Refugee Children’s Consortium

HOUSE OF LORDS – COMMITTEE STAGE BRIEFING
Immigration Bill – Amendment 81AA – Child Trafficking Guardians
March 2014

Introduction
The Refugee Children's Consortium – a coalition of over 40 organisations promoting the rights of refugee children – has long been calling for independent guardians to be appointed to all separated children. We support the amendment tabled by Baroness Smith, Lord McColl and Lord Rosser because we believe that it is vital for this provision to be given statutory footing. However, we believe this provision should be made available to all separated children including potential victims of trafficking. An independent legal guardian would ensure that the child would be provided with all the statutory services to which he or she was entitled and help them to navigate the complex legal processes they are engaged in such as the immigration, criminal justice and care system.

International children’s rights standards
Research evidence by RCC members has consistently highlighted the gaps in the UK’s current protection systems and the need for independent legal guardians to be appointed to all separated migrant children including to potential victims of trafficking. The UN Committee on the Rights of the Child (UNCRC) has clearly outlined the responsibility of signatory states to provide guardians for unaccompanied and separated children. Further obligations also arise under Article 16 of the EU Directive on combating trafficking to “take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings”. This was recently echoed by the Council of Europe expert group on trafficking and the Joint Committee on Human Rights in its inquiry into unaccompanied migrant children and young people. The JCHR welcomed the findings from the Scottish Guardianship Service, which demonstrate the value that a guardian can add for unaccompanied asylum seeking and trafficked children. It recommended that the government commission pilots in England and Wales that build upon and adapt the model of guardianship trialled in Scotland. It stated that “the guardian should provide support in relation to the asylum and immigration process, support services and future planning, help children develop wider social networks, and ensure that children's views are heard in all proceedings that affect them. The government should evaluate the case for establishing a wider guardianship scheme throughout England and Wales once those pilot schemes are

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2 UN Committee on the Rights of the Child, General Comment No. 6 (2005) - Treatment of unaccompanied and separated children outside their country of origin, para 33. Also see the Committee’s concluding observations in the 2008 UK report.

3 Group of Experts on Action against Trafficking in Human Beings (2012) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: http://tinyurl.com/q3eqfug

Since then the successes of the Scottish pilot were highlighted in its final evaluation\(^5\), securing a commitment for further funding from the Scottish Government.

**Vulnerabilities of separated children**

Separated children are outside their country of origin and subject to immigration control. They are affected by decisions made by the Home Office about their legal status to remain in the UK which in turn has implications for their immediate safety as well as their long term best interests. Furthermore, language and cultural barriers mean that overall they are less likely to be able to know and access their rights as children and therefore need support from a trusted adult to ensure their welfare is not compromised. Trafficked children often have additional needs to help in their recovery and rehabilitation stemming from the abuse and exploitation they have suffered, although this may also be the case for children fleeing persecution, war and torture, whose traumatic experiences of abuse outside of the UK and on their journey to safety leave them in need of both physically and emotionally scarred. For example, various systematic reviews estimate that 19% to 54% of separated children suffer from symptoms of post-traumatic stress disorder compared to 0.4%-10% of other children in the UK\(^6\).

**Barriers to adequate support and accommodation**

Separated migrant children experience barriers to appropriate accommodation and adequate support and rehabilitative services\(^7\). This is particularly true for older teenagers (e.g. 16 and 17 year olds) who are in need of care from local authorities. Many are placed in unsupervised placements including B’n’Bs despite statutory guidance stating that this type of accommodation is not suitable for children\(^8\). In the experience of RCC members some young people may be turned away from care altogether, often on the basis that they are from abroad, do not have documentation or because their age is disputed by the local authority. This gap in provision is poignantly evidenced in the recent serious case review of Child S in Manchester.

**Serious Case Review of Child S\(^9\)**

Child S came to England at the age of 16 from an Eastern European country and was abandoned within months by his father and left without any means of support. Manchester City Council’s children’s social care, having assessed S by this stage as being 17 years old, failed to complete an Initial or Core Assessment to meet his needs. He was left street homeless for a period of time and when he was eventually housed, it was in bed and breakfast accommodation contrary to statutory guidance and despite internal legal advice to practitioners. Child S lived in Manchester for ten months when he was found hanged in bed and breakfast accommodation. It is believed that he took his own life. The serious case review found that the council had failed to provide Child S with adequate support as a child.

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\(^{5}\) She endures with me: An evaluation of the Scottish Guardianship Service Pilot (2013): [http://tinyurl.com/pb9bgs8](http://tinyurl.com/pb9bgs8)


\(^{9}\) Serious Case Review – Child S – Manchester: [http://resources.leavingcare.org/uploads/60lec78b9d9aa74ee5c0b036e096a8854.pdf](http://resources.leavingcare.org/uploads/60lec78b9d9aa74ee5c0b036e096a8854.pdf)

in need and accommodation as required by section 20 of the Children Act 1989. His holistic needs - for education, health and beyond - were never addressed. The review found that there was inadequate management oversight in children’s social care which was compounded by a lack of consistently robust challenge from other agencies. The review identified many areas of Child S’s life that should have been addressed prior to his death including the impact of being abandoned in an unfamiliar country by his father, continued homelessness, no means of financial support, alcohol misuse, deteriorating emotional and mental health and no means of accessing life-enhancing opportunities. As S was not accepted as a looked after child and was not under a care order, he did not have anyone with legal responsibility looking out for his best interests. He was also not given access to an independent advocate to support him or involved in a care review with an Independent Reviewing Officer.

Current gaps in provision

The weaknesses in the current legal framework - both in the international protection system administered by the Home Office and the child protection system – mean that separated children often fall through the gaps in provision and do not get the protection and support they need. For example, most separated children including victims of trafficking will normally be accommodated by local authorities under Section 20 of the Children Act 1989 rather than under a Section 31 care order as this is not available to local authorities to protect 17 year olds and some 16 year olds¹¹, despite the fact that a considerable proportion of trafficked children are ‘discovered’ at this age. This means that there is no-one with legal parental responsibility for them in the UK and no-one who can instruct legal representatives on their behalf. The tensions between immigration, criminal and welfare legislation which they are subject to mean that these 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, allowing other professionals such as social workers, immigration case workers and legal representatives to fulfil their roles more effectively and to instruct legal representatives on the child’s behalf.

Social workers, independent reviewing officers and independent advocates do not play a role or have powers to act in all of the jurisdictions in which a separated migrant child may be involved, including immigration and criminal proceedings. For example, neither an independent advocate nor an IRO would normally become involved in a child’s immigration case even though his or her international protection claim may be central to her welfare. Conversely a guardian would have legal responsibility for a separated or trafficked child’s life across all areas of their life. He or she would ensure that the child would be provided with all the statutory services to which he or she was entitled. This would include services provided by local authorities as well as those for which the Home Office was involved in. British citizen children, who go through court proceedings in the Family Court, are recognised as often needing independent advice and support to represent their best interests, and this is provided through Children and Family Court Advisory and Support Service (CAFCASS) a non-departmental public body accountable to the Department of Education. CAFCASS guardians are only triggered by care proceedings or in some cases by private family proceedings so separated children are unable to access these unless care proceedings are issued. As highlighted above, however, they are not issued in relation to

¹¹ Section 31(3) of the Children Act 1989 states that no care order or supervision order may be made with respect to a child who has reached the age of seventeen (or sixteen, in the case of a child who is married).
separated children because there is no-one with parental responsibility in the UK. In addition, this role rarely interacts with the immigration system.

**Government trial on child trafficking advocates**

We welcome the government’s recent announcement to trial personal advocates for child victims of trafficking, and believe this is an important step forward. However, in order for these provisions to be effective we believe that it is vital guardians be given statutory powers to ensure they have legal responsibility for the child and will be empowered to take action on behalf of the child where services are not provided by the authorities. In addition this trial will exclude many vulnerable children in need of this protection and support that they desperately need.

The RCC is calling on the government to establish a system of independent legal guardianship for all separated children including potential victims of trafficking. This could be done through the Immigration Bill with a delayed commencement date pending the government trial, provided these are made available to all separated children.