

Lord Morrow  
DUP Advice Centre  
19 Church Street  
Dungannon  
County Tyrone  
BT71 6AB

16 October 2012

Dear Lord Morrow

## **Consultation on a Private Member's Bill regarding to proposed changes in the law to tackle human trafficking**

Thank you for inviting comments in relation to the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. This response is not intended to be comprehensive, but instead focuses on Clause 11 of the Bill, 'Legal advocates for child victims'. We take the opportunity within our submission to highlight our own recommendation for legal guardians to be appointed for separated children and young people subject to immigration control, and also to inform of a focused piece of research in this area which we will be commissioning.

The office of the Northern Ireland Commissioner for Children and Young People (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.

Under article 7(2) of the 2003 Order, NICCY has a duty to keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children. Under article 7(3), we have a duty to keep under review the adequacy and effectiveness of services provided for children by relevant authorities.

In carrying out our function, NICCY's paramount consideration is the rights of the child and our work is based on the United Nations Convention on the Rights of the Child (UNCRC).

NICCY understands that Clause 11 of the Private Member's Bill calls for 'legal advocates' (or 'guardians', to use the language of the UN Committee on the Rights of the Child) *"for child victims of trafficking who have no parental figure available"*.



The issue of guardianship for child victims of trafficking has received particular attention on a UK-level in recent times, with ECPAT UK publishing a report in October 2011 calling on the UK Government to introduce a system of guardianship for child victims of trafficking<sup>1</sup>. In addition, an amendment (Amendment 57A) to the Protection of Freedoms Bill (now Protection of Freedoms Act) seeking the introduction of a system of legal advocates or guardians for trafficked children was debated in the House of Lords in February 2012, but ultimately withdrawn<sup>2</sup>. NICCY notes that Clause 11 of the Private Member's Bill for consultation follows the wording of Amendment 57A.

ECPAT UK has noted that its call for a system of guardianship for child victims of trafficking is also part of a *"wider campaign by other children's charities and organisations"* calling for a *"system of guardianship for all separated children who arrive in the UK and are subject to immigration control"*<sup>3</sup>.

Guardianship for separated children subject to immigration control is an issue of key concern to NICCY, alongside the Children's Commissioners for England, Scotland and Wales<sup>4</sup>.

The Separated Children in Europe Programme (SCEP) provides the following explanation regarding the term 'separated children':

*"Separated children are under 18 years of age, outside their country of origin and separated from both parents, or their previous legal, or customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCEP, may be living with extended family members who are not necessarily their customary or primary caregivers. All such children are separated children and entitled to*

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<sup>1</sup> ECPAT UK (2011) *Watch over me: A system of guardianship for child victims of trafficking* (London: ECPAT).

<sup>2</sup> <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120215-0002.htm#12021581000113> (last accessed 15 October 2012).

<sup>3</sup> ECPAT UK (June 2011) *Briefing: Guardianship for Child Victims of Trafficking* (London: ECPAT UK), page 2, [http://www.ecpat.org.uk/sites/default/files/briefings/guardianship\\_briefing\\_2011.pdf](http://www.ecpat.org.uk/sites/default/files/briefings/guardianship_briefing_2011.pdf) (last accessed 15 October 2012).

<sup>4</sup> The UK Children's Commissioners have jointly called for legal guardians to be introduced in: UK Children's Commissioners (2011) *Midterm report to the UK State Party on the UN Convention on the Rights of the Child*, and UK Children's Commissioners (2008) *Report to the UN Committee on the Rights of the Child*.

*international protection under a broad range of international and regional instruments<sup>5</sup>".*

In practical terms, a distinction must be made between cases of children and young people who are subject to immigration control and at potential risk of trafficking/having been trafficked; and the trafficking of children and young people from NI, or otherwise *not* subject to immigration control (internal trafficking).

Evidence of trafficking of young people from NI for the purposes of sexual exploitation was documented in the 2011 Barnardo's NI report 'Not a World Away'<sup>6</sup>. Indeed the report highlighted that seven "*local young people*" were confirmed as 'victims of trafficking' through the National Referral Mechanism (NRM) in recent months prior to the report's publication (the report was published in October 2011).

The Private Member's Bill consultation document notes statistics published by the Child Exploitation and Online Protection Centre (CEOP) which highlight that seven children received a 'positive conclusive grounds' decision and were therefore found to have been trafficked under the NRM during the period 1 January 2011 to 15 September 2011. This figure corresponds with the information published in the Barnardo's NI report. NICCY therefore presumes that the seven children and young people referred to in the consultation document are the seven local young people referred to in the Barnardo's NI report, and therefore represent victims of internal trafficking in NI.

On the other hand, we are aware that one child subject to immigration control was confirmed as a 'victim of trafficking' through the NRM<sup>7</sup> between April 2009 and March 2011 (with reference to statistics published in a written answer by the Home Department in March 2011).

Unaccompanied child victims of trafficking who are subject to immigration control may be interpreted as a subset of the overall number of separated children subject to immigration control in Northern Ireland, which has also remained low.

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<sup>5</sup> SCEP (2009) *Statement of Good Practice: 4<sup>th</sup> Revised Edition* (Denmark: SCEP), pages 3-4.

<sup>6</sup> Dr Helen Beckett (2011) *Not a world away: the sexual exploitation of children and young people in Northern Ireland* (Belfast: Barnardo's).

<sup>7</sup> NICCY is aware of and shares concerns of other agencies regarding the NRM process itself, particularly in relation to persons subject to immigration control. However, this issue is beyond the scope of our consultation response.

The UK Border Agency's NI office has advised the Commissioner that approximately 5 to 7 unaccompanied young people seek asylum each year<sup>8</sup>. Comparative figures suggest that 13 separated children subject to immigration control presented to NI social services between July 2009 and November 2010<sup>9</sup>.

While recognising the small numbers presenting in Northern Ireland, separated children and young people subject to immigration control are recognised as representing some of the most vulnerable children and young people in need of protection in the UK. Concerns have been brought to the Commissioner's attention regarding the complex interaction between the immigration, welfare, trafficking and legal processes to which this highly vulnerable group of children may be subject in Northern Ireland, and the need for improvements in practice in order to meet their rights and best interests.

International children's rights law and human rights standards call for a guardianship approach towards safeguarding the rights and best interests of this vulnerable group, and there have been numerous calls at both the UK and international level for guardians to be appointed.

The United Nations Committee on the Rights of the Child recommended that the Government "*consider the appointment of guardians for unaccompanied asylum-seekers and migrant children*" in both its 2002 and 2008 Concluding Observations in respect of the United Kingdom's compliance with the UNCRC<sup>10</sup>. In a General Comment published in 2005<sup>11</sup>, the UN Committee recommended the appointment of a competent guardian as "*expeditiously*" as possible, "*as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child*"<sup>12</sup>, noting that a child "*should only be referred to asylum or other procedures after the appointment of a guardian*"<sup>13</sup>, and that a legal representative should also be appointed in addition to a guardian, where a child is referred to asylum procedures or

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<sup>8</sup> Children's Commissioner's meeting with UK Border Agency official on 10 September 2012.

<sup>9</sup> Figures established via Freedom of Information requests in 2010 by a working group led by Law Centre (NI).

<sup>10</sup> Committee on the Rights of the Child (2008) *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, paragraph 71; Committee on the Rights of the Child (2002) *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, paragraph 48.

<sup>11</sup> Committee on the Rights of the Child (2005) *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin* (Geneva: United Nations).

<sup>12</sup> As above, paragraph 21.

<sup>13</sup> Committee on the Rights of the Child (2005), as above

other administrative or judicial proceedings. In this context, NICCY believes that the risk of trafficking of the small number of separated children subject to immigration control in NI should not be considered in isolation to the issue of the complex immigration processes (including asylum processes) to which these children are subject.

A further crucial component of guardianship is that *"agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship"*<sup>14</sup>.

Despite calls across the UK and internationally for a guardianship approach to safeguarding separated children subject to immigration control, the UK Government has maintained its position that guardianship is not necessary and that existing arrangements are adequate. The UK Children's Commissioners clearly disagree with the UK Government position<sup>15</sup>.

NICCY recommends that a system be developed so that legal guardians are appointed to all separated children subject to immigration control in NI. It is of particular interest that a guardianship pilot project was launched in Scotland in 2010, supported by the Scottish Government. The UK Children's Commissioners wish to see all UK administrations follow this example<sup>16</sup>.

Outside of Scotland, guardianship models for children subject to immigration operate in a number of European countries and can vary widely in terms of their approach. A number of UK<sup>17</sup> and international<sup>18</sup> reports have investigated the matter, however, the issues have not been explored in detail at the NI level.

For this reason, NICCY is planning to commission a focused piece of research to explore a model of guardianship for separated children in Northern Ireland. At a more basic level, we will also hope that the research that we commission will provide us with a greater understanding of the profile and issues facing separated children and young

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<sup>14</sup> Committee on the Rights of the Child (2005), as per note 10, paragraph 33.

<sup>15</sup> UK Children's Commissioners (2008), see note 4 above.

<sup>16</sup> UK Children's Commissioners (2011), see note 4 above.

<sup>17</sup> For example: Save the Children UK (2008) *Guardianship for Separated Children in the UK: Stakeholder Views* (unpublished report) and Crawley, H. (2012) *Working with children and young people subject to immigration control: Guidelines for best practice. Second Edition* (London: ILPA).

<sup>18</sup> For example: Versteegen, T. and Murk, J. (2010) *Towards a European Network of Guardianship Institutions* (Utrecht: Nidos Foundation and Refugium e.V.) and Separated Children in Europe Programme (2009) *Statement of Good Practice: 4<sup>th</sup> Revised Edition* (Copenhagen: SCEP).

people subject to immigration control in Northern Ireland. We are particularly aware that the statistics on this issue remain low in Northern Ireland in comparison to other parts of the UK and the Republic of Ireland, and we hope that our report will provide us with clarification on the situation in NI. Most of all, we anticipate that our report will add strength to the call for guardianship for separated children subject to immigration control.

Thank you for the opportunity to provide our comments in relation to the Private Members' Bill for consultation. We hope that our comments are informative.

I look forward to discussing the issues in further detail with you during our meeting on 18 October. However, please do not hesitate to contact the office in the meantime if you require clarification regarding any of the issues raised in this submission.

Yours sincerely

A handwritten signature in black ink, reading "Patricia Lewsley-Mooney". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

Patricia Lewsley-Mooney  
Commissioner