

**The indicative costs
and efficiencies
of guardianship**

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Key messages

- Separated children are in this country without the support of a parent or carer. They have a particular need for an independent legal guardian to help them navigate the complex processes within which they are involved.
- The Modern Slavery Bill provides a key opportunity for the government to introduce a system of guardianship for *all* separated children including potential victims of trafficking, which is independent not only of local authorities but also of the Home Office, and which gives guardians statutory powers to ensure they have legal responsibility for the child.
- We estimate that a system of guardianship for England and Wales would need to be made available to approximately 2500-3000 children each year.
- This briefing highlights the relatively small cost of a guardianship system and the potential cost savings and efficiencies which it could generate.
- We are calling on the government to introduce a system of independent legal guardianship to be implemented within primary legislation for all separated children.

Introduction

Over recent years many NGOs and child welfare experts have argued for independent guardianship in statute for all separated migrant children¹, including victims of trafficking. This would mean that each separated child would have a trusted adult – someone on their side - to oversee and coordinate the complex services and processes which they are involved in and make sure their welfare is always central to decisions made about them. This is a long-standing position of the Refugee Children's Consortium – a coalition of over 40 NGOs working collaboratively to protect the rights of refugee, migrant and trafficked children including a range of charities such as ECPAT UK, Coram Children's Legal Centre, Barnardo's, NSPCC, Refugee Council, the Immigration Law Practitioners' Association, the British Association of Social Workers, The Children's Society and UNICEF UK.

What has received less attention so far are the cost implications for developing such a system within England and Wales, and areas where potential cost savings could be made. This briefing looks at the approximate number of separated migrant children in England and Wales who are in need of a guardian, the running costs of two European systems of guardianship, and indicative areas where efficiencies and cost-savings could be made if a guardianship system were to be put in place. This briefing should be read as a supplement to evidence highlighting in more detail the case for independent legal guardianship provided to the Joint Committee on the draft Modern Slavery Bill from the Refugee Children's Consortium², UNICEF UK³ and The Children's Society.⁴

¹ When we refer to separated children in this document this also includes unaccompanied children. Please see the appendix for full definitions of these terms.

² See evidence to the Joint Committee on the draft Modern Slavery Bill submitted by the Refugee Children's Consortium: <http://tinyurl.com/ku4s87r>

³ See evidence to the Joint Committee on the draft Modern Slavery Bill submitted by UNICEF UK <http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/EvidenceHtml/6010>

⁴ See evidence to the Joint Committee on the draft Modern Slavery Bill submitted by The Children's Society <http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/EvidenceHtml/7022>

Numbers of affected children

There are no comprehensive statistics on the number of separated children in the UK. However, indicative statistics do exist:

- Between 2008 and 2013⁵ an average of 2832 unaccompanied asylum-seeking children were looked after by local authorities in England each year.
- Between 2008 and 2013⁶ an average of 2153 unaccompanied children applied for asylum in the UK each year.
- There are no readily available figures of the number of separated children in Wales; however, the latest figures estimate there were 35 unaccompanied asylum-seeking children in Wales⁷.
- According to the UK Human Trafficking Centre Annual Assessment, 549 potential child victims of trafficking were identified in 2012⁸. However, this assessment did not include information held by local authority children's services who are likely to have more information about potential child victims of trafficking and therefore the true scale of child trafficking is likely to be far greater.

We estimate that a system of guardianship for England and Wales would at present need to be made available to approximately 2500-3000 children each year.

Why is a guardian needed for all separated children?

Separated children have a particular need for an independent legal guardian - one person in their life to oversee and coordinate the agencies, services and processes which the child needs to navigate. Many separated children are seeking protection from persecution, war and violence; have been abandoned by or become separated from their parents or carers once outside their country of origin; and might also be victims of human trafficking and exploitation. The vulnerabilities and additional needs of separated children outside their country of origin are widely recognised⁹.

⁵ Children looked after in England, including adoption: <https://www.gov.uk/government/publications/children-looked-after-in-england-including-adoption>

⁶ Refugee Council - Asylum Statistics, May 2013: http://www.refugeecouncil.org.uk/assets/0002/7887/Asylum_Statistics_May_2013.pdf Home Office Statistics (October to December 2013) <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2013/immigration-statistics-october-to-december-2013#asylum-1>

⁷ Wales Children in Need Census (2013) <http://wales.gov.uk/docs/statistics/2014/140227-wales-children-need-census-2013a-en.pdf>

⁸ UK Human Trafficking Centre Annual Assessment (2013) <http://www.soca.gov.uk/news/608-human-trafficking-assessment-published>

⁹ Rigby, P. (2011) *Separated and Trafficked Children: The Challenges for Child Protection Professionals*. Child Abuse Rev., 20: 324–340

A guardian should be available to all separated children and be independent from the state in order to avoid conflicts of interest. This would mean that every child, including all potential victims of trafficking, would have a specially trained and court appointed adult invested with all necessary legal responsibilities to assist the child, to help them to engage with and participate in decisions about their lives, and to ensure that such decisions are always made in order to safeguard and promote the well-being of the child in full understanding of the child's best interests. A guardian should be appointed for every separated child aged under 18 and this service should continue until the child has reached the age of at least 21 (or until 24 if they are in full-time education), or as long as their welfare demands in order to be consistent with leaving care legislation.

Difficulties in identification

In addition to the inherent vulnerabilities of separated children, there are some practical reasons around the identification of child trafficking victims which make it important that a guardian is appointed immediately when a child is identified by authorities. Identifying child victims of trafficking poses numerous challenges¹⁰. For example, when a child has not been recognised as a potential victim of trafficking, or even been identified as being under of 18, they may be criminalised and sent to prison or adult immigration detention centres¹¹. In some cases, the first indication that an unaccompanied child who has come into care may have been trafficked is that they go missing from their placement, often within the first 48 hours. The role of a guardian – a trusted adult – is also vital in ensuring that a child feels supported and is able to disclose information relevant to their experience of being exploited which can take a period of time. In addition children do not always fall into neat categories: a trafficked child who is subject to immigration control and would need to regularise their immigration status in order to remain in the UK legally, may have grounds for an asylum or human rights claim, and therefore be considered an unaccompanied asylum-seeking child. Moreover, children's status may change depending on the legal options open to them, and the decisions taken by immigration authorities or by the courts reviewing such decisions.

Therefore it is vital that guardians are appointed for *all* separated migrant children as soon as the child comes to an authority's attention¹². This will ensure that no child is excluded from this vital protection on the basis of an incorrect categorisation or misunderstanding as to their status, risks and protection needs, as well as in recognition of the inherent vulnerabilities of separated migrant children as a whole. An inclusive approach at the earliest stage will prevent children falling out of the system and remaining unnecessarily exposed to continuing risks of trafficking and other forms of abuse and exploitation.

¹⁰ UNICEF (2011) *Child Trafficking in the Nordic Countries: Rethinking strategies and national responses* http://www.unicef-irc.org/publications/pdf/nordic_countries.pdf

¹¹ Franklin, A. and Doyle, L. (2013) 'Still at risk: A review of support for trafficked children'. The Refugee Council and The Children's Society: <http://tinyurl.com/o3e8k7w>

¹² General Comment No. 6 (2005), c.33

Existing guardianship systems and their set up and running costs

Other European countries have introduced or piloted variations of guardianship schemes. Below are case studies from the Netherlands and Scotland which highlight the key features and output costs of these systems. We do not believe that these models can or should be directly transferred to the English and Welsh context. In particular, guardians in Scotland do not have the legal powers to instruct a lawyer on the child's behalf or compel authorities to act in the child's best interest, which is the approach we believe should form part of any new system in England and Wales¹³. Nevertheless these examples serve to inform the development of an effective model and give an indication of costs incurred by other governments setting up a similar system.

Scottish Guardianship Service: Scottish Refugee Council and Aberlour

The Scottish guardianship service¹ provides a consistent point of contact – a guardian - for all newly arrived unaccompanied children. A total of 81 young people were allocated a guardian during the period of the evaluation and the average caseload per guardian was 6 young people. The guardians work in three main areas of children's lives; social networks, asylum and welfare. The service is based in Glasgow but has built relationships with all 32 local authorities across Scotland. The successes of the pilot project were highlighted in its final evaluation¹, securing a commitment for further (three-year) funding for the service from the Scottish Government.

Staff costs (the service manager, 3 full time guardians, 1 part time guardian (4 days per week) and a full time administrator)	£188,058
Direct project/department costs	£7935
Overheads and maintenance (rent, electricity, gas, stationery, printing, telephones etc.)	£26,204
Travel and mileage costs	£7202
Interpreting and consultation fees	£30,615
Management fees	£19,470
Total expenditure	£279,484

¹³ See Paras 14- 18 of Joint Committee on the draft Modern Slavery Bill submitted by the Refugee Children's Consortium: <http://tinyurl.com/ku4s87r> and paras 13-16 of evidence to the Joint Committee on the draft Modern Slavery Bill submitted by UNICEF UK <http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/EvidenceHtml/6010>

Nidos in the Netherlands: legal guardianship for all unaccompanied children

The guardianship system in the Netherlands has been the responsibility of Nidos Foundation, an NGO financed by the Ministry of Justice, since the early 1990s.

- Nidos has approximately 200 staff.
- Each guardian accompanies approximately 20 children and works with them until they reach 18 years old or are ready to leave the country.
- The system has a statutory footing. The Dutch Civil Code states that all minors residing in the Netherlands must be provided with legal guardianship. In the absence of a parent, the government must ensure that a guardian is appointed. This takes place by means of legal proceedings resulting in the appointment of a guardian by the court. Guardianship is therefore always a result of a judicial decision. Usually the judge appoints Nidos as a guardian.
- The duties of Nidos are tested against the Civil Code and the Youth Care Act and are assessed by a governmental body called the Inspector for Youth Protection.
- Guardians have a case management function and are the coordinator for every actor involved in the child's life.

Based on the guardianship of approximately 2,000 children, in 2013 Nidos spent €15.50m on the direct costs of a guardianship scheme.

	EUR	GBP*
Staff costs	€11.70m	£9.80m
• <i>Guardians and supportive tasks such as case-supporting psychologists</i>	€10.13m	
• <i>Overhead (P&O, secretariats, finances, administration, in-house lawyers etc.)</i>	€1.33m	
• <i>Specific overhead (e.g. a specialist back-office for return procedures, a few in-house lawyers)</i>	€0.23m	
Travel, buildings and office costs	€2.40m	£2.00m
"Schiphol-team" active 24 hrs at airports if children arrive	€1.40m	£1.17m
Total expenditure:	€15.50m	£12.98m

*Based on a conversion rate of: 1 EUR = GBP 1.19 as at 14th March 2014

Improved outcomes and efficiencies

A system of guardianship would not only bring improved outcomes for children and young people but should also contribute to efficiencies and cost-savings for key agencies working with separated and trafficked children. Establishing the role of a 'key worker' to bring together all the actors and services involved in one case has already shown that cost-savings can be generated (see examples below). These demonstrate the advantage of having one person to oversee a situation of complex needs which cut across several different service areas with many professionals involved, such as would be the case for separated children.

Family Intervention Projects (FIPs) for 'troubled families'

FIPs developed out of the Government's anti-social behaviour strategy which aimed to address evidence that 'troubled families', those with the most complex and entrenched problems, often do not benefit from services they receive because these services do not take the full family situation and context into account¹⁴. Research shows that the myriad of service interventions around these families are costly and sometimes generate conflicting advice¹⁵.

A **key worker** is one of the central features of FIPs. Their role is to coordinate activity and ensure that only the right agencies are involved and that they meet their obligations to deliver services. These key workers have been found to provide an antidote to the fragmented activity from many different agencies that usually surrounds a troubled family. FIPs have seen huge success including over 60% of families experiencing a reduction in the number of risks they have associated with poor parenting, domestic violence, child protection issues, crime and anti-social behaviour. This success has demonstrated cost savings for services.¹⁶ The average costs of a FIP range from £8000 and £15,000 depending on the level of intervention. It has been estimated that the costs to society of a family with severe problems could be as much as £250,000 - £350,000 in a single year without this intervention. For example, the cost of having one child alone in care over the period of a year would be nearly £13,000 as well as the associated costs of taking a child into care would be a further £5300.

Refugee Action Family Key Worker Pilot¹⁷

A pilot 'key worker' project set up and run by Refugee Action called the Family Key Worker Pilot in 2010 highlighted the benefits of having a continuous independent point of contact providing holistic support for a family while they navigate the asylum process. Clients were found to raise issues they would not raise through other asylum advice providers; they were more able to actively engage with their legal case and influence its progress; and clients gained a more realistic view of potential progress and case outcome.

For example, in some cases, it was clear that the key worker approach had allowed issues to surface which had been directly relevant to the asylum claim. In one it was only after a woman revealed personal details about her circumstances to the female key worker (up to that point she had just been seen by men) that it was realised that she had a much stronger case than her husband and that, effectively, the wrong person had been applying for asylum. This enabled a new claim to be made, ultimately saving costs down the line.

¹⁴ Department for Education (2010) *Monitoring and Evaluation of Family Interventions*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181676/DFE-RR044.pdf

¹⁵ Research by Kate Morris for Nottingham City Council in Department for Communities and Local Government (2012) *Working with Troubled Families: A guide to good practice*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66113/121214_Working_with_troubled_families_FIN_AL_v2.pdf

¹⁶ Ibid.

¹⁷ Refugee Action (2012) *Evaluation of Family Key Worker Pilot: Outcomes and lessons learned* http://www.refugee-action.org.uk/assets/0000/5469/Family_Key_Worker_Pilot_Evaluation_2012.pdf

This section now uses four key areas to exemplify where a guardian could play a similar role to the key workers described above, using evidence from the evaluation of the Scottish Guardianship Service.

1) Quality of decision-making

➤ Immigration and asylum decision-making

Despite obligations within the UNCRC and established case law which require that a child's best interests are a *primary consideration* in all actions affecting them¹⁸, research has highlighted that in a significant number of cases the Home Office does not carry out any determination of a child's best interests when assessing claims for asylum by unaccompanied children¹⁹. There is evidence that guardianship contributes to the asylum decision-making process by improving young people's understanding and engagement in the process and by ensuring that as much information as possible is made available to case owners. This enables them to make a better informed decision and create a context in which there is increased communication and information-sharing between all of the professionals involved in the asylum process. This has an impact on improving decisions at an early stage in the claim, reducing the likelihood of an incorrect decision and possible appeal.

In Scotland, 44% of young people who were appointed a guardian were granted refugee status or humanitarian protection at the initial stage, compared with 21% over the corresponding period in the UK as a whole and just 11% in Scotland in the 12 months prior to the pilot commencing²⁰. Whilst it is difficult to attribute these outcomes directly to the work of the guardianship service, there is clear evidence of guardians helping young people to navigate the complexities of the asylum process resulting in clear, timely and often positive outcomes for those who are seeking asylum or have been trafficked. Guardians in the Scottish guardianship service are increasingly providing evidence in the form of reports and other information on behalf of children using the service. They work closely with the child's lawyer to ensure that the child's statements and evidence are as thoroughly prepared as possible, to facilitate disclosure, and to support their asylum claims. They also attend appeals before the Tribunal to provide evidence of their own work with the child as well as to support the child before and during the hearing. Where an extension of discretionary leave was required for a young person, guardians proactively sought letters from a young person's GP, social worker, key worker and teacher to support the young person's extension application. **Guardians therefore helped to ensure that decision-makers in the Home Office had sufficient up-to-date information on which to base a decision.**

¹⁸ Both Article 3 of the UNCRC and Article 24 of the Charter of Fundamental Rights of the European Union make the child's best interests 'a primary consideration' in all actions concerning children. There is a distinct but related domestic statutory obligation imposed by section 55 of the Borders, Citizenship and Immigration Act 2009 and in the Home Office's child asylum processing instructions.

¹⁹ In one recent study 24 out of 34 unaccompanied children's cases reviewed showed that best interests of the child were not determined as part of the asylum claim. Greater Manchester Immigration Unit (2013) Children's Best Interests: A primary Consideration?

²⁰ Crawley, H and Kohli, R, K (2013) *She endures with me: An evaluation of the Scottish Guardianship Service Pilot* <http://tinyurl.com/pb9bgs8>;

➤ Decisions within the National Referral Mechanism (NRM)

Substantial limitations to the NRM have consistently been raised by a number of organisations²¹ and the government has recently announced a review of the system²². The Scottish guardianship service found that guardians dealing with separated children who had an asylum claim were able to review all the relevant papers to ensure that all of the circumstances of the case were taken into account in the decision-making process. Sometimes this highlighted unrecognised potential cases of trafficking.

Case study: Guardian identifies missed child victim of trafficking

A young person who had been trafficked to the UK for the purpose of cannabis cultivation was advised by a legal representative over the telephone. The legal representative completed the 'Statement of Evidence' form over the telephone and did not ask the questions that would have elicited the answers needed for a clear and accurate description of the young person's exploitation in their country of origin, en route to the UK and within the UK. No referral was made to the NRM by either the legal representative or the young person's social worker. After reading the record of his substantive interview the guardian identified indicators that the young person may have been trafficked and made a referral to a specialist legal firm. The social worker submitted an NRM notification to UKBA on behalf of young person and the young person was assessed accordingly. The young person was given the opportunity to provide a fuller account and received a Conclusive Decision through the NRM process.

Source: Scottish guardianship pilot evaluation

Guardians provided brief factual summaries of the backgrounds of young people to local authorities who have then used these as a basis for identifying a young person as a potential victim of trafficking. **According to legal representatives, guardians contributed directly to improving the quality of evidence that a young person is able to present to decision makers²³.**

2) Legal advice and representation

The Scottish service is limited in that guardians cannot instruct solicitors on behalf of a child, which is particularly problematic in cases involving trafficking victims who may be too fearful of disclosing information to implicate the traffickers or where children have been coached to tell a particular story. Legal assistance is however, in some cases the only way in which a victim is identified and that identification is crucial to their receiving support and their traffickers being detected and prosecuted. The lack of quality immigration advice and representation for children means there is also a risk that all the relevant evidence relating to a child's claim is not heard and that their claim is wrongly refused.

²¹ The Anti-trafficking Monitoring Group (2013) *Hidden in Plain Sight: Three years on: updated analysis of UK measures to protect trafficked persons* http://www.antislavery.org/includes/documents/cm_docs/2013/h/hidden_in_plain_sight.pdf The Anti-trafficking Monitoring Group (2013) *In the Dock*: http://www.antislavery.org/includes/documents/cm_docs/2013/i/inthedock_final_small_file.pdf

²² Modern slavery white paper published <https://www.gov.uk/government/news/modern-slavery-white-paper-published>

²³ Crawley, H and Kohli, R, K (2013) *She endures with me: An evaluation of the Scottish Guardianship Service Pilot* <http://tinyurl.com/pb9bgs8>

In Scotland, guardians play an important role in ensuring young people have timely access to legal representation, develop an awareness and understanding of their rights, and are able to understand and reflect on legal advice before making important decisions. The guardian's role in helping young people to adjust to life in Glasgow provided an important context within which young people have the capacity and willingness to engage fully with the asylum process. In almost 70% of cases a guardian attended the majority of appointments with the young person's legal representative, including in cases where it would have been inappropriate for the social worker to attend because there was a dispute over age and the assessment carried out by children's services was being challenged by the young person.

Guardians have been found to have the time, expertise and resources to build trust and confidence with the child to facilitate disclosure, to do additional work to fill information gaps, provide evidence and clarify issues to help the young person to communicate and remember all parts of their story. **The regular attendance of the guardian at legal appointments has been acknowledged by children's lawyers to add significant value to the information-gathering process.**

3) Documentation and age disputes

A child or young person whose age has been disputed has not had their claimed date of birth accepted by the Home Office and/or local authority. This has significant implications for the way in which their asylum claim is treated, and the support they receive. Undertaking an holistic age assessment process can take a considerable length of time, to the considerable disadvantage of the young person concerned, both in terms of their asylum claim and the provision of support (or lack thereof). In addition, the process of age assessment causes great distress to the child, particularly where they are involved in legal proceedings. Even when age is finally established, valuable time is lost forever to that child and cannot be recovered. Guardianship during this period is particularly critical to ensuring continuing support and assisting the child's welfare, educational progress and development, as well as playing a role in supporting the child during the age dispute itself. In 2012, 328 individuals making asylum applications had their age disputed²⁴, and the average time for an age assessment to be completed has been recorded as between one and four years²⁵.

Where a young person disagrees with the local authority's decision and wishes to challenge it, but where the dispute over age does not affect the young person's immigration application, no right to appeal exists and the only option is judicial review. The Supreme Court in 2009 strengthened this route by making the High Court's judicial review procedure the ultimate fact finder in age disputed cases²⁶.

²⁴ Home Office, 'Immigration statistics: October to December 2012', para.9.5

²⁵ Coram Children's Legal Centre (2013) *Happy birthday: Disputing the age of children in the immigration system*
http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday_Final.pdf

²⁶ Supreme Court's judgment in *A v Croydon*(2009)

The result has been the further 'judicialisation' of age assessment²⁷ and an increase in the number of challenges, a process which involves a child repeatedly having to tell their story and go to court which can be very stressful²⁸. Age assessments therefore generate legal, administrative and procedural costs. For example, the cost of an age assessment challenge ranges from £15,000 to £75,000 per case, with a cost to the Upper Tribunal of just under £5000 per hearing²⁹.

There is a role to play for a guardian in helping to simplify and maintain momentum in the age assessment process which will have cost-saving implications if this results in a more effective process. In Scotland, the guardianship service primarily helps the young person to understand why an age assessment is being conducted and what it will involve, as well as explaining the outcomes and ramifications. In some cases the guardian in Scotland provides a letter of support for young people undergoing an assessment of age or through the provision of additional information in support of the claimed age. The case of two young people who were trafficked into Scotland and age disputed by a local authority outside Glasgow was highlighted in the evaluation of the pilot, where guardians played an important role in supporting the young people concerned, not least because their relationship with social work had entirely broken down. **From the perspective of the legal representative, the contribution made by the guardian was crucial in order to prevent the age assessment process being stalled because it would have otherwise been impossible to give the case the level of attention needed.**

4) Criminalisation and detention of children

Many trafficked children are only identified once they are arrested for crimes consequent on or integral to the exploitation for which they had been trafficked³⁰. This might include cannabis cultivation, petty crime and using false identity or travel documents. Child victims of trafficking continue to be processed through the criminal justice system when they come into contact with the authorities³¹, receiving a youth justice rather than a welfare response. This is further complicated if their age is disputed because if they are assessed to be over 18 they will be treated as an adult and need to prove that they were coerced into any crimes committed as a result of being trafficked. The trauma suffered frequently means children do not disclose what has happened for long periods of time - this can have huge implications in any dealings with the criminal justice system. It is therefore imperative that victims are identified early on. Guardians have been found to play an important role in linking services and ensuring access to legal advice and representation when a young person has been detained³².

²⁷ These types of judicial review are now dealt with under enhanced powers of judicial review in the Upper Tribunal of the Immigration and Asylum Chamber

²⁸ Coram Children's Legal Centre (2013) *Happy birthday: Disputing the age of children in the immigration system* http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday_Final.pdf

²⁹ Information provided in FOI response to Coram Children's Legal Centre, 7th March 2013 in Brownlees & Yazdani, *The Fact of Age* (2012) *Review of case law and local authority practice since the Supreme Court judgment on R(A) v Croydon LBC [2009]*, Office of the Children's Commissioner, p 73

³⁰ As per test established in *L, HVN, THN and T v R* [2013] <http://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html>

³¹ Franklin, A. and Doyle, L. (2013) *Still at risk: A review of support for trafficked children*. The Refugee Council and The Children's Society: <http://tinyurl.com/o3e8k7w>

³² Crawley, H and Kohli, R, K (2013) *She endures with me: An evaluation of the Scottish Guardianship Service Pilot* <http://tinyurl.com/pb9bgs8>

Case study: Trafficked girl victim found in detention

The Scottish guardianship service received anonymous information about a young person who had been given a custodial sentence for cannabis cultivation despite it being noted when she was arrested that she had marks on her ankles and wrists suggesting they had been bound. The guardian had good links with a children's charity that worked in prisons and managed to visit this young person in prison and find out about her background experiences. Subsequent enquiries revealed that previously she had been in contact with a local authority that had assessed her as being under 18. It had made a referral under the NRM which was accepted after she was sentenced for the offence. This decision was not communicated to the girl and she did not get legal advice. She was due to turn 18 shortly after her the date of her release from prison. The guardian managed to get the girl appropriate legal advice and support.

Source: Scottish guardianship pilot evaluation

The average overall cost of one bed per day in immigration detention is last published as £120³³. In 2012 it was revealed that over £2 million had been paid in an earlier court settlement to 40 child asylum-seekers who had been wrongly detained as adults by the Home Office³⁴. **The support of a guardian who can link different service providers and share information could serve to avoid unnecessary costs by ensuring child victims of trafficking are not detained or are removed from detention as soon as they are found.**

Conclusion

An independent legal guardianship system in England and Wales would inevitably have set up and running costs which would not be insignificant. However, if the government is serious about protecting vulnerable children and preventing further abuse and exploitation, we believe these costs are relatively small and that they could in part be offset by efficiency and cost savings as highlighted in this briefing. We believe the government should seriously consider these prospective savings when considering the cost output of a comprehensive legal guardianship system in England and Wales.

Separated children have specific needs and their immigration status can take a number of different forms, while their vulnerability to exploitation and trafficking can be difficult to identify. Guardians would provide a vital safeguard for children and, if applied to all separated migrant children in the way we have outlined, we believe this would go far in ensuring that children are able to recover from the abuse they have suffered as well as ensuring that they are protected from further exploitation and re-trafficking.

³³ *Briefing: Immigration Detention in the UK*

<http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Immigration%20Detention%20Briefing.pdf>

³⁴ '£2m paid out over child asylum seekers illegally detained as adults', The Guardian, February 2012, at www.guardian.co.uk/uk/2012/feb/17/homeoffice-payout-child-asylum-seekers *In R (J) v SSHD [2011] EWHC 3073 (Admin)* £10,000 damages awarded to the claimant unlawfully detained as a child



UNITED KINGDOM



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This briefing has also been submitted to the Joint Committee on the draft Modern Slavery Bill as supplementary written evidence.

Definitions

- **Separated child** - a child who has been separated from both parents, or from its previous legal or customary primary caregiver, but not necessarily from other relatives.³⁵ These may, therefore, include children who have been trafficked but are accompanied by other adults including community members, friends or members of the extended family.
- **Unaccompanied child** – a child who is separated from his/her family (both nuclear and extended) and is totally alone. The UK Home Office definition of unaccompanied children does not include children who arrived in the UK in the care of a parent or other adult (for example, a relative or family friend) who by law or custom has responsibility for the child, but is no longer living with such an adult due to the subsequent breakdown of such an arrangement.
- **Trafficking** - Trafficking is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion or abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation³⁶. Trafficking is a criminal offence and occurs even if the child knew why he or she was being moved, and regardless of whether force or coercion was used because a child cannot consent. Trafficking can relate to any form of exploitation which includes, at the minimum, sexual exploitation, forced labour, slavery or similar practices. Children are trafficked for different types of exploitation, including sexual exploitation, illegal adoption, under-age forced marriage, domestic servitude and begging. Child trafficking has been shown to operate through personal and family links as well as through highly organised international criminal networks³⁷.

³⁵ General Comment No. 6 (2005), c. 8

³⁶ *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (The Palermo Protocol)*, which is a supplement to the UN Convention against Transnational Crime 2000.

³⁷ ECPAT UK and Save the Children (2007) *Missing Out. A Study of Child Trafficking in the North- West, North-East and West Midlands*. ECPAT UK. London



UNITED KINGDOM



UNICEF is the world's leading organisation working for children. UNICEF works with families, local communities, partners and governments in more than 190 countries to help every child realise their full potential. In everything we do, the most disadvantaged children and the countries in greatest need have priority.

UNICEF UK raises funds for UNICEF's emergency and development work around the world and advocates for lasting change for children worldwide. This includes, for example, working to change government policies and practices that are detrimental to child rights in the UK and internationally. Our UK programmes seek to build a better life for children in the UK from birth to age 18.

The Children's Society has over 130 years' experience of supporting society's most vulnerable children and young people. With them we fight childhood poverty, harm and neglect.

Our network of programmes includes drop-in services for runaways, as well as children's centres and support for young carers. We support children who are refugees from violence, and we give those in care a voice. We transform the lives of many more children by pressurising government and local authorities to change policy and practice to protect them, and we challenge the negative attitudes that perpetuate harm and injustice.

For more information please contact:

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