

Amending Clause 12 of the Human Trafficking and Exploitation Bill

The Northern Ireland Commissioner for Children and Young People (NICCY) and Law Centre (NI) warmly welcome Clause 12 of the Human Trafficking & Exploitation (Further Provisions and Support for Victims) Bill, which provides a Legal Guardian for all trafficked children in Northern Ireland. We call for an amendment that would extend the clause to *all* separated children irrespective of whether trafficking or exploitation has been suspected or identified. This paper provides the rationale for our amendment and is illustrated by three recent Northern Ireland case studies.

Who are separated children?

Under 18 years of age, outside their country of origin and separated from both parents, or their previous legal, or customary primary caregiver.¹

Children who arrive alone in Northern Ireland from other countries may be scared and traumatised, and face a bewildering set of legal and social care processes. Many of these children are either unidentified victims of trafficking, or vulnerable to trafficking or exploitation. The reasons why children move away from their homelands are many and include being orphaned, abandoned, fleeing persecution, escaping traditional practices such as female circumcision, replacing missing children in other families, child abuse and domestic violence, and child trafficking.²

What is the Legal Guardian's role?

A Legal Guardian is a trusted adult at the side of a child who oversees and co-ordinates the complex services and processes (including immigration and welfare) in which they are involved. A guardian ensures the child's participation in decisions affecting them and that their best interests are of paramount consideration. A guardian has legal responsibilities, making them an authoritative figure among other stakeholders.

Who would benefit from the amendment?

- *Unidentified* victims of trafficking
- *Potential* victims of trafficking
- Unaccompanied asylum seeking children
- Any other overseas child who has no-one exercising parental responsibility e.g. an abandoned or orphaned child.



Current Clause 12:



With amendment:



¹ UNHCR, 'Separated Children in Europe Programme: Statement of Good Practice' (2004)

² Kohli et al. (2014) By Their Side and on their Side: Reviewing the Evidence for Guardianship for Separated Children in Northern Ireland.

How many children would benefit?

The exact numbers of separated children and young people in Northern Ireland is difficult to gauge and figures vary depending on source. As of 31 March 2013, 10 separated children were in the care of Health and Social Care Trusts.³ In comparison, National Referral Mechanism figures for 2013 refer to 20 minors identified as trafficked (10 UK Nationals and 10 Non-UK Nationals).⁴ There may also be some duplication between reporting systems where a child is registered as both a trafficked and separated child.

What is clear is that the additional number of children that would be affected by this amendment is extremely small (< 10 per year). While the additional resources would be minimal, the benefits to these individual children would be immeasurable.

Given the small numbers, there is no need to create a whole new office to provide guardianship. Instead, we anticipate that the service can be delivered by 2-4 trained and qualified staff attached to an existing charitable organisation.

Why should Clause 12 be extended?

There are a number of compelling reasons why Clause 12 should be extended. These include:

1. Helping to ensure that trafficked children are properly identified

Trafficked children rarely self identify as a victim of trafficking and do not make a full disclosure at the outset. They have been deceived, coerced and are often terrified of their traffickers. In some cases, their families may have been complicit in their trafficking – a very difficult thing for any child to come to terms with. The Scottish Guardianship service has demonstrated that an independent Legal Guardian can play a crucial role in – over time - helping identify trafficking indicators.⁵

The Department of Justice estimates that presently two thirds of all victims of trafficking are not identified through the official NRM mechanism.⁶ There are a number of reasons for this but poor identification of victims by professionals is part of the problem.

Jin⁷ is 16 years old and was spotted by immigration officials disembarking from an international flight. Social Services were called and legal advice was sought. Jin's account was bizarre and his explanations of his travels seemingly implausible. Professionals suspected trafficking but Jin was adamant that he was not a victim and did not want any investigations to take place. This created difficulties for all involved. A specially trained and experienced Legal Guardian may have identified indicators and encouraged disclosure. In addition, a Legal Guardian could have instructed a solicitor to act on behalf of Jin.

³ Information obtained in the Delegated Statutory Functions Report. See Kohli et. al (p.51)

⁴ The National Referral Mechanism (NRM) is a UK wide framework for identifying victims, ensuring victims receive appropriate protection and support and compiling official statistics on victims.

⁵ Crawley & Kohli, 'Evaluation of the Scottish Guardianship Service: She Endures with Me' (2013)

⁶ Simon Rogers of DOJ Protection and Organised Crime Division giving evidence in Westminster Q1004 evidence session HC [1019], Tuesday 4 March 2014

⁷ Names have been changed within the case studies to protect children's identities.

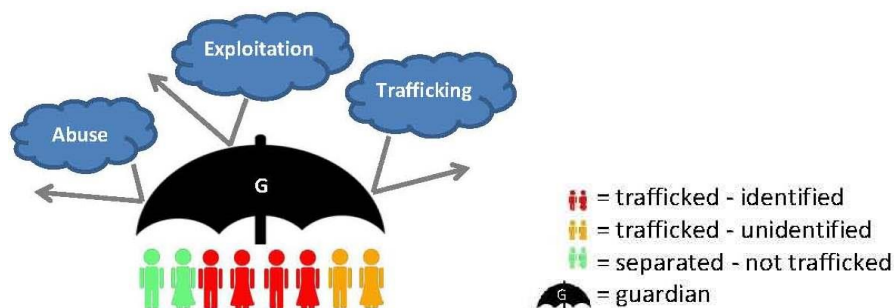
More identification of victims will improve intelligence, which in turn will lead to more effective enforcement. This proposed legislation demonstrates that Northern Ireland is serious about protecting child victims of trafficking, however to do this fully it must 'widen the net' to ensure that no potential child victim is missed. This amendment effectively widens the net.

2. Helping prevent exploitation / abuse.

Without a family network, separated children are particularly vulnerable to exploitation and abuse and are at very high risk of going missing from care. As of March 2013, three separated children went missing during the previous year in Northern Ireland.⁸ This amounts to a quarter of the separated children who presented to the HSCT's during April 2012-March 2013.

An independent Legal Guardian would complement existing social services structures by being the one constant person in the life of a separated child, helping them to integrate into the community safely and to build healthy relationships, while being vigilant to any risk of exploitation or abuse. This amendment would play a critical preventative role.

Huang, a young person, was arrested by police in Stranraer and brought to the Larne Adult detention facility where he told staff he was a minor. A Home Office immigration officer interviewed the young person and confirmed that he appeared to be under 18. Social services arranged for him to be taken into care, but before a social services age assessment could be completed the young person went missing. Immigration Enforcement contacted the Police Service of Northern Ireland who worked with the Garda Síochána in the Republic of Ireland to try and trace the young person.⁹ Research suggests that the quick intervention of a Guardian would have improved Huang's prospects of staying safe.



3. Complying with international best practice.

No EU Member state has a guardianship system only for child victims of trafficking¹⁰. Several countries provide guardians for both trafficked and separated children in recognition of the inherent vulnerabilities of both groups. It is also a requirement of international good practice and advice of the UN Committee on the Rights of the Child that member states

⁸ HSCB & DHSSPS (2014) Presentation on Safeguarding and Promoting the Welfare of Separated Children arriving in NI Ireland, DOJ NGO Anti-Trafficking Engagement Group, 03.05.2014.

⁹ HM Chief Inspectorate of Prisons, Report on an Unannounced Inspection of the Short-Term Holding Facility at Larne House, November 2013.

¹⁰ European Agency for Fundamental Rights & European Commission 'Guardianship for Children Deprived of Parental Care' (2014)

should appoint a guardian to all unaccompanied children.¹¹ The current Clause 12 falls short in this regard.

4. A guardianship system saves money.

While the primary consideration for extending the Guardian service to separated children must be in the protection of these most vulnerable children, in the current tight fiscal circumstances, the fact that this service will lead to savings is important. A recent cost-benefit analysis found that a guardianship system can have significant savings: it estimated that £1 spent will generate a saving of £1.25 - £2.39 from other services over three years.¹² In particular the presence of a guardian:

- improves the quality of decision making,¹³ thus reducing the need for lengthy and expensive tribunal/court proceedings;
- lessens the possibility of a child being wrongly prosecuted for offences committed as a direct result of being trafficked, thus reducing criminal justice/detention costs;
- Facilitates communication between various professionals and co-ordinates services, thus reducing inefficiencies and duplication.

By improving the efficiency and effectiveness of how the whole system works, public money is saved and the correct decisions are made about the welfare of these vulnerable children.

Degash arrived in Belfast as an unaccompanied asylum seeking minor from a war-torn country. He was extremely reticent to talk, making it extremely difficult for professionals to gather the necessary information to make a decision. As a result, the case was extremely time-consuming, with lots of unsuccessful attempts to interview him. A year and a half later, a possible learning disability was identified and is now being assessed. This would explain the difficulties: had it been identified earlier by a Guardian, professionals may have taken a different approach.

5. Ensuring consistency with Northern Ireland guidance

The Health and Social Care Board has issued comprehensive regional operational guidance specifically to assist separated children in Northern Ireland. The guidance recognises that a separated child might be a trafficked child or a child suspected of being trafficked.¹⁴ This amendment would therefore be consistent with current government guidance, which recognises the inextricable links between separated children and trafficking.

The Law Centre and NICCY would be very grateful if you would consider co-sponsoring this amendment. We are currently developing the specific wording for the amendment which we will share with you shortly.

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¹¹ E.g. UN Convention on the Rights of the Child, Treatment of unaccompanied and separated children outside of their country of origin. (General Comment 6 2005)

¹² UNICEF and Children's Society, 'The indicative costs of efficiencies of guardianship' (March 2014); 'Protecting children through guardianship: the costs and benefits of guardianship for unaccompanied and separated migrant children' ((June 2014). The exact saving depends on the age of the child.

¹³ At the NICCY research launch, Home Office Scotland & Northern Ireland Asylum Lead highlighted that Scottish Guardians play a fundamental role in helping young people tell their story correctly, which improves the quality of information recorded and better immigration decisions. 10/02/2014

¹⁴ Health and Social Care Board, 'Pathways for Safeguarding and Promoting the Welfare of Separated/Unaccompanied Children Arriving in NI' (2013), p.3