



## Protecting children from trafficking through guardianship

### Overview

All separated migrant children living in the UK – including potential victims of child trafficking – need an independent legal guardian to protect their rights, advocate for their best interests, and give them the help they need to grow up happy, healthy, and secure.<sup>1</sup> In order for guardians to be independent, accountable, and have the authority they need to support separated children in all manner of settings, guardians need to be an integral part of the child protection system with accompanying statutory powers provided for in legislation.

UNICEF UK welcomes the Home Secretary's ongoing commitment to tackling child trafficking and modern slavery. The Home Office's trial of advocates for trafficked children is an

important step forward in the protection of victims. However, UNICEF UK believes that only a **comprehensive system of independent guardianship, enshrined in statute, and with individual guardians holding adequate legal powers to support all separated migrant children** – regardless of their trafficked or immigration status - will be capable of fulfilling the Government's aspirations for these children.

This briefing makes the case for such a system of guardianship to be established in UK law through the Modern Slavery Bill, and explains why it would improve the lives of some of our most vulnerable children.

### 1. Separated migrant children need legal guardians

Separated migrant children are one of the most vulnerable groups of children in the UK. Almost **three thousand children each year** arrive in the UK alone<sup>2</sup>, some as victims of child traffickers.<sup>3</sup> Many are seeking

protection from violence, abuse, persecution or conflict; many request asylum or humanitarian assistance. These children are alone in an unfamiliar country, without the support of a parent or carer to help

them, vulnerable to exploitation and abuse, and facing an uncertain future as decisions are made by authorities about their immigration and asylum claims.

At this disorienting and frightening time, separated children must

navigate a range of complex immigration, child protection and judicial processes, and engage with a bewildering array of different services and agencies to establish a new life in new country.

***The United Nations Convention on the Rights of the Child gives every child the right to be protected from neglect, exploitation and abuse, have their best interests considered, have a say and be heard, and be supported to develop to their full potential.***

Immigration and local authorities have statutory responsibilities for safeguarding and promoting the welfare of separated children, including through considering their best interests when assessing and making decisions regarding asylum claims, and through the provision of

accommodation, education and social care.<sup>4</sup> But the reality is that they often struggle to meet more than the most basic of needs, with children experiencing inconsistent support across different areas, and facing significant challenges in accessing appropriate legal advice.<sup>5</sup>

**At least 10 children are trafficked in the UK every week. Many more go unidentified.**

If all separated children had an independent legal guardian – a person to support them from the moment they are identified by authorities until a decision about their future, in their best interests, is made and implemented (a durable solution) – they would have a trusted and consistent person in their life to support them to understand and engage with all the different services and processes that are necessary for them to build a life in the UK. As well as providing adequate protection and support for trafficked children, giving all separated children access to a legal guardian would assist in preventing the trafficking and exploitation of separated children once in the UK.

The Committee on the Rights of the Child – the United Nations expert body that holds governments to account for their human rights obligations to children – has been explicit about the responsibilities governments have to provide guardians for separated migrant children.<sup>6</sup> This requirement has also been emphasised in international law protecting the rights of victims of trafficking, including in relation to UK systems of protection for children.<sup>7</sup> The parliamentary Joint Committee on Human Rights has also indicated the need for guardianship support for separated children.<sup>8</sup>

## 2. What is a guardian?

**“They help you with everything. They even draw a diagram...You start here, that is the beginning...and this is the end. You understand better.”<sup>9</sup>**

A guardian is an independent person appointed to support a separated or trafficked child. Essentially this means that children would have a trusted adult to go to, a person to help them feel safe and connected, a consistent point of contact across all the different services and processes they may be involved in. The guardian would push for children’s best interests to be a primary factor in all decisions made that affect them, and ensure that

children’s own views and experiences were taken into account. The guardian would help children find their way through the complex landscape they find themselves within, dealing with immigration and asylum, child protection, criminal justice, housing and other agencies, and work with children to help them understand their rights and entitlements, and the implications of the information they are asked to share.

A guardian’s role should be to:

- Advocate for decisions that are in the child’s best interests
- Ensure a child receives the care, accommodation, health provision, psycho-social support, education and language assistance (interpretation and learning) they need
- Support the child through different legal processes, and ensure access to legal representation (including instructing solicitors on a child’s behalf where necessary)
- Ensure the child’s views are heard
- Advise the child and inform him or her of rights and entitlements
- Contribute to finding a durable solution in the child’s best interests
- Act as a link between the child and other agencies (for example, the Home Office, local authority, police, health professionals, education), attending interviews in support of the child
- Assist the child in family tracing
- Ensure that where a return to the country of origin takes place or where family reunification is possible, this is carried out in the child’s best interests.<sup>1</sup>

**“I was happy, she was so nice, so nice about everything, we go to different appointments together. She calmed me down when I was upset. After the appointment she and I would meet and talk together about what happened, and she advised me. She was more than a worker for me, because she was someone I could talk to.”<sup>10</sup>**

### 3. An effective guardianship system: independent and legal

UNICEF UK believes that guardians must be an integral part of the child protection system, supported by an accountable guardianship service, and independent of the state. They should be trained professionals with child protection experience, a thorough understanding of the immigration and asylum process, knowledge of children's and human rights, and an understanding of the indicators of trafficking and the specific needs of child victims.

Children should be appointed a guardian by the court as soon as they come to the attention of the authorities, and that guardian should

remain with the child until a durable solution consistent with their best interests is found and implemented. Ensuring that all separated children – and thus including all potential victims of child trafficking – have access to guardians is necessary to give vulnerable children the support and protection they need. Restricting guardianship to certain categories of children may mean that potential victims of trafficking go unidentified and unsupported, or that children pursuing different types of asylum or human rights claims do not receive the support to which they are entitled under international law.

#### Independence

It is vital that guardians are **independent** of any agency that is making decisions about aspects of a child's life, care and immigration status. This is because:

- A guardian must be free to make independent and impartial decisions that are driven by a child's best interests and not balanced by other considerations.
- A guardian must have the authority (through being invested with all necessary legal powers) to act in all jurisdictions and administrative processes in which a separated or trafficked child might be involved. This is not the case for other practitioners such as social workers, independent reviewing officers, independent advocates, or existing guardians in the child and family courts (when care orders apply).
- A guardian must be a specialist role in order to ensure they have the time to deliver effective (and intensive) support to the child, including spending time with the child to build a trusted relationship, to assist in gathering relevant and accurate information relating to any asylum claim or trafficking referral, to liaise with other agencies to secure support for the child, and to prepare and accompany the child to interviews and meetings, including with a legal representative.
- A guardian must not have any direct or indirect conflicts of interests – for example, by holding responsibility for conducting initial age assessments in age-disputed cases (the role of a social worker); in being responsible for the provision of accommodation or care; or in making decisions regarding immigration and asylum claims.

### **Case study: guardian identifies missed child victim of trafficking**

A child who had been trafficked into 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 and did not ask the questions that would have elicited the answers needed for a clear and accurate description of the child's exploitation in their country of origin, en route to the UK, and within the UK. No referral was made to the National Referral Mechanism (NRM) by either the legal representative or the child's social worker. After reading the record of his substantive interview, the guardian identified indicators that that child may have been trafficked, and made a referral to a specialist legal firm. The social worker submitted an NRM notification on behalf of the child, and the child was assessed accordingly. The child was given the opportunity to provide a fuller account and received a conclusive decision through the NRM process.

*Source: Scottish Guardianship Service, pilot evaluation*

### **Legal responsibility**

The majority of separated children are in the UK alone, and have no one who has parental responsibility for them. Most of those in the care system are not under care orders but voluntarily accommodated by local authorities as unaccompanied asylum-seeking children. This means they do not have someone to promote their best interests. Giving guardians legal authority in relation to a child would:

- Enable them to instruct a legal representative on the child's behalf, and provide clear instructions on which the legal representative can act to protect the child's welfare and best interests

- Ensure their authority across all the processes a child may need to engage in, giving them the statutory right to participate in family court proceedings, an immigration and asylum tribunal or juvenile justice proceedings.

This would not affect the statutory responsibilities held by other agencies towards separated children, nor would it mean that a guardian accommodates a child. Instead, it would enable the guardian to be a powerful advocate for the child, and to provide important oversight and accountability for an incredibly vulnerable group of children.

## **4. An effective guardianship system: enshrined in law**

In order for guardians to be independent, accountable, and have the authority they need to support separated children in all manner of settings, guardians need to be an integral part of the child protection system with accompanying statutory powers. Legislation would clearly set out the roles and responsibilities of guardians, the powers with which guardians would be imbued to protect

and promote the rights of trafficked and separated children, and the governance structures through which they would be held accountable. A statutory role defined by legislation would also provide the consistency and sustainability needed to provide ongoing and comprehensive support to trafficked children and other vulnerable migrant children.

International experience of guardianship demonstrates that establishing a system through national legislation does give guardians the authority, support, expertise and continuity they need to promote and protect the best interests of children. Moreover, international law clearly lays out requirements on states to

appoint guardians for trafficked children and separated children<sup>11</sup>. This approach is reflected in the progressive practice we see in a number of European countries in relation to separated migrant children, most notably in Belgium, Germany, the Netherlands and Sweden.

## 5. UNICEF UK recommendations for the Modern Slavery Bill

NGOs, lawyers and human rights experts have been calling for guardianship for separated migrant children for many years, both in the UK and internationally. In recent years we have seen guardianship services emerging across Europe (and indeed within the UK, in Scotland), which are clearly making a difference for the children they are set up to support.

UNICEF UK welcomes the Home Secretary's commitment to tackling human trafficking. The Home Office's trial of advocates for trafficked children is an important step forward, and we support the Government's recognition of the role of an independent advocate in supporting trafficked children:

"Child victims of slavery are an incredibly vulnerable group in need of specialist support...We want to ensure there is a single dedicated point of contact for each child from start to finish. We believe having a truly independent voice in the system, **advocating for the child in the way that a parent could**, will dramatically improve the prospects of these children and ensure they receive the help and protection they need and deserve".<sup>12</sup>

The Modern Slavery Bill offers the Home Secretary an opportunity to protect and improve the lives of some of our most vulnerable children by placing a comprehensive system of guardianship on the face of the Bill for all separated migrant children, including potential victims of child trafficking. This statutory system of guardianship must be built on three fundamental elements:

- That guardians are appointed for all separated migrant children
- That guardians are independent of the Home Office and local authorities
- That guardians hold adequate legal powers to act on behalf of the child and promote the child's best interests.

Establishing a comprehensive guardianship system such as that described above will of course have cost implications in light of set-up, running and governance costs. However, if the Government is serious about protecting vulnerable children from abuse and exploitation, these costs are minimal in terms of their legal and moral obligations to separated migrant children, and are relatively small in light of the potential cost-savings and efficiencies that would result from an effective guardianship service being in place.<sup>13</sup>



## About UNICEF UK

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. UNICEF UK raises funds for UNICEF's emergency and development work around the world and advocates for lasting change for children worldwide. This includes working to change government policies and practices that are detrimental to children's rights.

[www.unicef.org.uk/trafficking](http://www.unicef.org.uk/trafficking)

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<sup>1</sup> A separated child is one who has been separated from both parents or from his or her previous primary caregiver, but not necessarily other relatives. An unaccompanied child is one who is separated from his or her family (both nuclear and extended) and is totally alone. For ease in this briefing, we refer to both groups of children collectively with the term "separated".

<sup>2</sup> Each year between 2008 and 2013, an average of 2,832 unaccompanied asylum-seeking children were looked after by local authorities in England (<https://www.gov.uk/government/publications/children-looked-after-in-england-including-adoption>), and an average of 2,153 unaccompanied children applied for asylum in the UK ([http://www.refugeecouncil.org.uk/assets/0002/7887/Asylum\\_Statistics\\_May\\_2013.pdf](http://www.refugeecouncil.org.uk/assets/0002/7887/Asylum_Statistics_May_2013.pdf) and <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2013/immigration-statistics-october-to-december-2013#asylum-1>)

<sup>3</sup> The annual assessment from the UK Human Trafficking Centre identified 549 children that were potential victims of human trafficking in the UK in 2012. It should be noted this assessment did not include information held by local authority children's services, and as such the true scale of child trafficking in the UK is likely to be far greater, particularly when considering the number of children that never come to the attention of authorities.

<sup>4</sup> Examples: Section 55 of the Borders, Citizenship and Immigration Act 2009, Section 20 of the Children Act 1989, Section 11 of the Children Act 2004

<sup>5</sup> L. Brownlees and N. Finch (2010), *Levelling the Playing Field: A UNICEF UK report into provision of services to unaccompanied and separated migrant children in three local authority areas in England*; A. Franklin and L. Doyle (2013), *Still at risk: A review of support for trafficked children*, The Refugee Council and The Children's Society

<sup>6</sup> UN Committee on the Rights of the Child (2005), *General Comment 6 on the treatment of unaccompanied and separated children outside their country of origin*; (2008), *Concluding observations on the United Kingdom of Great Britain and Northern Ireland*, paragraphs 70 and 71

<sup>7</sup> GRETA (2012), *Report concerning the implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by the United Kingdom, First evaluation round*, paragraph 247; see also EU Directive Articles 14 (2) and 16 (3), and Article 10 of the Trafficking Convention

<sup>8</sup> Joint Committee on Human Rights (2013), *Human rights of unaccompanied migrant children and young people in the UK*

<sup>9</sup> A child's description of a guardian, courtesy of Scottish Guardianship Service

<sup>10</sup> A child's description of a guardian, courtesy of Scottish Guardianship Service

<sup>11</sup> Article 16(3) of the EU Trafficking Directive, and Article 10(4)(a) of the Council of Europe Convention on Action Against Trafficking in Human Beings; see also the UNODC Legislative Guide for the UN Trafficking Protocol: <https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>

<sup>12</sup> Home Office press release, 28 January 2014

<sup>13</sup> The Children's Society and UNICEF UK (2014), *The indicative costs and efficiencies of guardianship*