

Julie Stephenson
Family and Children's Policy Directorate
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6 November 2015

Dear Julie

RE: Draft Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardians) Regulations (Northern Ireland)

The office of the Commissioner for Children and Young People (NICCY) welcomes the opportunity to comment on the above draft regulations which will support the provision of independent guardians to separated children in Northern Ireland. NICCY was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. In carrying out her duties, the Commissioner's paramount consideration is the rights of the child and in exercising her functions the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

Under articles 7(2)(3) of NICCY's legislation, the Commissioner has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and welfare of children and young people. It is with these duties in mind that we are providing a number of comments on the document.

Background

The term separated children includes children who are subject to immigration control, may be victims of trafficking, unaccompanied asylum seekers, migrants arriving alone and children who had arrived with a family member and have then been abandoned or bereaved. They are separated from their homes, families and friends and may have experienced trauma, abuse, violence and poverty in their country of origin and in their journey to Northern Ireland. Risks to children can be heightened in the post arrival period.

In 2012-2013, 12 separated children were referred to Health and Social Care Trusts and in 2013-14 six children had been referred. In 2013-14 three of the six separated children subsequently went missing (one had been assessed as an adult), and in addition to this one child who had initially been detained as an adult in Larne House Short Term Holding Facility also went missing.¹ NICCY is deeply concerned at the proportion of those who have been identified as potential separated children who have subsequently gone missing.

NICCY's 2014 commissioned research on guardianship² identified that support, services and expertise provided to separated children (including those who may have been trafficked) in Northern Ireland can be variable and contingent on the skills and commitment of individual practitioners. Immigration and child protection systems which span across Northern Ireland and the UK, and are both critical to the child's safety and welfare, can operate separately and in isolation to each other. Northern Ireland is also the only part of the UK which has a land border and NICCY remains concerned that ease of movement across the border can represent a significant challenge to child protection arrangements and place separated children and young people at greater risk of trafficking, exploitation and abuse.

Northern Ireland faces a very real challenge about how to ensure a small, but highly vulnerable, and often invisible, group of children have their most fundamental rights protected. The provision of an effective independent guardian should help to address this.

Children's rights

The UN Convention on the Rights of the Child confers special protection rights on 'refugee' children due to the unique vulnerabilities of their situation and their precarious legal status. A number of Convention articles also set out the obligations on government and statutory agencies to safeguard the rights of children who may be subject to trafficking and exploitation.

The UN Committee on the Rights of the Child states that the "appointment of a competent guardian as expeditiously as possible serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child" and in General Comment 6 (2005) the Committee sets out obligations for the treatment of separated

¹ 2014 HSCB Delegated Statutory Functions Report: 1st April 2013 to 31st March 2014 six notifications were received in respect of separated children, two in the Belfast Trust, three in the Northern and one in the Southern Trust. 2013 HMIP Unannounced Inspection of Larne House Short Term Holding Facility.

² R. Kohli, H. Connolly and H. Beckett (2014) *By Their Side and On Their Side: Reviewing the Evidence for Guardianship for Separated Children in Northern Ireland*, Belfast: NICCY.

children including the appointment of a guardian.³ The Committee notes that the guardian should: represent the child's best interest in all matters affecting them; have the authority to be present in all planning and decision making processes (including immigration and appeals hearings, care proceedings and the search for a durable solution); and have the necessary expertise in all areas including the child's legal, health and psychological needs. In their 2012 Day of Discussion on the Rights of All Children in the Context of International Migration the Committee reiterated that unaccompanied children should be provided with a legal Guardian and in their 2008 Concluding Observations that had recommended that the UK State Party should consider guardianship for separated children.

In addition to this, European law including The Council of Europe Convention on Action against Trafficking in Human Beings which was ratified by the UK 2008 and the EU Directive on Preventing and Combating Trafficking (2011/36/EU) also require government to ensure child victims of trafficking have access to a legal guardian in order to safeguard their best interests. As noted by the European Commission and European Union Agency for Fundamental Rights, as children have particular vulnerabilities, and may become victims of trafficking and exploitation at any point, the role of guardian is preventative as well as protective.⁴

Guardianship

Following the enactment of the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Act 2015, Northern Ireland is at present the only part of the UK to protect trafficked *and* separated children on a statutory basis through a guardianship provision. NICCY has warmly welcomed this legislation. However, while it was understood that provisions of the clause would be commenced in November 2015, NICCY is extremely disappointed that the guardian role will not be operational in the near future and is concerned that there appears to be no definitive timescale for this. The Department is currently consulting on regulations for the provision and the Department of Justice has stated that these will be laid by 31 March 2016.⁵

³ UN Committee on the Rights of the Child (2005) treatment of unaccompanied and separated children outside their country of origin, Geneva: CRC.

⁴ EUFRA and EU (2014) Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, EUAFR: Belgium.

⁵ Department of Justice (2015) Responses to consultation on the Human Trafficking and Exploitation Strategy 2015/16.

NICCY requests confirmation of the date from separated children will be provided with an independent Guardian.

While we welcome the current consultation on draft Regulations to outline the qualification and training of guardians, we are disappointed that they are restrictive in stipulating that the role of guardian and also their supervisor can only be undertaken by a qualified social worker. NICCY considers that the development of Regulations provides an important opportunity to directly link guardianship in Northern Ireland to the knowledge, competencies and qualities necessary for the role as set out by the Committee on the Rights of the Child in General Comment Number 6 and other standards, such as the EU Core Standards of Guardianship.⁶

For example, the Committee states that guardians “should have the necessary expertise in the field of child care, so as to ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered by, *inter alia*, the guardian acting as a link between the child and existing specialist agencies/individuals”.⁷ The European Commission handbook on guardianship outlines they must have “expertise and experience in child welfare and protection, including child development and psychology; an understanding of cultural as well as gender issues; sufficient knowledge of the national child protection systems, as well as the national healthcare and educational systems; sufficient knowledge of the legal framework” and notes that this may come from a range of professionals backgrounds, qualifications and experience.⁸ As documented, guardians in EU countries may come from a range of backgrounds including social work, psychology, youth work, legal profession and teaching.

NICCY recommends that the Regulations state that due regard should be given to the UN Committee on the Rights of the Child General Comment 6 in relation to the qualifications, expertise and training of independent guardians. NICCY is concerned

⁶ CRC (2005) General Comment Number 6: Treatment of unaccompanied and separated children outside their country of origin

M. Goeman et al (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities, Netherlands: Defense for Children.

⁷ CRC (2005) General Comment Number 6: Treatment of unaccompanied and separated children outside their country of origin.

⁸ EUFRA and EU (2014) Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, EUAFR: Belgium. See also EUAFR (2015) Guardianship systems for children deprived of parental care in the European Union: with a particular focus on their role in responding to trafficking, Italy: EUAFR.

that the role of independent guardian is restricted to qualified social workers and in addition to this those with five years post qualifying experience and is not aware of the evidence and reasoning for this requirement.

NICCY is content that all guardians will be required to complete appropriate Office of Immigration Services Commissioner training as suggested but seeks assurance that successful completion of Level Two registration will be an essential requirement for those seeking to act as independent guardians for all separated children due to their compromised legal status and as they are subject to immigration, asylum and potentially also trafficking processes.

We note the necessity of ensuring that guardians maintain and further develop expert knowledge and are provided with appropriate training, including for example, children's rights, child trafficking. NICCY would also highlight the importance of appropriate safeguards for the role are in place, such as, criminal records checks, registration with appropriate professional bodies and access to translation services. In addition to this, there should be robust assurances regarding potential conflict of interest between guardians and separated children, including where guardians hold any position in services required to provide resources to separated children (such as accommodation and support) or position where they are engaged in immigration, asylum or trafficking processes and decisions (such as age assessment).

In relation to the supervision of guardians, we note that any stipulation should be in line with professionals body requirements and should retain flexibility so that, where appropriate, supervision can reflect caseload, nature of cases and needs of the child and guardian. **NICCY expresses concern that the draft Regulations state that the supervisor role is also restricted to qualified social workers.**

Other considerations

The European Commission and Fundamental Rights Agency have also identified six fundamental principles that should form the basis of guardianship systems: child participation, sustainability, accountability, quality, independence and impartiality and non discrimination and these should be embedded in the Northern Ireland service.

In establishing guardianship provision in NI, NICCY notes that guidance should be produced NI to ensure that the role and tasks of guardians are outlined in detail for children, for guardians and also for the full range of professionals and agencies that are involved in the lives of separated children and who will be required to work with guardians and children to ensure that their rights and best interested are safeguarded.

The Guardianship provision should also be subject to appropriate monitoring and evaluation, including independent oversight and have in place an accessible child friendly complaints system. **It is unclear if such guidance will be produced by the Department or Health and Social Care Board and NICCY requests further detail regarding this.**

Please do not hesitate to contact my office if you require any further information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Koulla Yiasouma', written in a cursive style.

Koulla Yiasouma
Commissioner for Children and Young People