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Organised Crime Branch
Protection and Organised Crime Division
Department of Justice
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Our ref: 12/PD/PLM/078

Dear Ms Patterson

Consultation on the draft 'Working Arrangements for the Welfare and Protection of Adult Victims of Trafficking'

The Northern Ireland Office of the Commissioner for Children and Young People (NICCY) was created in accordance with The Commissioner for Children and Young People (Northern Ireland) Order 2003 ('the 2003 Order') to safeguard and promote the rights and best interests of children and young people in Northern Ireland.

In carry out our work, NICCY's paramount considerations are the rights and best interests of children and young people. The 2003 Order requires us to have regard to any relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

The safeguarding and promotion of the rights and best interests of separated children and young people subject to immigration control in Northern Ireland is an important issue for NICCY.

Given that the draft 'Working Arrangements' for consultation focus on adult victims of trafficking, NICCY's comments refer only to the section of the draft guidance on "Age disputed individuals" (paragraphs 7.11 to 7.14 of the draft Guidance) insofar as this relates to separated children and young people subject to immigration control.



We note that the relevant paragraphs of the draft guidance for consultation largely mirror the corresponding sections of the 'Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking' issued by the Department of Health, Social Services and Public Safety (DHSSPS) and the Police Service for Northern Ireland (PSNI) in February 2011. That guidance, however, was subject only to "targeted consultation" by DHSSPS and PSNI, in which NICCY was not included.

NICCY recommends that the Department of Justice (DOJ) and DHSSPS ensure that the section of the draft guidance for consultation on "age disputed individuals" reflects current best practice standards with respect to children and young people under the age of 18.

In March of this year, the Immigration Law Practitioners' Association (ILPA) published a second edition of 'Guidelines for best practice' in working with children and young people subject to immigration control, by Heaven Crawley¹. These Guidelines aim to "represent best practice in the context of United Kingdom immigration control based on contemporary knowledge and relevant national, international and regional norms, standards and principles"² and can be accessed via the following web link:

http://www.ilpa.org.uk/data/resources/14627/12.04.25-ilpa_child_guidelines_2nd_ed.pdf³

We would highlight the statements made at paragraph 7.11 of the draft adult trafficking guidance for consultation (which we note have been largely copied across from the child trafficking guidance):

"A young person under the age of 18 years found in a brothel, for example, may have been told to state that he/she is an adult. Other young people who are over the age of 18 may have been told to claim they are under 18 years in order to secure the protection of the HSC Trust and the more favourable outcomes for unaccompanied children in immigration decisions" (paragraph 7.11 of the draft adult trafficking guidance).

We note that an example is given at the end of the above paragraph as a rationale as to why a person over 18 would be told to claim that they are under 18 (the example

¹ Heaven Crawley (March 2012) 'Working with children and young people subject to immigration control: Guidelines for best practice. Second edition' (London: ILPA).

² As above, page 1.

³ Last accessed 16 August 2012.

being “in order to secure the protection of the HSC Trust and the more favourable outcomes for unaccompanied children in immigration decisions”). However, no such example is provided to practitioners as a rationale as to why a young person under the age of 18 may have been told to state that he/she is an adult. Some direction is provided in Crawley’s Guidelines for best practice on working with children and young people subject to immigration control:

“Professionals who first come into contact with a child or young person who may have been trafficked may have doubts about the child’s age and/or identity. This is because children and young people who are trafficked rarely enter on their own passports and traffickers tend to provide them with identity documents which state that they are older than they are to avoid the extra exit and entry requirements imposed on children”⁴.

Following the rationale outlined in Crawley’s best practice guidelines above, we recommend that an explanation is added to paragraph 7.11 of the draft DOJ/DHSSPS guidance highlighting an example as to why an under-18 may state that he/she is an adult. This would draw further attention to the risk of under-18s going undetected as such. By the same token, it is important that such an example is highlighted in the draft guidance in order to provide a sense of balance to the relevant section, given that an example is already highlighted within the draft guidance illustrating a rationale for the opposing example of an over-18 claiming to be under the age of 18.

Moving on, at paragraph 7.13 of the draft guidance, it is noted that that Health and Social Care (HSC) Trusts “should have access to social workers who have been trained in conducting Merton-compliant age assessment of young people” [emphasis added].

The guidance for consultation goes on to state at paragraph 7.13 that “age assessments should be undertaken by two social workers, one of whom must be Merton trained...” (We note that this is largely copied across from the child trafficking guidance).

The Children’s Commissioner for England explained in a recently published report that “since the introduction of the section 55 duty [within the Borders, Citizenship and Immigration Act 2009], UK Border Agency policy has been to accept the conclusion of

⁴ See footnote 1 above, Crawley (2012), at paragraph 12.18.

*a Local Authority assessment of age (if it is available to the immigration officer and if it is accepted that it was conducted in accordance with the relevant case law)*⁵.

It is therefore essential that social workers in Northern Ireland are adequately trained for the task of conducting age assessments.

In order to comment on the relevant area of the guidance for consultation it is crucial to have an awareness of the number of social workers who have received the relevant training, in each Trust, as appropriate. According to the corresponding section of the child trafficking guidance issued in February 2011, "Merton Compliant Age Assessment training for Trusts' social workers" was "due to commence in February 2011"⁶.

Within the context of our response to the present consultation, we therefore request figures on:

- The number of social workers (including the number within each Trust, as appropriate) who have received training on conducting Merton-compliant age assessments of young people since February 2011, to date; and
- The number of social workers within the Trusts (including the number trained within each Trust, as appropriate) who had received such training as of February 2011.

We note that the requested information may be held by DHSSPS (or the HSC Board/Trusts, as appropriate), and not the Department of Justice (DOJ), which we understand to be leading on the administration of the consultation exercise. We also note that the draft guidance has been developed jointly by DOJ and DHSSPS, and look forward to receiving a response on this matter.

On the issue of allocating responsibility for the assessment of age, we note the following advice within the draft guidance at paragraph 7.13:

⁵ Children's Commissioner for England (July 2012) 'Review of case law and local authority practice since the Supreme Court judgment in R (A) v Croydon LBC [2009]' (London: OCCE), page 20. In March 2012 the UK Children's Commissioners jointly voiced serious concerns about the UK Border Agency's plans to pilot a trial with the London Borough of Croydon to offer the opportunity to young people who claimed to be children but who had been assessed by Croydon Social Services as over 18 to undergo a dental age assessment <http://www.niccy.org/article.aspx?menuid=14024> (last accessed 29 August 2012). The pilot was suspended in April while the Border Agency seeks ethical approval for the scheme.

⁶ DHSSPS/PSNI (February 2011) 'Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking' (Belfast: DHSSPS/PSNI) page 15.

"Age assessment should be undertaken by two social workers, one of whom must be Merton trained and the other, preferably, the young person's social worker or a social worker who is familiar with the case".

In our November 2011 'Midterm Report to the UK State Party on the UN Convention on the Rights of the Child'⁷, while noting that it is preferable that child care professionals make the assessment on age, the UK Children's Commissioners made the following comment on the number of challenges that this presents:

"The UK Children's Commissioners have held a consistent position that there is a potential conflict of interest where a local authority has the dual role of making the decision on the age of the young person and then accommodating them if found to be a child. The potential conflict is exacerbated by the insufficient 'per capita' grant that UKBA provides for the care of each person found to be a child and the subsequent financial consequences for the authority. Because a majority of age disputed young people will first come to the attention of UKBA in a 'gateway' authority there is a disproportionate impact on those particular Local Authority budgets and therefore a greater incentive to reduce their costs by finding the young person either not to be a child or to be older than the young person is claiming (as it is more expensive to accommodate a young person below the age of 16). The Children's Commissioners have therefore taken the position that there should be a greater involvement in the age determination process by other professionals who are in contact with the young person. Of particular importance is establishing the view of a paediatrician before coming to a final decision".

Our comments are complemented by Crawley's advice in the Guidelines for best practice on working with children and young people subject to immigration control:

"Age assessment should be undertaken by professionals who are independent and have no vested interest in the outcome of the decision"⁸.

The UK Children's Commissioners have commented that evidence exists from around the UK that authorities do not consistently give the 'benefit of the doubt' to a young

⁷ UK Children's Commissioners (November 2011) 'UK Children's Commissioners' Midterm Report to the UK State Party on the UN Convention on the Rights of the Child. The Evidence' (London/ Belfast/ Edinburgh/ Swansea/ Conwy: UK Children's Commissioners).

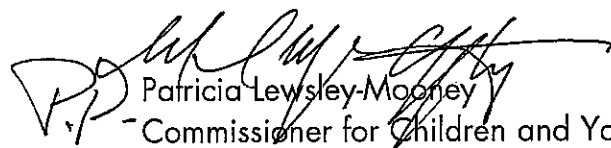
⁸ See footnote 1 above, Crawley (2012), at paragraph 9.28.

person claiming to be a child⁹. Where a child is incorrectly assessed as an adult or as older than they actually are, this has profound effects on the child's enjoyment of their rights under the UNCRC.

We urge the DOJ/DHSSPS to take into account the advice provided within this submission and to ensure that the final guidance reflects best practice standards.

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

Yours sincerely


Patricia Lewsley-Mooney
Commissioner for Children and Young People

⁹ See footnote 7 above, UK Children's Commissioners (November 2011).