



Law Centre (NI)

Draft proposed Human Trafficking & Exploitation (Criminal Justice & Support for victims)
(Independent Guardians) Regulations (Northern Ireland)

Law Centre (NI) response

November 2015

About Law Centre (NI)

Law Centre (NI) works to promote social justice through the provision of specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. The Law Centre provides advice, casework, training, information and policy services to our member organisations. Since 2008, the Law Centre has provided advice and representation to victims and potential victims of trafficking in Northern Ireland. The Law Centre chairs the Racial Equality Forum's Immigration Sub Group and is a member of the EU Civil Society Platform Against Trafficking in Human Beings, the DoJ NGO Engagement Group, the NI Strategic Migration Partnership, the Refugee and Asylum Forum and the Home Office Asylum Stakeholders Forum.

Preliminary comments

We welcome the opportunity to respond to this consultation. Law Centre (NI) established a Working Group on Separated Children in 2008 comprised of professionals working to support unaccompanied children subject to immigration control in Northern Ireland. Along with the Northern Ireland Commissioner for Children and Young People, the Working Group mapped out the experience of those children and examined a number of policy options for responding to the needs of this particularly vulnerable group.

In September 2013 the Law Centre received funding from Comic Relief to establish an Anti-trafficking Young People Project, dedicated to representing children and young people who are, or are suspected to be, victims of human trafficking in Northern Ireland and who have been referred into the National Referral Mechanism (NRM). Since it was established, the project has represented 10 children through the trafficking process, 7 of whom also sought asylum in the UK, 8 of whom are subject to immigration control, the other 2 being EEA citizens. The children come from Europe, Asia, Africa and the Middle East. Very few speak English, none have English as a first language. Currently we represent 7 separated children in the project, all of whom we anticipated will be eligible to receive the support of an Independent Guardian (IG) when in place.

Q1. Do you agree that, in order to be eligible for appointment as an IG, a person should have to be registered as a social worker in the principal part of the register of social care workers maintained by the Northern Ireland Social Care Board?

Section 21 of the Human Trafficking and Exploitation (Criminal Justice & Support for Victims) Act (NI) 2015¹ ("2015 Act") introduces into Northern Ireland provisions which will enable the appointment of an IG to separated children, including suspected child victims of human

¹ <http://www.legislation.gov.uk/nia/2015/2/contents/enacted>

trafficking. S21 (7) provides that that the IG's duties will include *"making representations to, and liaising with, bodies and persons responsible for –*

- (b) (i) *providing care, accommodation, health services, education ...; or*
- (b) (ii) *otherwise taking decisions in relation to the child*
- (d) *contributing to a plan to safeguard and promote the future welfare of the child based on an individual assessment of that child's best interest; and*
- (f) *providing an link between the child and any body or person who may provide services to the child*

The role and responsibilities of the IG clearly requires a person who will be qualified to a high level and be professional in the exercise of their duties. We support the requirement for IGs to have professional knowledge and expertise in order to be able to represent the child's best interests in compliance with the UN Convention on the Rights of the Child and s21 (7) (e) of the 2015 Act.

Based on our experience of representing separated and trafficked children in the Law Centre's Anti-trafficking Young People's Project, we also agree that the IG needs to have an understanding of child welfare and protection issues and the relevant systems in place, particularly in order to carry out their functions effectively regarding child suspected victims of human trafficking.

We agree that the IG should be expert in their area of work. Post-holders must be able to inspire confidence in the new office. We consider that registration as a social worker should be a desirable criterion for the IG. This is in line with the recommendation of the Scottish Guardianship Pilot (see below) which has been operating a model of guardianship for separated children since June 2010. A statutory requirement for registration as a social worker in the Part One of the Social Care Council's Register may preclude other appropriately educated and experienced individuals from fulfilling the role of guardian

Standard 10 of the Core Standards for Guardians of Separated Children² refers to relevant professional knowledge and competencies which the IG should have in order to fully protect the rights and best interests of the child. These include knowledge of social welfare law and of immigration and asylum law, child developmental psychology, knowledge on how to access information regarding country of origin circumstances relevant to each child, as well as trafficking processes and children's rights. Further to this, Core Standard 10 requires the IG to be competent in case management. and proactive in identifying training and development needs.

² <http://www.corestandardsforguardians.com/images/11/279.pdf>

The child trafficking advocates pilot delivered by Barnardo's across 23 local authority areas in England has concluded. Prior to the implementation of the pilot, while the Modern Slavery Act was passing through Westminster, Karen Bradley, the Minister for Modern Slavery and Organised Crime, was asked how these new advocates would differ from guardians within public law proceedings. She explained:

“For the first time, each child allocated an advocate will be supported by a dedicated contact with the capacity and expertise to promote their welfare and guide them through the social care, immigration and criminal justice systems...They will have expertise across the immigration, criminal justice and social care systems and will be completely independent of the Local Authority.”³

Therefore it was envisaged that the knowledge and experience of those appointed to the position of Child Advocates would enable them to promote the welfare of the child within very distinct and different settings, i.e. welfare, immigration and criminal.

The final report on the child trafficking advocates trial is due to be published in the coming weeks. However, the March 2015 Interim Evaluation⁴ highlights the benefit of having advocates with a range of qualifications and experience. It found this diversity provided “opportunities for cross pollination of good practices”.

The final evaluation of the Scottish Guardianship Service Pilot⁵ identified certain requirements as being “central” to the guardianship role. They reflect those set out in Core Standard 10 as well as excellent advocacy skills, good communication and a positive, non-judgemental attitude. A social work qualification was considered desirable.

Whether a social work qualification and registration is a pre-condition for applying for the role of IG or not, it is critical that the appropriate training is made available to IGs to support them in their new role.

To conclude, it is our opinion that this requirement would be too restrictive and may unnecessarily restrict the available pool of potentially qualified applicants

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372791/ChildTraffickingAdvocates.pdf

⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409125/Child_Trafficking_Advocates_Evaluation_-_Interim_Findings_FINAL.pdf

⁵ Heaven Crawley & Ravi KS Kohli, *She Endures With Me: An Evaluation of the Scottish Guardianship Pilot* (University of Swansea & Bedfordshire University; 2013), p 32

Q2 Do you agree that, in order to be eligible for appointment as an IG, a person should have a minimum of five years post qualifying social work experience with children and families, including direct work with children, court related experience and inter-agency working?

We refer to our response to question 1 above.

Guideline 4 of the UNICEF Guidelines on The Protection Of Child Victims Of Trafficking⁶ states that a guardian must, inter alia, have child protection experience and knowledge of children's rights. We agree that an IG should have experience of direct work with children and we would support there being a particular focus on child protection procedures. Working experience in these areas should be a requirement for appointment as an IG. Some of the children we represent in the Law Centre's Anti-trafficking Young People's Project and to whom an IG will be appointed would benefit from an IG with experience as set out in question 2, i.e. court related experience and inter-agency working. Other experience is also important. Guideline 4 sets out that IG "must have"⁷ experience and knowledge of human rights as well as an understanding of the specific needs of child victims.

Once in post, there must be an on-going programme of training undertaken by the IG to support the acquisition of further specialist skills and knowledge in relation to separated/trafficked children. See further below.

Q3. Is there any other training which you consider should be specified as a requirement to be eligible for the appointment as an IG? If so please advise and give your reasons.

The consultation paper explains why it is considered necessary for the IG to become a 'qualified person' with the OISC in accordance with s84(1) Immigration & Asylum Act 1999 to enable the IG to provide up to level two immigration advice and assistance to the child. It also sets out why this will not be a requirement for appointment but something the IG will be expected to achieve "within a defined period of time following appointment".

The evaluation of the Scottish Guardianship Service Pilot identified OISC training as being relevant and central to the guardianship role⁸. Section 21(7) (b) and (d) of the 2015 Act requires the IG to make representations to bodies or persons who take decisions in relation to the child, as well as to consult with and keep the child informed of relevant legal proceedings. Given the complex immigration issues affecting the separated/trafficked children we represent in the Anti-trafficking Young People Project in Law Centre (NI), we welcome the requirement that OISC registration must be sought. However, this **must** be a requirement **prior** to appointment so as to ensure the IG is not giving unlawful advice contrary to the 1999 Act.

⁶ http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

⁷ Ibid, page 16

⁸ Ibid, page 33

Q4. Are there any other qualifications which you consider should be specified as a requirement to be eligible for appointment as an IG?

Please see above response to question 1 and 3.

Q5. Do you agree with the proposed definition of “support” provided at Regulation 4(2)? If not, please give your reasons.

We agree that support must include administrative support as well as advice and assistance, training and development that will enable the IG to improve and enhance their knowledge and skills. However, for reasons set out in response to Question 1 we do not consider post registration training and learning requirements in accordance with the Northern Ireland Social Care Council as being the only appropriate support for the IG but that there should be a requirement for the IG to operate within a regulatory framework.

Q6 Is there any other support which you consider the charity should provide to the IG? If so please advise and give your reasons.

We agree with the position of the Fundamental Rights Agency as set out in their comparative report: Separated, Asylum Seeking Children in the EU⁹ where it states: *“Persons assigned legal guardianship duties, as well as any other persons in charge of safeguarding the child’s best interests, should be provided with appropriate training and support to carry out their functions adequately.”*

Article 18(4) of the Directive¹⁰, requires regular, ongoing training for those working with this group of children. Articles 14 (1) and 16 (2) of the Directive imposes a duty on Member States to ensure that individual assessments of need are carried out in relation to suspected child victims of trafficking and s21 (e) of the 2015 Act requires the IG to contribute to the safeguarding plan of the child based on an individual best interest assessment. We therefore recommend that there should be quality assurance that the IG is appropriately trained on how to carry out that assessment.

The UNCRC General Comment No 6 sets out that training for all those working with unaccompanied and separated children should include the 1951 Refugee Convention, knowledge of the country of origin of separated and unaccompanied children, appropriate interview techniques, child development and psychology as well as cultural sensitivity and inter-cultural communication¹¹. We recommend that training on these areas is carried out.

The IG must receive training in a wide range of issues including working with interpreters, child protection, and the trafficking process with particular focus on the UN indicators, impact of trauma on child victims of trafficking and asylum seekers as well as age assessment awareness training and human rights. It will be appropriate for some of this

⁹ http://fra.europa.eu/sites/default/files/fra_uploads/1692-SEPAC-comparative-report_EN.pdf

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

¹¹ <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

training to be carried out by other agencies/NGOs in the form of multi-disciplinary training. This will also have the benefit of enhancing networking and cooperation as well as enforcing the common understanding of the needs and rights of this group of children.

Q7. Do you agree that access to formal supervision once a month is sufficient? If not, please tell us how frequent you consider it should be and why.

Further to our response to question 1, we do not accept that it is appropriate for IGs to obtain formal supervision once a month when they are first in post. The consultation states:

“Based on the Supervision Policy, Standards and Criteria Guidance, supervision should normally take place once a fortnight in the first six months and then monthly thereafter. Fortnightly supervisions would normally only apply to newly qualified social workers. Given that IGs should have at least five years’ experience working as a social worker, we consider that monthly supervision would be sufficient”

The roles and responsibilities of the IG as set out in Section 21(7) of the 2015 Act are varied and extensive. The IG will be working alongside a complex myriad of procedures. The close support of a manager is essential in this initial period to ensure that the child’s best interests are being properly identified and promoted, the training needs for the IG are identified as early as possible in post and to ensure overall quality of the work.

The experiences of some of the children which the IG will be responsible for will involve instances of trauma. In those cases it will be important in the first six months that there is close support available to avoid secondary traumatisation of the IG and safeguard the child’s best interests and of the IG. It will also ensure early identification of training needs.

We therefore consider it essential that an IG benefits from formal supervision on a fortnightly basis for the first six months, and then monthly thereafter to enable the IG to benefit from regular guidance and support when first in post.

Q8. Do you have any comments in respect of the definition of “formal supervision” and “senior employee”? If so, please let us have your views.

Further to our comments in relation to Question 1, we do not consider it appropriate that the term “senior employee” is defined to as to mean a social worker with a minimum of five years post qualifying experience. For the reasons set out previously in this response, we consider that other managers will have appropriate experience and knowledge to work with the IG to oversee, manage and direct the IG to meet organisational, professional and personal objectives. The Charity in which IGs will be based should be required through the tendering procedure to demonstrate that it has appropriate senior employees and robust processes in place for supervising IGs, including identifying and facilitating training needs and supporting an IG through cases which may involve very difficult child exploitation

issues. The successful organisation should have to demonstrate that the IG has understanding and experience of the child protection process in NI.

For further information about this consultation response contact:

Policy Unit
Law Centre (NI)
124 Donegall Street
BELFAST
BT1 2GY

Tel: 028 90 24 44 01
Fax: 028 90 23 63 40
Text phone: 028 90 23 99 38