

**Scottish Government consultation on Child Trafficking Guardians**

**EIS response**

**PART ONE**

**Question 1: The appointment of an independent child trafficking guardian**

Scottish Government (SG) propose appointing. That organisation will be appointed through an open and fair procurement/bid process and they will be responsible for employing independent child trafficking guardians and appointing them to individual cases.

Do you agree with the proposal?

*Yes, we agree. We believe that this particular cohort of vulnerable children need a discrete service to meet their needs.*

*We welcome the assurance in the consultation document that "it is the intention of the legislation that all children and young people who arrive in Scotland unaccompanied and who will have undergone an arduous migration alone, are considered to being at risk of having being trafficked or becoming trafficked and would be referred to the Independent Child Trafficking Guardian for support."*

*We agree that all unaccompanied and trafficked children should be entitled to an independent guardian to act in their best interests and support their needs. International evidence confirms that many unaccompanied children will have been exploited or trafficked at some stage from the point of forced displacement, during migratory journeys, or even once in Europe or the UK.*

*It is our view that the current Scottish Guardianship Service is a vitally important organisation in helping children and young people in negotiating byzantine and stressful asylum processes, but we would also wish the organisation responsible for providing independent child trafficking guardians to have a specific and clearly defined role in facilitating the integration of children, both those who arrive in Scotland with refugee status already in place, and those who have not yet secured refugee status. This could be done through running social groups, residential trips etc.*

*We would also like to see the organisation being part of a broader approach. A more joined up, sustainable approach to ensuring good long-term outcomes for the young people known to the current service (who are unaccompanied children seeking refugee status) is much needed.*

*We are concerned by what we have been told by the current service about the extent to which local authorities understand what needs to be in place for these young people. It is clear to us that their rights as looked after children are not being met. It will be important for these young people to have Looked After Children reviews, pathway planning, and support to achieve positive long-term outcomes; this is mainly a social work responsibility.*

*We would like to see a national framework for young people newly arrived in Scotland, which sets out a joined-up approach; we gather that the First Minister has made a commitment to such a framework (verbally, at a Scottish Refugee Council event) but there is not one yet.*

## **Question 2: The termination of that appointment**

SG propose that the appointment of an independent child trafficking guardian should be terminated using the normal procedures of the service provider.

Do you agree with the proposal?

*Yes. That seems sensible, providing that the normal procedures of the organisation are fair and robust and would meet the expectations of trade unions and labour law.*

## **Question 3: The conditions (including training, qualifications and experience) to be satisfied by a person to be eligible for that appointment**

- a) It is suggested, given the intended role of the ICTG, those employed will as a minimum require the following qualifications:
- OISC (Office of the Immigration Services Commissioner) Level 2
  - Relevant related qualification in working with children, Professional Qualification to SCQF Level 8 (HND Level)

Do you agree with the above qualifications? Yes/No/Don't Know

What other 'relevant related qualification' should be considered?

*Yes, we agree.*

b) In addition, it is suggested that given the intended role of the ICTG, those employed will have - or be required to develop - the following experience:

- Understanding of child protection and looked after children guidance and procedures
- Awareness of impact of trauma on children/young people and its effects
- Skills in communicating with children, working with and through interpreters
- Knowledge of UK and Scottish legislation to include immigration, asylum, human rights and data protection legislation, as well as specific legislation concerning children and young people and the statutory responsibilities and duties of the agencies involved in supporting them
- Knowledge of key policies and procedures relating to key legislation above
- Awareness of age assessment guidance and procedures
- An understanding of the distinct and cultural needs of separated children

- An understanding of data protection and information sharing legislation and guidance
- Experience of working with young people/children at risk
- Knowledge of child abuse and exploitation, indicators of trafficking and the National Referral Mechanism or other relevant trafficking identification systems

Do you agree with the above requirements for experience? Yes/No/Don't Know  
Is there any other experience or training that should be a requirement for an independent child trafficking guardian?

*Yes, we agree. We would suggest that Equality training featuring strong anti-racism and gender equality elements would also be useful.*

c) To ensure that an ICTG is suitable and accountable they must:

- Undergo a full Disclosure up to and including PVG Scheme membership; and
- Register with the Office of the Immigration Services Commissioner

Do you agree with the above requirements? Yes/No/Don't Know Are there any other checks that an independent child trafficking guardian should undergo?

*Yes, we agree. We are not aware of other checks that would be necessary.*

#### **Question 4: The payments to be made to, or in respect to the role of, an independent child trafficking guardian**

SG propose that the service provider, whoever that may be, should set the salary and the policy for any other payments to be made to the ICTG

Do you agree with the above proposal? Yes/No/Don't Know

If not, what approach would you propose?

*Yes, we agree, providing that the service provider is sufficiently well resourced to provide a salary which will enable them to attract candidates with the requisite skills and experience for this difficult work. This service should not be delivered on the cheap. There is a general tendency in Scotland and the UK of under-valuing work with children, illustrated by teachers' comparatively lower pay to that of teachers in other OECD countries, and the very low pay of childcare workers. Working with traumatised children and young people needs specific skills and experience. This should be well remunerated. A good salary will also act as a disincentive against staff turnover, providing more stability for the young people being supported by the guardians.*

*We would also note that the current service (with a staffing resource of 4 f/t Guardians, one part-time Guardian, and some relief staff) is at capacity, and indeed is stretched. This is challenging work and planning for the extent of demand is not easy: spontaneous presentations can happen anywhere in the country, and in areas where there are few interpreter services or other ancillary services to assist. The service should be resourced to meet the full range of need across Scotland. We would also note that changing patterns of migration related to climate change and rising inequality (which creates opportunities for exploitation) are likely to mean a growth in the cohort in need of this service; this should be planned for and properly resourced.*

### **Question 5: The functions of an independent child trafficking guardian**

Do you agree with the [above] functions? Yes/No/Don't Know Are there any that you would add to or remove from the list? If so, what are they?

{NB: the listed functions are as follows:

It is proposed that the ICTG should have regard to the following functions:

Contribute to the safeguarding of the child or young person and specifically contribute to the prevention of (re)trafficking.

Promote the best interests of the child or young person

Where the immigration status of a child or young person is not established, advise them as they progress through the immigration process, including on pathway planning for both positive and negative decisions on their status.

Have regard to the duties of the public bodies who have statutory duties relating to these children and young people, specifically but not limited to local authorities, the Home Office and Police Scotland.

Act in accordance with and assist local authorities as part of their plan for the support of the child or young person by:

Supporting them in dealing with the consequences of having been trafficked.

Supporting them through any appropriate referral mechanism for identification of trafficking, such as the National Referral Mechanism where they have been entered into by a First Responder.

Supporting them through any criminal proceedings against their traffickers, including understanding the process and managing expectations around prosecution.

Supporting them to access Criminal Injuries Compensation through the Criminal Injuries Compensation Authority (CICA) if required.

Supporting them towards independence to achieve the best outcomes and destinations for these young people.

Supporting them in being active in the development of their support and pathway planning.

Provide a confidential service according to data protection guidance and information sharing protocols.

When necessary, contribute to an age assessment in line with the Age Assessment Practice Guidance for Scotland.}

*We agree in general but would add some functions.*

*There's no specific function listed about supporting children and young people with navigating or understanding the asylum system, which forms the bulk of the work of the current service. Rather, the 'function' refers to 'immigration processes' more broadly. We would welcome a specific function around the asylum system. We would highlight that the current service was established in large part because unaccompanied asylum seeking children were engaging with a complex asylum process without support, and felt unsupported, and in need of an independent advocate by/on their side; this need was identified by 2006 research.*

*There's also no specific function to 'advocate' or engage in 'advocacy' on behalf of the child. We would see advocacy as a core part of the service and as such this should be reflected in statutory functions.*

*Crucially, there is no specific mention of the guardian's role in ensuring that the child or young person's voice and opinion is heard in all of the discussions which affect them. This is particularly important for the service, considering the planned incorporation of the UNCRC into Scots Law and the general thrust of user-led policy and practice in Scotland, in which listening to lived experience and respecting children's rights has become increasingly important and well understood.*

*The service should have core principles, such as being compassionate and respecting the dignity of all persons.*

### **Question 6: Record Keeping: What records should be kept about the ICTG (for example, records on employment; relevant training)?**

(Data protection principles as set out in the relevant data protection laws must be adhered to by the ICTG Service, individuals appointed and service users at all times as with any other public service)

*No view – this should be at the discretion of the service provider.*

### **Question 7: Vulnerable young people over 18**

The legislation allows Scottish Ministers to make provision for what circumstances the ICTGs may continue to act for a person after they are no longer a child. One such example is due to the complexities and the timescales

involved in the trafficking and asylum processes, it is possible that a child will reach the age of 18 before they have a decision about their case or may still be vulnerable to exploitation or re-trafficking and require on-going support and advice from the ICTG. It is therefore suggested that a young person could continue to receive support from an ICTG after the age of 18 where they have been a looked after child by a local authority, potentially in line with existing Continuing Care and Aftercare provisions (which the young person will be eligible for). This is for the purpose of preventing (re)trafficking of vulnerable young people.

Do you agree with the above? Yes/No/Don't Know

Are there other circumstances in which the ICTG may continue to act for a person after they are no longer a child that should be considered?

*We agree that the service should work with those over 18.*

*Young people continuing to receive support from a guardian after the age of 18 would be in line with existing Continuing Care and Aftercare provisions.*

*Children and young people's support needs do not automatically change when they turn 18. Much evidence exists of the difficulties experienced by young people in adversity in making transitions from one stage of their lives to another, a parallel experience to that of refugee young people turning 19 being young people with additional support needs, particularly those who are disabled, making the transition to post-school destinations. Ongoing and consistent support from a trusted guardian is crucial to preventing re-trafficking and would better support stable futures for young people who have arrived in Scotland as refugees.*

*We would also note that many children who are likely to need the support of this service don't know their age; and many will have had experiences which are completely atypical for children of their age so will not necessarily be mature or mentally well enough to cope without support. Their needs are more important than their age.*

*We believe that adults with settled status (i.e. those who have been officially recognised as refugees) are supported to develop a long-term plan, and can access appropriate help with goal setting, housing, etc. but that this approach, which is vitally important for young people too, doesn't seem to be consistently in place. There must be continuity of support.*

## **PART TWO**

### **Question 8: Support for victims of child trafficking**

**What are some of the additional support measures that a child trafficking guardian could provide, or facilitate provision of, to best support trafficked children?**

*We would wish to see the service having a strand of work focused on social integration.*

### **Question 9: Support to prevent re-trafficking**

**What additional support, if any, could the child trafficking guardian provide to minimize the risk of vulnerable young people being re-trafficked?**

*Just because someone receives a decision (positive or negative) on their asylum claim, this should not mean that their support from a guardian ends. Cutting off support in such a way disrupts an important trusting relationship and could make young people vulnerable to being re-trafficked or exploited. Regardless of the decision made on their asylum application, young people should be able to access the ongoing support of a guardian to address ongoing needs.*

### **Question 10: Appeal Rights Exhausted**

When a young person in receipt of support from a child trafficking guardian has their asylum/immigration application refused, and have exhausted all their rights to appeal that decision, they are deemed 'Appeal Rights Exhausted' and unlikely to hold any valid immigration status. Social work still have a statutory duty to provide support and assistance to Appeal Rights Exhausted children and young people as they are still likely to have support needs. It is also likely that a child or young person in this position will still require the additional support that is provided by an ICTG.

**What support for Appeal Rights Exhausted children and young people would you propose that an ICTG provide, and what additional support arrangements (if any) could be put in place to help the ICTG provide that support?**

*As above, there should be support for this group of young people to ensure they are not re-trafficked.*

### **Question 11: Data Sharing**

The legislation states that a person responsible for exercising functions in relation to a child for whom a child trafficking guardian has been appointed (for example social worker, teacher, health worker, etc.) must recognise and pay due regard to the guardian's function and where appropriate provide the guardian

with access to information regarding the child as will allow the guardian to provide appropriate support for the child or young person.

**What information needs to be shared between the statutory professionals supporting the child/young person and the independent child trafficking guardian (whilst adhering to data protection and other information sharing principles)?**

*Best practice in terms of child protection should apply.*

### **Question 12: Conduct**

Given the statutory nature of the ICTG, it is important to ensure that appropriate measures are in place in the situation where there is a concern raised regarding the conduct of a child trafficking guardian. It is important to have procedures in place to ensure quality assurance, professional standards and the safeguarding of the children and young people, and to provide a framework for potential complaints or grievances

**In the event that it is necessary for a complaint or grievance to be made about a child trafficking guardian, what procedures and processes should the service provider have in place to ensure accountability and quality improvement of the ICTGs and the service?**

*Best practice in complaints procedures should apply.*