



Law Centre (NI)

Joint Committee on Human Rights: inquiry into the human rights of unaccompanied migrant children and young people in the UK with a particular focus on those who are seeking asylum or who have been the victims of trafficking

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Introduction to the Law Centre

Law Centre (NI) works to promote social justice and provides specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services operating from our two regional offices in Northern Ireland. The Law Centre provides advice, casework, training, information and policy services to over 400 member organisations in Northern Ireland. We are a primary provider of specialist immigration advice in Northern Ireland and facilitate the Immigration Practitioners' Group consisting of lawyers and voluntary sector organisations.

This submission is organised in two parts. Part A provides an overview of separated children in Northern Ireland including some (limited) figures, a summary of issues affecting separated children, and an account of ongoing work to improve practices, etc.

In Part B, we respond to JCHR questions which relate to our work.

PART A

Separated children in Northern Ireland

In recent years, there has been increased interest in separated children in Northern Ireland. In 2010, the Law Centre convened a Working Group, consisting of both statutory agencies and NGOs, to identify the issues faced by separated children in Northern Ireland with the view to improve practices and to consider the need for a guardianship system.

The Working Group's first task was to get a better idea of the numbers of separated children within the jurisdiction. Access to such information has long been a problem because UKBA does not publish Northern Ireland data. The five Health Trusts were surveyed and we found that, between July 2009 and November 2010 (a period of 17 months), thirteen separated children presented to Social Services in Northern Ireland.¹ The children were a range of nationalities including Chinese, Nigerian, Sudanese and Somali and were aged between 9 and 17 years old. That the number of separated children in this jurisdiction is small was confirmed in a subsequent piece of research conducted by NSPCC and Barnardos which found less than ten separated children presenting to Social Services in 2009 – 2010.² In September 2012, the UKBA confirmed to the Law Centre that was dealing with two cases of separated children – both unaccompanied asylum seeking children. We understand that, to date, only one child in Northern Ireland has been conclusively identified as a victim of trafficking through the National Referral Mechanism.³

In December 2010, the Working Group presented a paper to the five Trust Directors to draw their attention to issues faced by separated children. The following list is an extract from that paper and provides a good summary of the issues at that time, many of which are still relevant today:

¹ This information was compiled by Working Group member VOYPIC (Voices of Young People in Care)

² NSPCC/Barnardos, 'Separated children and child trafficking in Northern Ireland' (September 2011)

³ Evidence given by NSPCC & Barnardos at the All Party Assembly Group on Human Trafficking, 18 September 2012

- Immigration and welfare processes can be extremely complex and separated minors often feel that they have little understanding or participation in these processes that will determine their future;⁴
- Separated minors may often be expected to deal with a range of professionals without having a single responsible adult for guidance. This can be a bewildering experience and is compounded by language barriers.⁵ Professionals may include social workers, legal representatives, healthcare professionals, police officers, UK Border Agency officers, Guardian *ad Litem* Agency officers⁶, etc;
- The needs of separated children may be complex and difficult to assess and meet. While there are examples of good practice on the part of individual Trust staff, a lack of training has been highlighted as a cause of inconsistency among Trust staff.⁷ We understand that training is now underway. The difficulties faced by social workers in Northern Ireland are perhaps compounded by the lack of clear Departmental guidance on dealing with separated children. We are aware that guidance is forthcoming and we anticipate that this will include a presumption that separated children in Northern Ireland are *Looked After Children*;
- Specialist immigration advisers in Northern Ireland rarely have expertise in care provision nor are they always aware of what welfare services may be available for separated children;
- There is a particular concern that separated children do not always receive prompt access to specialist immigration advice. Failure to obtain legal advice/representation may result in children's protection needs not being correctly identified and this can have detrimental consequences;
- There may be particular difficulties for children who are unable (for whatever reason) to give full instructions in relation to their immigration status, health treatment, etc;
- There is a real concern that suspected child victims of trafficking have gone missing from care in Northern Ireland.⁸ This reflects similar concerns in Great Britain.⁹ Trafficked children have a particular vulnerability and we believe that a guardian could help ensure that such children do not go missing;¹⁰
- The process of age disputes can be contentious and highlights the need for an

⁴ Scottish Refugee Council Briefing, '*Separated Children Guardianship in Scotland Pilot*' (June 2010)

⁵ UNICEF, '*Levelling the playing field: a report into provision of services in three local authority areas in England*' (May 2007), Chp 7

⁶ In the majority of separated children cases, the Guardian ad Litem Agency is not appointed. This is the case across UK.

⁷ Northern Ireland Human Rights Commission, '*No Home from Home: Homelessness for People with No or Limited Access to Public Funds*' (September 2009), Chapter 7

⁸ Northern Ireland Human Rights Commission & Equality Commission, '*The Nature and Extent of Human Trafficking in Northern Ireland: A Scoping Study*' Chpt 4. We acknowledge that the Northern Trust has implemented a number of measures to address this problem, however, the sophisticated nature of trafficking means that the issue could reoccur in Northern Ireland

⁹ High numbers of children have gone missing in GB. See ECPAT, '*Missing Out*' (2007). See also House of Commons Home Affairs Committee, '*The Trade in Human Beings: Human Trafficking in the UK*', Sixth report of the session 2008-09 HC23-1

¹⁰ See House of Commons Children, Schools and Families Committee '*Looked After Children*,' Third report of the Session 2008-09 HC111-I, para. 210. The Working Group believes that the early appointment of someone to explain the processes may encourage the child/young person to remain in the system.

independent person to offer guidance to the young person.

- Finally, there is ongoing problem about access to reliable data pertaining to separated children. The UKBA does not publish regional asylum data. Data is essential for planning for service delivery and for devising a human rights based approach.

Having identified the key issues, the Working Group embarked upon a mapping exercise. This brought together a large number of practitioners working in both immigration and welfare fields to identify and record all the different welfare and immigration processes that a separated child might encounter in Northern Ireland. The information compiled in these Working Groups was compiled into a detailed mapping report which was circulated.

In addition to the issues outlined in the first text box, some additional key issues emerged from the mapping process:

- Initial identification process issues include: children being interviewed without the presence of an appropriate adult; whether a framework is in place to ensure that children are able to give their consent to fingerprinting and photographs; delays in obtaining interpreters, etc.
- Accommodation process issues include: difficulties in identifying suitable accommodation for children; difficulty in meeting cultural needs; Social Services facing considerable resource pressures when placing children, etc.
- Immigration process issues include: children being subject to repeat interviews; age assessment process; delays in decision making
- Welfare process issues include: young people having limited entitlement to benefits, children not being recorded as 'newcomer' on the school census, which has resource implications; GPs not being consulted on key events that could adversely impact on the child's mental/physical health; transition between child and adult status

Developments

As well as identifying issues, the mapping exercise identified a number of ideas for positive change in Northern Ireland.

The seven key recommendations emerging from the Working Group process were distilled from a total of 24 'good ideas' suggested at the mapping workshops:

1. Specific regional guidance issued by Department of Health, Social Services & Public Safety
2. A mechanism to review/monitor wider practices in Northern Ireland
3. Centralised data including outcomes for separated children
4. Better training and support for practitioners including Social Workers and carers
5. An opportunity to share information and best practice across organisations and to clarify remits
6. Legal representative and independent advocate to be appointed immediately
7. Consider an expanded service offered by *Guardian ad Litem* Agency

JCHR: Inquiry into the human rights of unaccompanied migrant children

We are pleased to inform the JCHR that a lot of work has subsequently taken place.

The most significant progress has been the development of a service standard drafted by the Department of Health, Social Services and Public Safety through the Health and Social Care Board. The Service Framework contains explicit standards underpinned by evidence and legislative requirements. A Service Standard on separated children is being developed as one of the five standards within the 'Children and Young People in Special Circumstances' group. The standard is still in development, however, we anticipate it will apply to children who are separated in an immigration sense (i.e. unaccompanied asylum seeking children, trafficked children and abandoned children subject to immigration control) as well as any child (regardless of nationality or immigration status) who is homeless at aged 16 or 17. The service standard will contain measurable performance indicators and so has the potential of significantly enhancing the care and services provided to separated children. A monitoring mechanism, a Regional Group on Separated Children, has been set up. We wish to highlight this Service Standard to JCHR as an example of good practice. We look forward to the Service Standard being finalised and implemented.

Other developments include:

- Annual meetings between Northern Ireland Commissioner of Children and Young People and UK Border Agency.
- The Department of Health, Social Services and Public Safety is drafting guidance, which will encompass separated children although it will be broad in scope.¹¹ This guidance has been pending since 2010.
- The Department of Health, Social Services and Public Safety has started collecting and publishing data on separated children. Data related to all separated child presenting to Social Services in any of the five Trusts will now be recorded. This is a particularly welcome development given the current scarcity of data.
- There are increasingly more training opportunities for practitioners working with separated children. For example, NSPCC, in partnership with Barnardo's and the DIANI project, has provided training on trafficked minors to a range of practitioners including UKBA. This training builds upon expertise from the NSPCC National Child Trafficking Advice Centre. The DIANI project has also incorporated separated children into its training programmes. The Law Centre has provided training through ILPA for legal and non-legal practitioners and for Social Workers.
- A pilot protocol has been drawn up between Belfast Gateway Social Services Team and Voices of Young People in Care (VOYPIC) to ensure that separated children are referred to VOYPIC's independency advocacy service within 72 hours. This means that all separated children in Northern Ireland should now benefit from an Independent Advocate.

¹¹ DHSSPS Access to Social Care Guidance (pending)

PART B

In this part, we refer to unaccompanied migrant children as UMC.

- *Is the treatment of unaccompanied migrant children and young people in the UK consistent with the UK's obligations under the UN Convention on the Rights of the Child (UNCRC)?*

We do not believe that the UK is complying with its obligations under UNCRC as there is no system of guardianship in place.

- *To what extent is the statutory duty in section 55 of the Borders, Citizenship and Immigration Act 2009, and its accompanying guidance, proving effective in ensuring that in practice public bodies have regard to the need to safeguard and promote the welfare of children?*

We believe that some UKBA practices and policies do not comply with the s.55 statutory duty and accompanying guidance. For example, in terms of practice, there is still no child-friendly interview room in Drumkeen House in Belfast. In terms of policies, the UKBA guidance on interviewing children states that there is no requirement for a Responsible Adult to be present when children are interviewed initially or at their screening interview.¹²

- *Should one department in Government have overall responsibility for unaccompanied migrant children and young people in order to ensure that their rights are best promoted and protected? If so, which one?*

In general, we think it would be helpful if a single department in Government had overall responsibility for unaccompanied migrant children and young people. Similar arrangements should apply in devolved regions.

In Northern Ireland, the Department of Health, Social Services and Public Safety deals with services for children whereas the Office of the First Minister & Deputy First Minister has responsibility for some children matters such as child poverty and has also taken the lead on racial equality and immigration. Issues relating to UMC may fall to either department. In addition, the Department of Education also plays a role. We think it would be useful for there to be a lead government department which would ensure the effective co-ordination of children matters. Given that children subject to immigration control are owed the same protections and duties as 'national' children, we think it would make sense for the DHSSPS to have this remit.

Are Government departments and their agencies satisfactorily 'joined-up' in how they protect and support unaccompanied migrant children and young people?

We believe that the Regional Sub Group (the monitoring mechanism for the Service Standard) will help 'join up' government departments and agencies.

The real challenge for practitioners in Northern Ireland (and no doubt throughout the devolved jurisdictions) is to ensure that UKBA does not continue to act beyond the scrutiny remit of our devolved agencies. 'Children' is a devolved matter in Northern Ireland whereas 'immigration' of course is not. We would like to see the Department of Health, Social

¹² UKBA guidance, 'Processing an asylum application from a child', paragraph 6.2

Services and Public Safety playing an active role in monitoring practices relating to separated children. Once implemented, the Service Standard will be an excellent starting point. Equally, we would like the UKBA to regularly engage with the Department on children matters. We believe that more work needs to be done to ensure that children really are treated first as children rather than as migrants.

- *Will the proposed reforms to the Office of the Children's Commissioner for England benefit unaccompanied migrant children and young people or is there more that could be done to ensure that the institutional machinery protects this particular vulnerable group?*

We do not have the expertise to comment on the proposed reforms to the Officer of the Children's Commissioner for England. However, we would support any reforms that would extend the remit and powers of Northern Ireland Commissioner for Children and Young People in respect of separated children in this jurisdiction.

- *Is there sufficient awareness and relevant training on children's rights and the UNCRC for those in government, central and local, and other bodies, public or otherwise, who deal with separated migrant children and young people?*

As outlined above in Part A, we think the main challenge is ensuring that practitioners working in their respective immigration and welfare fields are better aware of the other process. This will ensure that practitioners are more able to identify and challenge instances of poor practice.

- *How are unaccompanied migrant children's best interests being considered and upheld in immigration decisions made about the leave to remain or enter?*
- *Is the current decision-making process on children's asylum claims satisfactory and does it represent the finding of a 'durable solution' for each child in the UK, in accordance with the recommendations of the UNCRC?*

Although the numbers of separated children in Northern Ireland are very low, we continue to see a delay in decision making. The Law Centre is currently representing a child who waited four months for his Screening Interview. Delay is even more common for young people who, having been granted a period of Discretionary Leave to remain, submit an application for Further Leave to Remain prior to turning 18 years old. This creates a significant degree of uncertainty for the child.

Case study

We are currently representing a minor who has been without a 'durable solution' for more than four years. She was identified by UKBA when she was entering UK aged 11 years while travelling with a family member. After a complex family law process she has been returned into the care of her family member and a Residence Order is in place. She applied for Indefinite Leave to Remain in summer 2011 however to date no decision has been issued. We have recently applied for Judicial review of the UKBA's failure to make a decision. We argue that this is not consistent with s.55 or UNCRC. The lack of a decision and the prolonged uncertainty is a cause of stress for our client. In addition, her lack of status is impacting her healthcare as she is not entitled to free NHS care.

We have already had to challenge Removal Directions that would have sent our client, then an unaccompanied 11 year old child, into the care of the authorities of a third country. Our minor had citizenship but no remaining friends or family in that country.

- *Are unaccompanied children able to access the legal advice and representation necessary to ensure that they are able to have their voice heard in any judicial and administrative proceedings affecting them, and that their rights are upheld, in accordance with international standards? Should there be a system of guardians for unaccompanied and separated migrant children to ensure that their interests are represented?*

Fortunately, unlike in some regions of the UK where availability of legal advice and representation is a problem for UASCs, we are not aware of any child in Northern Ireland who has been unable to secure a solicitor. We have a general concern, however, that legal advice is not always sought promptly. When we surveyed immigration practitioners two years ago we came across numerous examples where legal advice was not sought until considerable time after the child presented to Social Services. In a case that involved an unaccompanied 11 year old child, advice was not sought for 11 months. However, we believe that practice is improving and that practitioners are more aware of the need to gain advice immediately.

Northern Ireland's guidance on trafficked children states that a legal representative should be notified as a 'matter of urgency'.¹³ This is welcomed, however, as noted above, there is no guidance governing separated children. We also anticipate that the DHSSPS Service Standard will include prompt access to legal advice as a key performance indicator..

Despite these developments, we continue to believe that children would benefit from a system of legal guardianship. In 2011, we identified that the NI Guardian Ad Litem Agency has only ever acted as a Guardian in just *four* cases involving separated minors. (We believe this number may now have increased). This means the majority of separated children in Northern Ireland do not have a legal guardian acting for them, which means no person has parental responsibility for the child. We recognise that the NIGALA's role is prescribed by legislation and that a guardian is appointed to act only in very specific circumstances. Nonetheless, we believe guardians should be appointed more frequently and before there would be merit in considering whether the remit could be expanded.

The guidance on trafficked children requires the Trust to 'consider' the legal status of the child as a matter of urgency and to consider appropriate action including the use of an emergency protection order, interim/care order application, wardship proceedings, etc.¹⁴ We would welcome a 'legal presumption' rather than a 'consideration', although we recognise that the current legislation is an obstacle for 16 and 17 year olds.

- *Are all unaccompanied migrant children made aware of the existence of a system for appealing against immigration and asylum decisions, and is this appeal system satisfactory?*

As above – we do not have a problem of unrepresented children in NI and therefore we believe that children are sufficiently aware of the appeal system where relevant.

¹³ DHSSPS & PSNI, 'Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking', (February 2011) paragraph 4.21

¹⁴ DHSSPS & PSNI, 'Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking', (February 2011) paragraph 4.16

JCHR: Inquiry into the human rights of unaccompanied migrant children

- *Is there sufficient support and advice for unaccompanied migrant children as they approach eighteen years of age and beyond into adulthood?*

No. The transition between being in Trust care and NASS accommodation is not always smooth for children. Improvements could be made to planning to ensure that the young people, and any support workers, are properly aware of any chances to they can prepare accordingly. In addition, Social Services should consider whether the child has any statutory entitlement to services under the Leaving Care provisions. It is inadequate for young people simply to be transferred into NASS care when they turn 18 years.

- *Has the Government conducted an assessment of the number of young victims of trafficking in youth or adult custody, and of the steps being taken to safeguard them?*

No. We are not aware of any such assessment. You may be interested to note that, in relation to identifying potential victims of trafficking in places of detention in Northern Ireland, the GRETA report stressed the importance of 'not relying exclusively on self-identification' and urged the UK to develop a proactive detection of potential victims of trafficking.¹⁵

- *Are local authorities and immigration officials dealing satisfactorily with the issue of children and young people whose ages have been disputed, and has the Government considered developing an independent multi-agency panel-based approach to determining age assessments?*

Our understanding is that the number of Merton-compliant trained Social Workers in Northern Ireland is low although we do not have confirmed figures.

- *What assessment has been made of the impact of funding cuts on care provision for unaccompanied migrant children and young people, and what steps have been taken to ensure that such individuals are provided with sufficient support and care?*

We are not aware of any assessment of the impact of funding cuts on care provision.

- *Is the relationship between immigration legislation and child welfare legislation compatible with the UK's international human rights obligations?*

See above discussion on guardianship

- *Any other comments*

We continue to have concerns about unaccompanied children being accommodated in unsupervised B&Bs. This usually applies to UASCs however we have one current case where a potential trafficked child was placed in a B&B for a night. Thankfully the child was quickly transferred to supervised accommodation after a Social Worker noticed suspicious activity around the B&B. We do not think trafficked minors should ever be placed in B& accommodation.

For further information about this response, please contact:

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¹⁵ Group of Experts on Action against Trafficking in Human Beings, 'Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the UK' (2012) Para. 229. See also para. 233 and government response at para.41

