

# LIGHTING THE WAY:

**Steps that lawyers, legal guardians and child trafficking advocates in the UK can take to better identify and protect children who may have been trafficked**







ReACT: Reinforcing Assistance to Child Victims of Trafficking

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### About REACT

ReACT is a partnership project between ECPAT groups in the UK, France, Belgium, The Netherlands and Germany aiming to increase the capacity of representatives (guardians and lawyers) of child victims of trafficking to provide appropriate support and uphold the rights of trafficked children during legal proceedings in key trafficking destination countries.

The project supports trafficked children and their representatives (guardians and lawyers) by:

Delivering a practical research programme that focuses on guardianship systems for child victims of trafficking involved in legal procedures in five Member States (Belgium, France, Germany, Netherlands and UK)

Developing multidisciplinary training modules that promote minimum standards for guardians and lawyers regarding child victims of trafficking, including specific modules relating to their roles and responsibilities

Providing training for guardians (or other representatives according to the country) and lawyers on child victims of trafficking involved in legal procedures at national level in five Member States

Producing child-friendly information tools for child victims of trafficking in order to inform children of their rights as children, and as child victims of trafficking

Advocating to ensure effective legal guardianship for child victims of trafficking in EU Member States and to integrate information and training on trafficking in the curriculum of new guardians and lawyers

## ACRONYMS AND ABBREVIATIONS

BAWSO	Welsh organisation that provides specialist services to people from Black and Ethnic Minority backgrounds who are affected by abuse, including human trafficking
CEOP	Child Exploitation & Online Protection Command, National Crime Agency
CMU	Case Management Unit
CTAC	Child Trafficking Advice Centre at NSPCC
ECHR	European Convention on Human Rights
ESCR	International Network for Economic, Social & Cultural Rights
FOA	Freedom of Information Act 2000
FRA	Fundamental Rights Agency
GLA	Gangmasters and Labour Abuse Authority
IRO	Independent Reviewing Officer
MASH	Multi-Agency Safeguarding Hub
NSPCC	National Society for the Prevention of Cruelty to Children
NGO	Non-Governmental Agency
NRM	National Referral Mechanism
NSPCC	National Society for the Prevention of Cruelty to Children
RYS	Refugee Youth Service
SCQF	Scottish Credit and Qualifications Framework
TARA	Trafficking Awareness Raising Alliance
UKHTC/MSHTU	UK Human Trafficking Centre / Modern Slavery & Human Trafficking Unit
VOIPIC	Voice of Young People in Care (an organisation in Northern Ireland)

## GLOSSARY OF KEY TERMS

Anti-Trafficking Convention	Council of Europe Convention on Action against Trafficking in Human Beings
Anti-Trafficking Directive	EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims
Duty Solicitor	A publicly funded solicitor provided at a police station when a person who has been arrested does not name a preferred solicitor
Freedom of Information	Section 1(1) of the Freedom of Information Act 2000 entitles individuals and organisation to information held by public authorities
Gateway Authority	Local authorities with an air or sea port in their area
Gateway Team	First point of contact for social services in Northern Ireland
Gillick Competent	A test adopted by Lord Fraser in <i>Gillick v West Norfolk &amp; Wisbech Area Health Authority</i> [1985] UKHL 7 to assess whether a child under the age of 16 is capable of consenting to his or her own medical treatment without the need for parental permission. Since this decision, the test has been used more widely as a tool to assess whether a child has the majority to make their own decisions and to understand the implications of any such decisions.
Guardian Ad Litem	An experienced social worker who is appointed in Family Court child protection proceedings in order to ensure that the child's interests are taken into account by the court. He or she should meet with the child and provide the court with a report. If an older child does not agree with the guardian ad litem's views about his or her future and is deemed to be Gillick competent, it is possible for the child to instruct his or her own lawyer to put an alternative view to the court
Juju	A spiritual belief system usually found in West Africa incorporating objects and spells, which can be used to ensure compliance



Newton Hearing

Where an issue has not been resolved by a jury or when there is a guilty plea, a judge sitting alone can hear evidence and reach a decision

Police and Crime Commissioner

An elected official in England and Wales responsible for securing efficient and effective policing of a police area

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### APPENDIX A: METHODOLOGY

## 1. INTRODUCTION

The United Kingdom is not a federal state but it is made up of four different nations and a number of powers and responsibilities have been delegated to national assemblies in Wales and Northern Ireland and a separate parliament in Scotland. These include the provision of child protection and education services. However, there is a UK-wide National Health Service and the UK parliament retains responsibility for border controls and immigration and asylum applications and policy. There are 43 local police forces in England and Wales and one police force for Scotland and one for Northern Ireland. However, the National Crime Agency is responsible for combating organised crime and human trafficking. In addition, there are three separate legal jurisdictions in the UK; one for England & Wales, one in Scotland and one in Northern Ireland. There are differences in both statutory law and legal procedures between these jurisdictions and lawyers are not able to practice in other jurisdictions without undertaking further training and/or being called to the appropriate Bar, if they are barristers. As a consequence, there are variations in how different regions respond in practice to children who may have been trafficked but there are substantial similarities in the substance of the provision by different services.

In keeping with the fact that there are three different legal jurisdictions within the United Kingdom, there are three separate pieces of anti-trafficking legislation – the Modern Slavery Act 2015 that applies in England and Wales, the Human Trafficking (Scotland) Act 2015 (“the Scottish Act”) and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (“the Northern Irish Act”). The Anti-Trafficking Monitoring Group has provided an analysis of the differences between these pieces of legislation.<sup>1</sup>

This research in the United Kingdom was initiated at a time of considerable constitutional debate about whether the United Kingdom should leave the European Union and, on 23 June 2016, 51.9% of electors<sup>2</sup> decided that the United Kingdom should withdraw from the Union. The vote was very close but the overall result masks geographical significant divisions. More multi-cultural urban areas, such as London, tended to vote to remain in the European Union whilst some northern areas, for example, where unemployment had been high since the closures of coalmines and the decline of manufacturing industries voted to leave. In addition, 62% of the population in Scotland voted to remain; as did 55.8% of those in Northern Ireland. The possible consequences of this difference in voting preferences between the nations has already seen a significant swing in support in Northern Ireland to Sinn Fein, a nationalist party that favours a United Ireland, and the real possibility of a

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<sup>1</sup> *Class Acts? Examining modern slavery legislation across the UK*, Anti-Trafficking Monitoring Group, October 2016

<sup>2</sup> 72.2% of electors cast a vote

second referendum on independence in Scotland. In this context the fact that the nations have distinct legislation and have devolved different services may be significant in the future.

The United Kingdom triggered Article 50 of the Consolidated Version of the Treaty on the European Union to give notice that it was leaving the Union on 29 March 2017, which means that the United Kingdom will leave by April 2019. Once this happens, EU law will no longer be part of the range of UK law, unless it has been incorporated into national law. In particular, it will no longer be possible to rely on the EU Anti-Trafficking Directive<sup>3</sup> and the Charter of Fundamental Rights of the European Union<sup>4</sup>. This will not affect any measures already incorporated into the Modern Slavery Act 2015, and similar acts in Scotland and Northern Ireland, but means that further development of laws<sup>5</sup> in the EU to protect children who may have been trafficked will not assist children here.

The Government has not indicated any intention to withdraw from the Council of Europe.<sup>6</sup> Therefore, it will retain obligations that arise under the Convention on Action against Trafficking in Human Beings.<sup>7</sup> The United Kingdom will also remain a member of the United Nations and there is no indication that it will repudiate its ratification of the UN Convention on the Rights of the Child<sup>8</sup> and its Optional Protocol on the sale of children, child prostitution and child pornography.<sup>9</sup> In particular, Article 35 of the UNCRC says that States Parties shall take all appropriate national, bilateral and multilateral measures to prevent child trafficking.

On 22 August 2016, Liz Truss, the Justice Minister, announced that the Conservative Government intends to repeal the Human Rights Act 1998 and replace it with a British Bill of Rights.<sup>10</sup> But in January 2017, Ministers stated that no bill would be drafted until after Brexit.<sup>11</sup> This does not mean that the United Kingdom will withdraw from the European Convention on Human Rights [ECHR], a convention which was drawn up under the auspices of the Council of Europe, as opposed to the European Union. However, the ECHR only became part of the law of the United Kingdom, when the Human Rights Act 1998 came into force as the United Kingdom does not recognise international conventions as being directly enforceable. Therefore, if the Human Rights Act 1998 were to be

<sup>3</sup> 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

<sup>4</sup> 2010/C83/02

<sup>5</sup> This trend has been prefigured by the decision by the UK not to opt into re-cast versions of the directives which make up the international protection acquis

<sup>6</sup> It has 47 member states

<sup>7</sup> Council of Europe Treaty Service – No. 197, Warsaw, 16 May 2005

<sup>8</sup> General Assembly resolution 44/25 of 20 November 1989

<sup>9</sup> New York, 25 May 2000

<sup>10</sup> It is likely that such a bill would have to retain a provision based on Article 4 of the ECHR as the Modern Slavery Act and the legislation in Scotland and Ireland prohibit slavery, servitude and forced labour

<sup>11</sup> *The Telegraph*, 26 January 2017

repealed,<sup>12</sup> reliance on the ECHR would be limited to showing that a failure to apply its provisions amounted to a breach of common law.

A recent dissemination conference and ‘Training for Trainers’ event organised as part of the ReACT project in January 2017 indicated that many of the provisions already developed in the United Kingdom to identify and protect children who may have been trafficked were capable of acting as “best practice” for other European States.<sup>13</sup> It was also clear that professionals from the United Kingdom tended to be self-critical about their own practices and those of UK institutions. This is an approach that is reflected in the comments made by many UK professionals in the body of this report.

Furthermore, one of the strengths of the anti-trafficking work carried out by both statutory organisations and the NGO sector in the UK is the strong emphasis placed on multi-agency working, in theory and policy, if not always in practice. In relation to prevention and protection, the Modern Slavery Human Trafficking Unit (MSHTU) of the National Crime Agency works closely with the UK Border Force, UK Visas & Immigration, the Gangmasters Labour Abuse Authority, NGOs and international agencies. The Modern Slavery Unit has also established a Modern Slavery and Implementation Group<sup>14</sup> and one of its sub-groups is the Task and Finish Group for Children, which brings together representatives from the Home Office, the Department for Education, the National Crime Agency, the Office of the Children’s Commissioner for England and NGOs to consider the particular needs of children who may have been trafficked. In relation to NGOs, the Anti-Trafficking Monitoring Group brings together a number of leading civil society organisations and has produced a number of reports assessing the UK’s response.

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<sup>12</sup> Individuals would no longer be able to rely on section 6 of the Act that states that “it is unlawful for a public authority to act in a way which is incompatible with a Convention right”. Section 7 also enables a person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6 to bring proceedings against the authority under this Act in the appropriate court or tribunal

<sup>13</sup> See *Better support, better protection: Steps lawyers and guardians can take to better identify and protect trafficked children*, ECPAT, November 2016

<sup>14</sup> Chaired by the Minister for Vulnerability, Safeguarding and Countering Extremism

## 2. EXECUTIVE SUMMARY

The research identified the following general findings:

1. A multi-agency approach to the identification of children who may have been trafficked ensures that the skills and experiences of all professionals within the wider child protection system are utilised and the protection of these children is enhanced.
2. It is possible to build on a number of existing processes which require different professionals to work together to safeguard children, including children who may have been trafficked.
3. The National Referral Mechanism is likely to be able to identify more children who may have been trafficked if it operates within a child protection system such as a Multi-Agency Safeguarding Hub (MASH).
4. The requirement to apply a presumption of age contained in the Anti-Trafficking Convention and the Anti-Trafficking Directive has been incorporated into anti-slavery and anti-trafficking legislation throughout the United Kingdom but it is not consistently applied by social workers and other professionals.
5. Research indicates that medical examinations are capable of estimating the maturity but not the chronological age of a child.
6. There is no national process for identifying and recording children who may have been trafficked who have gone missing.
7. A statutory service providing independent guardians for all separated children is about to become operational in Northern Ireland.
8. There is already a non-statutory service providing guardians for unaccompanied migrant children in Scotland and the Scottish Trafficking Act provides for the appointment of independent child trafficking guardians but this service is not yet operational.
9. In 2017, independent child trafficking advocates were appointed in three 'early adopter' sites in England and Wales with a commitment on the part of the UK Government to roll this out nationally and appoint independent child trafficking advocates throughout England and Wales.

10. Although, the United Kingdom lagged behind many other European states in providing guardians for unaccompanied and trafficked children, the statutory provisions for all separated children in Northern Ireland and trafficked children in other parts of the United Kingdom are comprehensive and include a number of features missing from most European services. This is partly because the delay enabled lessons to be learnt from research and guidance provided by FRA.<sup>15</sup>
11. Children who may have been trafficked benefit from some solicitors and barrister and projects who specialise in the representation of children who may have been trafficked. But the distribution of these services is not uniform across the United Kingdom and tends to be concentrated in Northern Ireland, Scotland, London and Manchester.
12. Training for solicitors and barristers who work in other geographic areas is urgently needed.
13. The removal of a right to free legal aid for children who are not applying for asylum and where a decision has not been reached that there are reasonable grounds to suspect that a child had been trafficked, renders children who have not yet been accurately identified as having been trafficked in a very vulnerable position.
14. Guidance has been provided to help ensure that children who may have been trafficked are not prosecuted for offences committed as a consequence of them being subjected to criminal exploitation. The most comprehensive guidance is provided in Scotland.<sup>16</sup>
15. The protection children receive is better where there are specialist police and prosecution services.
16. There is also an urgent need to provide training to duty solicitors who practice in criminal law who are not presently identifying children who may have been trafficked.
17. There is at yet no best interest determination process to find an individual durable solution for each trafficked child.
18. Comprehensive training opportunities for professionals within the wider child protection system are not in place in most parts of the United Kingdom, although better systems are in place in Wales.

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<sup>15</sup>*Guardianship systems for children deprived of parental care in the European Union: With particular focus on their role in responding to child trafficking, European Union Agency for Fundamental Rights, 2015 and Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to care of the specific need of child victims of trafficking, European Union Agency for Fundamental Rights, 2014*

<sup>16</sup>*Instructions to Prosecutors when considering the Prosecution of Victims of Human Trafficking and Prosecution, issued under section 8 of the Human Trafficking and Exploitation (Scotland) Act 2015*

### 3: IDENTIFICATION

Article 10.1 of the Council of Europe Convention<sup>17</sup> on Action Against Trafficking in Human Beings requires Member States to provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims.

Article 11.4 of the EU Anti-Trafficking Directive also states that Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

Both the ReACT Project desk and field research revealed the centrality of the need for enhanced methods for the accurate and swift identification of children who may have been trafficked.

It is widely accepted that child trafficking was once primarily viewed as a matter for those involved in crime prevention and immigration control. Therefore, when the UK government set up the UK Human Trafficking Centre (UKHTC)<sup>18</sup> to co-ordinate its response to human trafficking and exploitation in 2006, it was hosted by South Yorkshire police and between 2006 and 2010 its staff were drawn from the UK Border Agency, South Yorkshire Police, the Serious Organised Crime Agency and the Crown Prosecution Service. At the same time, the UKHTC recognised the expertise of a number of NGOs working on human trafficking and the role of civil society in caring for those who may have been trafficked. As a consequence, it set up a number of working groups involving members of civil society and the Government consulted with NGOs on a regular basis on a formal and an informal basis.

However, the UKHTC became more embedded within the crime prevention section in 2010 when it became part of the Serious Organised Crime Agency and moved from Sheffield to Birmingham. It now sits within the National Crime Agency and has been rebranded as the Modern Slavery Human Trafficking Unit (MSHTU). It has four staff, who are NCA employees or seconded police officers<sup>19</sup>. The National Crime Agency collates the numbers of children referred into the National Referral Mechanism (NRM), the UK's official system for identification of and support to victims of trafficking

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<sup>17</sup> An instrument that will remain in force after Brexit

<sup>18</sup> UK Human Trafficking Centre

<sup>19</sup> See Modern Slavery Human Trafficking Unit on NCA website



and acts as a Competent Authority in making trafficking identification decisions about those adults and children who do not have immigration concerns.

The National Crime Agency has noted that traffickers change their methodology and routes on a frequent basis in response to market demands and improved intelligence led criminal investigations and prosecutions. It is important for the state to monitor changes in patterns regarding the profile of victims and the locations and forms of exploitation as this is ever-changing and can present a challenge for identification. For example, in early 2016 it was reported<sup>20</sup> that children were being brought in through Harwich and other seaports in Eastern England, in addition to Dover and ports on the south coast of England. This was confirmed<sup>21</sup> by an NGO working closely with children and the local authorities who accommodate them. The NSPCC's Child Trafficking & Advice Centre (CTAC)<sup>22</sup> also reported that there were a growing number of boys from Albania being brought in for criminal exploitation and Afghan boys being trafficked for sexual exploitation. In addition, it noted that Vietnamese and Chinese children were being trafficked into the United Kingdom under the guise of attendance at private schools here but then went missing. The phenomenon of unaccompanied Albanian children being identified in the United Kingdom under the control of organised Albanian criminal gangs has also been confirmed by a representation of the Office of the Independent Anti-Slavery Commissioner.<sup>23</sup>

It was also noted that traffickers now appear to be "renting" those who have been trafficked as opposed to buying them<sup>24</sup> and that Albanian children may be sold an "asylum package" to gain them entry to the United Kingdom.<sup>25</sup> Moroccan children who appeared to have been trafficked to be exploited in street crime were also appearing in the criminal courts.<sup>26</sup> British children are increasingly being trafficked for sexual exploitation by gangs of older men<sup>27</sup> - this is what is commonly referred to as "lover boy" trafficking in Germany and The Netherlands. In addition, there is evidence that they are also being trafficked for criminal exploitation.<sup>28</sup>

A number of interviewees also disclosed that it was their experience that professionals found it particularly difficult to identify whether children were being exploited within the Roma community.<sup>29</sup>

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<sup>20</sup> Mandy John-Baptiste

<sup>21</sup> Judith Dennis

<sup>22</sup> Mandy John-Baptiste

<sup>23</sup> At a meeting of the Home Office's Modern Slavery Strategy and Implementation Group, 7 July 2016

<sup>24</sup> Pam Bowen

<sup>25</sup> Pam Bowen

<sup>26</sup> Philippa Southwell

<sup>27</sup> Philippa Southwell

<sup>28</sup> Philippa Southwell

<sup>29</sup> Pam Bowen

Sometimes, this was attributed to a fear that this community already suffered from discrimination and racism and that raising concerns about child trafficking within the community amounted to further racism. An example was also given where a local authority had recognised that one Roma child out of a group of five was a child who may have been trafficked but had failed to recognise that the situation was one that raised safeguarding issues and just offered the family support.<sup>30</sup> A member of a specialist police unit also commented that it was unrealistic to expect Roma children to seek the assistance of other adults as they were commonly not aware that begging and domestic servitude amounted to criminal exploitation.<sup>31</sup>

## THE NATIONAL REFERRAL MECHANISM

The United Kingdom has a very well defined National Referral Mechanism that it adopted in order to comply with its obligations under the Anti-Trafficking Convention, which it signed on 23 March 2007. Shortly afterwards, on 14 January 2008, the UK Government announced that it intended to ratify the Convention by the end of the year.<sup>32</sup> Ratification took place on 17 December 2008 and the initial form of the NRM was brought into force on 1 April 2009.<sup>33</sup> The NRM does not distinguish between children and adults and the same basic process is applied irrespective of age.<sup>34</sup>

In the current version of the NRM “first responders” are responsible for referring children (and adults) into the NRM. Police officers, local authorities, the UK Border Force, UK Visas & Immigration, the Gangmasters and Labour Abuse Authority, the Health & Social Care Trust (Northern Ireland) and NGOs such as the Salvation Army, Migrant Help, Medaille Trust, Kalayaan, Barnardo’s, Unseen, TARA Project (Scotland), NSPCC (CTAC), Bawso, New Pathway and the Refugee Council can all act as first responders. Lawyers and judges<sup>35</sup> cannot act as first responders and this has led to delay and children being exposed to re-trafficking in some cases. In addition, the Scottish Guardianship Service is not a first responder and it is social workers in Scotland who make referrals into the NRM on its behalf. However, guardians provide information to these social workers on indicators of trafficking and the completion of NRM forms and have improved the quality of initial referrals.<sup>36</sup> This has

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<sup>30</sup> Lucy Coen

<sup>31</sup> Phil Brewer

<sup>32</sup> *Update to UK Action Plan on Tackling Human Trafficking, Home Office, July 2008*

<sup>33</sup> This was as a matter of policy as the Convention was not incorporated into UK law and the NRM was not established on a statutory basis

<sup>34</sup> The one modification is that in the current pilot project a panel considering whether an individual has been trafficked has to include child rights experts if the individual is under 18

<sup>35</sup> For example, a judge in the First-tier Tribunal (Immigration and Asylum Chamber) suspected that a child appearing in court with adults, who were said to be her parents, may have been trafficked but did not have the power to make a referral into the NRM. She had to contact another professional before a referral could be activated

<sup>36</sup> Catriona MacSween

provided an additional safeguard to ensure that children are referred into the NRM if this is appropriate.<sup>37</sup> There are as yet no operating statutory legal guardianship services in the United Kingdom but local professionals recognised that the presence of a child trafficking advocate on the Panel for Adolescents and Children Affected by Trafficking in Greater Manchester was very beneficial.<sup>38</sup>

There are two competent authorities within the NRM.<sup>39</sup> The first is currently the Modern Slavery and Human Trafficking Unit, MSHTU, (formerly UKHTC), which acts as an initial triage point for all referrals and remains responsible for decisions relating to British and EEA nationals who may have been trafficked. The second competent authority is currently UK Visas and Immigration, which is responsible for decisions relating to foreign nationals. These competent authorities decide whether there are reasonable grounds to suspect<sup>40</sup> that a child (or adult) has been trafficked. If they decide that there are, the individual is then entitled to a 45-day reflection and recovery period.<sup>41</sup> For children, this period of time is merely a formality as the child will already be entitled to accommodation and support if he or she is a child with no accommodation and no adult with legal responsibility for him or her.<sup>42</sup> But it may mean that children who may have been trafficked are not given the necessary assistance to make the psycho-social recovery required by the EU Anti-Trafficking Directive.<sup>43</sup> After this 45-day period the appropriate competent authority should make a conclusive grounds decision<sup>44</sup> as to whether on a balance of probabilities the child has been trafficked.

However, a number of concerns have been raised about the structure of the NRM. In particular, there have been concerns that the same case workers in UK Visas and Immigration are making decisions about whether an individual may have been trafficked and also whether he or she was entitled to refugee status, other international protection or leave under the ECHR. This concern was reflected in the UK Government's review of the NRM.<sup>45</sup> The review was also concerned that children were not always being referred into the NRM. The failure to refer arose for a variety of reasons, including a lack of awareness of the NRM, a perception on the part of social workers that the child

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<sup>37</sup> Catriona MacSween

<sup>38</sup> Jayne Horan

<sup>39</sup> <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

<sup>40</sup> This involves the application of a very low standard of proof, which is characterised as "I believe but I cannot prove"

<sup>41</sup> In practice due to delays in conclusive decisions this period may be extended beyond the 45 day period

<sup>42</sup> Under sections 17 and 20 of the Children Act 1989 in England and Wales, section 25 of the Children (Scotland) Act 1995 in Scotland and section 21 of the Children (Northern Ireland) Order 1995 in Northern Ireland

<sup>43</sup> Article 14.1

<sup>44</sup> A decision applying the standard of proof of a balance of probabilities that he or she has been trafficked

<sup>45</sup> *Review of the National Referral Mechanism for victims of human trafficking*, Home Office, November 2014

would not gain from any such referral as they were already accommodated or concern that the NRM could in fact have a negative impact on a child's asylum claim or on the child's wellbeing, if they were to receive a negative decision.

As a consequence, a pilot scheme was established to see whether the NRM could be improved. It began on 3 August 2015 in South-Western England (in the areas of Avon & Somerset, Devon & Cornwall, Dorset, Wiltshire and Gloucestershire police forces) and in the area covered by the West Yorkshire police force. First responders did not make reasonable grounds decisions, instead a number of slavery safeguarding leads (SSLs) were appointed in each area. These were not substantive posts but the role was carried out by professionals, such as social workers and police officers, who were already in post. They then referred the case to a Case Management Unit (CMU) based in the Home Office but not within the UK Visas and Immigration department. It prepared a summary file of the case which was forwarded to a meeting of one of a number of regional and virtual multi-disciplinary panels, chaired by an independent chair appointed by the Home Office. There were some concerns that this was purely a paper exercise and that the CMU had not sought out further evidence even when it was apparent that this was necessary. This meant that sometimes the regional panels had very little material before them. In some cases, it amounted to little more than a transcript of the child's asylum interview. However, it appears that panels did adjourn their meetings when they believe that they have not been provided with sufficient evidence about a particular child and more information was requested and re-sent to a new panel.

The regional panels were comprised of professionals from the police, social services, the Health and Education Services, UK Visas and Immigration and civil society. Where the individual was a child, it was required that there was always someone present from children's services within a local authority and a specialist child trafficking NGO professional. The positive aspect of the composition of the panel was it encouraged a multi-agency approach and involved a number of professionals<sup>46</sup> who were used to exercising child safeguarding duties.<sup>47</sup> However, even though the panel could decide that it was more likely than not that a child had been trafficked, any decision on immigration status remained the responsibility of UK Visas and Immigration and the panels were not privy to any follow-up information about the case.

The pilot scheme were scheduled to finish in August 2016 but was subsequently extended until the end of March 2017. The Home Office has produced two sets of interim evaluation findings based on

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<sup>46</sup> Local authorities, the police, the health service

<sup>47</sup> Dragan Nastic

both quantitative and qualitative research and has carried out a range of informal stakeholder engagements, however, a lack of focus on children's cases was raised as a point of concern. The Home Office has indicated that some elements of the new model are working very well but that other areas need further refinement. It is not clear whether any substantive changes will be made to the NRM system. Meanwhile the Office of the Independent Anti-Slavery Commissioner is formulating some recommendations about the need for the NRM to be amended.

## THE NEED FOR AN NRM FOR CHILDREN

There is no specific NRM for children. In August 2014, the Anti Trafficking Monitoring Group published a 'Proposal for a Revised National Referral Mechanism (NRM) for Children.'<sup>48</sup> Under this proposal the NRM for children would be embedded in existing multi-agency child protection arrangements, such as Multi-Agency Safeguarding Hubs, at a local or regional level. The need for such a NRM is partly the result of the ignorance displayed by many local authorities about the existing system.<sup>49</sup> It was also stressed that the current system does not sufficiently distinguish between forced labour and child labour.<sup>50</sup>

## NRM STATISTICS

The National Crime Agency (NCA) collates statistics based on referrals into the NRM. These statistics record the gender, nationality and age range of children who have been trafficked.<sup>51</sup> They also record type of exploitation and the source of referral.<sup>52</sup> In 2016, 1,278 children were referred into the NRM: 1,204 in England, 46 in Scotland, 21 in Wales and six in Northern Ireland. It is recognised that, even though relatively few children had been identified as having been trafficked in Wales, for example, there may well have been unaccompanied migrant children who should have been placed within this category.<sup>53</sup>

In addition, the NRM data is widely thought to be an under-estimate of the true extent of child trafficking in the UK. For example, in 2013 the Home Office's Chief Scientific Adviser estimated that there may have been as many as 10,000 to 13,000 potential victims of modern slavery in the United

<sup>48</sup> The ATMG is presently updating this proposal to take account of any findings which may arise from the current NRM review

<sup>49</sup> Dragan Nastic

<sup>50</sup> Dragan Nastic

<sup>51</sup> See Appendix A for a snapshot of such statistics for 2014 and 2015

<sup>52</sup> For example, between January and March 2016 116 children were referred into the Home Office by the Home Office, 19 by the UK Border Agency, 88 by local authorities, 13 by NGOs and 46 by different police forces

<sup>53</sup> Stephen Chapman

Kingdom at that time.<sup>54</sup> It was also noted that since 2009 a quarter to a third of victims had been children.

## TYPES OF EXPLOITATION

The National Crime Agency classifies incidents of trafficking into the categories of labour exploitation, sexual exploitation, domestic servitude, organ harvesting and unknown exploitation. This means that the data now included is not as extensive as it once was. This is because up until October 2011, CEOP<sup>55</sup> had responsibility for collating information relating to child trafficking and used a wider range of categories: benefit fraud, cannabis cultivation, criminal exploitation, domestic servitude, labour exploitation, and sexual exploitation. It also commented on trends and patterns.<sup>56</sup> The UKHTC's 2014 baseline assessment was the last to provide a more detailed breakdown on types of exploitation.

In 2016, it was recorded that 468 children had been trafficked for suspected labour exploitation and 103 for domestic servitude. In addition, 147 non-UK children had been referred for identification for trafficking for the purpose of sexual exploitation and 215 UK children. Some 345 children had been trafficked for unknown purposes.<sup>57</sup>

## THE ROLE OF SOCIAL WORKERS

Guidance has been published to assist social workers in all four national areas in the United Kingdom.<sup>58</sup> In addition, statutory guidance has also been published in England.<sup>59</sup> Paragraph 19 of this statutory guidance states that “in accordance with the requirements of the Council of Europe Convention on Action against Trafficking in Human Beings, the UK has a National Referral Mechanism (NRM) for identifying and recording victims of trafficking and ensuring that they receive appropriate support wherever they are in the UK (though the NRM does not itself provide that support). In cases where a child displays indicators that they may have been trafficked, whether

<sup>54</sup> *Modern Slavery Strategy, UK Government, November 2014, paragraph 2.13, page 17*

<sup>55</sup> Child Protection and Online Protection Centre (It is now a command within the National Crime Agency, which concentrates on combating child sexual abuse and child trafficking no longer falls within its responsibilities)

<sup>56</sup> *See, Child Trafficking Update, October 2011*

<sup>57</sup> *NRM Statistics, National Crime Agency*

<sup>58</sup> *Safeguarding Children who may have been trafficked: Practice Guidance (England)*, Department of Education, October 2011, *All Wales Practice Guidance for Safeguarding Children who may have been Trafficked*, All Wales Child Protection Procedures Review Group, June 2011, *Safeguarding Children in Scotland who may have been Trafficked*, Scottish Government, April 2008, *Working Arrangements for the Welfare & Safeguarding of Child Victims of Human Trafficking*, Department of Health, Social Services and Public Safety for Northern Ireland, February 2011

<sup>59</sup> *Care of unaccompanied and trafficked children, Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum and trafficked children*, Department of Education, July 2014 (This guidance is being revised and the revised version should be available later in 2017)

from overseas or within the UK, social workers or other front line professionals should refer the case to the relevant competent authority by sending the child NRM referral form to the UK Human Trafficking Centre (UKHTC).”

Therefore, social workers potentially play a key role in the NRM but this UK research indicated that they may not have the skills and training to identify children who may have been trafficked.<sup>60</sup> This may be because social workers had not previously worked with children who had been trafficked, which was the case when a care home in Northern Ireland first accommodated trafficked children.<sup>61</sup> So-called “Gateway” local authorities, such as Kent, who had accommodated unaccompanied migrant children for many years, have also disbanded their specialist unaccompanied migrant children’s team<sup>62</sup> and social workers were not provided with the necessary training, support and resources by their managers to understand how to identify a child who may have been trafficked.<sup>63</sup> An interviewee also commented that this situation was replicated in another southern county council where managers did not have any understanding of the complexities of the situation facing children who may have been trafficked and insisted that they had the same level of need as any other child who was being accommodated.<sup>64</sup> In the Home Office’s Child Trafficking Advocate Trial social workers also struggled to accurately categorise the purpose for which a child may have been trafficked<sup>65</sup>.

In Scotland, professionals appeared to find it much easier to identify those trafficked for sexual exploitation from outside the EU, as opposed to other forms of trafficking as this conformed to the traditional image of trafficked women and girls.<sup>66</sup> It was also noted social workers did not always understand that being exploited in a cannabis factory amounted to criminal, as opposed to labour, exploitation.<sup>67</sup> Furthermore, only two British children had been identified as having been internally trafficked in Scotland. This is inconsistent with other areas of the United Kingdom and is the subject of a pro-active review by Glasgow City Council.<sup>68</sup>

Specialist police officers were also critical of the level of understanding of modern slavery and child trafficking on the part of social workers and, in particular, their failure to identify Vietnamese children and others as being at risk and making appropriate referrals to child protection teams

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<sup>60</sup> Hannah Stott

<sup>61</sup> Mandy John-Baptiste

<sup>62</sup> Hannah Stott

<sup>63</sup> Hannah Stott & Dragan Nastic

<sup>64</sup> Hannah Stott

<sup>65</sup> *Evaluation of the Child Trafficking Advocate Trial: Final Report, University of Bedfordshire*, December 2015, page 14 & Hannah Stott

<sup>66</sup> Kirsty Thompson

<sup>67</sup> Catriona MacSween

<sup>68</sup> Kirsty Thompson

because they associated child protection with children at being at risk from their parents or a family member.<sup>69</sup> The ability of the NRM to accurately identify a child who may have been trafficked is also very dependent on the quality of the initial referral. For example, it was noted that referrals into the NRM by UK Visas and Immigration had increased from 15 in 2015 to 280 in the first five months of 2016. However, as the information and intelligence provided with these referrals was so poor, the Metropolitan Police Trafficking and Kidnap Unit could do little more than record them as crimes and officers were distracted from investigating other possible crimes of modern slavery and human trafficking and apprehending traffickers.<sup>70</sup> Many of these referrals involved suspicions that children had been trafficked here for the purposes of domestic servitude and sexual exploitation.<sup>71</sup>

In contrast, the NSPCC's CTAC, which provides advice to social workers in relation to children who may have been trafficked, believes<sup>72</sup> that social workers and other professionals are becoming more aware of the possible indicators of modern slavery and child trafficking and are more aware of the need to seek assistance from specialist NGOs, such as CTAC. In the Child Trafficking Advocate Trial, which was delivered by Barnardo's in several local authority areas in England, difficulties on the part of one particular local authority in identifying that a child had been trafficked opened up a positive dialogue with that local authority and led to training being organised for a large number of its social workers to ensure that similar mistakes were not made in the future. The local authority in question also appointed a trafficking champion, who has been able to continue to develop good practices.<sup>73</sup>

CTAC has also reported that it "regularly comes across cases where Romanian children are returned to Romania without thorough cross-border investigations, assessments or linking with social welfare authorities in Romania... It may be in the child's best interests to return to Romania, however, thorough assessment and cross-border work needs to be carried out prior to any decisions about the child's care being made in order to safeguard the child and to prevent them from going missing and potentially being trafficked again."<sup>74</sup> As a consequence of its concerns, CTAC has developed an International Multi Agency Assessment Framework model to safeguard children who have been trafficked across borders. This recognises that parents may be absent from these children's lives or complicit in their trafficking and, therefore, concentrates on information about the child, his or her present or past environment and the adults who seem to have been involved in the movement of the child.<sup>75</sup>

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<sup>69</sup> Phil Brewer

<sup>70</sup> Phil Brewer

<sup>71</sup> Phil Brewer

<sup>72</sup> Mandy John-Baptiste

<sup>73</sup> Hannah Stott

<sup>74</sup> *Free to Move, Invisible to Care: Coordination and Accountability towards Romanian Unaccompanied Minors' Safety, Icarus Project*, October 2015, page 55

<sup>75</sup> *Ibid* pages 57-71



## THE ROLE OF THE POLICE

Specialist units and operations<sup>76</sup> have been instrumental in enhancing mechanisms for identifying children who may have been trafficked. For example, since May 2015, Greater Manchester's Programme Challenger has organised proactive weeks of action involving officers from Greater Manchester Police, local authorities, the immigration service, environmental health, Greater Manchester Fire and Rescue, the HMRC and the Department of Work and Pensions in order to disrupt incidences of modern slavery and trafficking related offences. Acting on intelligence, the team has targeted brothels, car washes, houses, nail bars and restaurants in the Greater Manchester area. Much of their work has been with adults who may have been trafficked but the team has also identified trafficked children who have been registered at more than one school or health facility for purposes of benefit fraud.<sup>77</sup> It also has concerns about Roma children who were said to have been adopted in Eastern Europe but the suspicion is that they have been trafficked here for the purposes for sexual exploitation.<sup>78</sup> In Northern Ireland there is a specialist unit and they were said to be very aware of the indicators of forced labour and the evidence needed to bring a successful prosecution.<sup>79</sup> This compared favourably with the Border Force who were said to generally not seen as competent at identifying trafficking indicators.<sup>80</sup> However, it is noted that this is particularly difficult at the point of entry to the country as victims may not yet have been exploited. In 2014, the Home Office rolled out specialist trafficking and safeguarding teams at major ports of entry to increase identification of victims.<sup>81</sup>

Participants in this research also thought that information sharing protocols should be established between police forces to aid further identification.<sup>82</sup> It was also noted that the police were looking at establishing information-sharing hubs to share information between police forces and other agencies, such as the UK Border Force.<sup>83</sup>

The creation of posts of local police and crime commissioners has augmented the work being undertaken by individual police forces. For example, the West Midlands Police and Crime Commissioner funded a piece of work in the West Midlands to support Barnardo's to establish a Panel for the Protection of Trafficked Children. This enabled a support line to be set up for frontline

<sup>76</sup> For example, Operation Newbridge at Gatwick Airport and Operation Paladin at Heathrow Airport in

<sup>77</sup> Jayne Horan

<sup>78</sup> Jayne Horan

<sup>79</sup> Fidelma O'Hagan

<sup>80</sup> Fidelma O'Hagan

<sup>81</sup> <https://www.gov.uk/government/news/specialist-teams-to-fight-modern-slavery-at-uk-ports>

<sup>82</sup> Philippa Southwell

<sup>83</sup> Phil Brewer

professionals in the West Midlands area and a multi-agency panel across the area to share best practice, map trends and gather intelligence.<sup>84</sup> The Office of the Police and Crime Commissioner for West Yorkshire has worked with a local NGO<sup>85</sup> to establish a West Yorkshire Anti Trafficking Network. The Independent Anti-Slavery Commissioner, with the help of the Police and Crime Commissioner for West Yorkshire and the Association of Police and Crime Commissioners, has also established a modern slavery network for Police and Crime Commissioners, which includes representation from the Northern Ireland Policing Board and the Scottish Police Authority. It focuses on modern slavery issues, facilitate sharing of best-practice, monitor trends and needs, develop information sharing protocols and supporting the development of proactive strategies.<sup>86</sup>

Different police forces are also providing more training about human trafficking for their officers. In England and Wales this takes the form of the online training provided by the College of Policing. There is some concern about a lack of face to face training or training that focuses on children and the child protection response required in trafficking cases. Regional and national meetings are organised as part of efforts to combat organised crime in other areas but it appears that many concentrate on child sexual exploitation as opposed to efforts to combat modern slavery and child trafficking.<sup>87</sup>

## THE ROLE OF THE CPS

Prosecutors rarely identify children who may have been trafficked and depend upon defence lawyers, NGOs or outreach workers to do so.<sup>88</sup> But in one recent case a prosecutor did suspect that a child had been trafficked for criminal exploitation in a cannabis factory and was advised to advise the defence solicitor and ensure that a referral was made into the NRM.

## THE ROLE OF NGOS

One senior police officer was very positive about the benefits of working closely with NGOs and it was his view that the information and intelligence provided by NGOs meant that the chances of a prosecution were far higher.<sup>89</sup> Therefore, he was not sure about the efficacy of the pilot NRM systems in which NGOs did not play the role of first responders. Other professionals were also of the

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<sup>84</sup> Lucy Coen & Hannah Stott

<sup>85</sup> Hope for Justice

<sup>86</sup> *Independent Anti-Slavery Commissioner Strategic Plan 2015-2017*, Office of the Anti-Slavery Commissioner, October 2015, page 11

<sup>87</sup> Jayne Horan

<sup>88</sup> Pam Bowen

<sup>89</sup> Phil Brewer

view that NGOs were often the most successful at identifying children who may have been trafficked.<sup>90</sup> The input of NGOs into the multi-disciplinary panels during the NRM pilot was highly praised.

## THE NEED FOR A MULTI-AGENCY APPROACH

Many of the interviewees said that one of the key components of a successful child trafficking identification system was the development of multi-agency working practices.<sup>91</sup> There is legislation in all parts of the United Kingdom, which should encourage such practices. For example, in England and Wales Section 11 of the Children Act 2004 requires other authorities such as the police, the health and education services, the prison service and youth offending teams to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of all children. Section 10 also requires local authorities to promote co-operation between these services in order to safeguard and promote the welfare of children. They do this by establishing Local Safeguarding Children Boards and one of the areas of concern for some of these boards has been child trafficking. Some local areas<sup>92</sup> have also established protocols for safeguarding trafficked children, which increase understanding about child trafficking. Anglesey County Council in Wales set up a multi-agency anti-human trafficking group and several London boroughs in England have set up trafficking sub-committees to their local safeguarding children boards, as well as Kent County Council. A number of local authorities, such as Kent, have established Risk, Threats and Emerging Vulnerabilities checklists but it is a concern that child trafficking is not always given the same attention as issues such as gang culture and radicalisation.<sup>93</sup>

In Greater Manchester, the Greater Manchester Modern Slavery Co-ordinating Unit<sup>94</sup> brings together officers from Greater Manchester Police, probation, local authorities, the immigration service and the Gangmasters and Labour Abuse Authority and is part of the Organised Crime Co-ordination Unit. It is responsible for both adult and child trafficking but it has a Panel for Adolescents and Children Affected by Trafficking (PACT), which provides advice, guidance and operational guidance to local authorities, the police and partner agencies. Its core team is comprised of a Safeguarding Lead, a Local Authority Tactical Adviser, immigration staff, a Modern Slavery Greater

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<sup>90</sup> Dragan Nastic

<sup>91</sup> Hannah Stott

<sup>92</sup> For example, there is a protocol between Hampshire, the Isle of Wight, Portsmouth and Southampton

<sup>93</sup> Hannah Stott

<sup>94</sup> Part of the Greater Manchester Programme Challenger

Manchester Police Specialist Officer and a health adviser. Whilst the child trafficking advocate trial was in existence, it also included a child trafficking advocate.<sup>95</sup>

In Scotland, the Local Government in Scotland Act 2003 requires local authorities to establish multi-agency child protection committees and its guidance<sup>96</sup> states that “tackling child trafficking requires a multi-agency response at all levels. All agencies and practitioners must be aware of the issues pertaining to child trafficking and of the potential indicators or concerns.... local areas should have protocols for child trafficking and take steps to make staff aware of these protocols so that they have a clear understanding of the processes and procedures to follow when they identify a child who may have been, or is at risk of being trafficked.”(Child protection conferences are held for trafficked children under 16 and 16+ Vulnerable Young Persons Committees are organised for older children.)<sup>97</sup> Child protection committees in Glasgow were said to work very well.<sup>98</sup> However, a child’s lawyer will only attend if it is necessary to make an input in a case where a child has gone missing, as otherwise the information shared at a meeting may put the lawyer in a compromising position.<sup>99</sup>

In Northern Ireland, similar safeguarding committees and a Safeguarding Board were established by the Safeguarding Board Act (Northern Ireland) 2011. In addition, there is a virtual multi-agency team made up of representatives from the Gateway (16+) Team, VOYPIC, Glenmona, the Law Centre (NI), the police and the Home Office if there are concerns about a child who may have been trafficked.<sup>100</sup> There is also an NGO engagement group which meets twice a year that exchanges information and gives feedback on legislation and policy.<sup>101</sup> In Wales, the Anti-Trafficking Commissioner established a leadership group in 2013 that is made up of representatives from the four police forces, the 22 local authority areas, the Crown Prosecution Service, the Gangmasters and Labour Abuse Authority, the National Crime Agency, the Modern Slavery Unit, the Head of Safeguarding, representatives from health and education authorities, the Children’s Commissioner for Wales and Bawso. There are also two NGO representatives, who are presently New Pathways and the Voluntary Sector for Criminal Justice. This meets three times a year and is responsible for setting strategic objectives and a delivery plan. He has also established a multi-agency Wales Threat Group, which is responsible for intelligence and information sharing and is chaired by an assistant chief constable. It meets four times a year. There is also an operational delivery group, which the Crown Prosecution Service chairs

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<sup>95</sup> Jayne Horan & Hannah Stott

<sup>96</sup> *National Guidance on Children Protection in Scotland*, Scottish Government, 2014

<sup>97</sup> Kirsty Thompson

<sup>98</sup> Kirsty Thompson

<sup>99</sup> Kirsty Thompson

<sup>100</sup> Julie Bell

<sup>101</sup> Fidelma O’Hagan

and which meets 4 times a year and six regional anti-slavery groups (two chaired by Bawso, one by a local authority, one by an NGO and one by the Soroptimists.)<sup>102</sup>

## RECOMMENDATIONS

1. Child rights-based multi-disciplinary training courses should be organised on a regional and/or national basis for all professionals who have child protection duties on the range of types of exploitation for which children may be trafficked, how to identify risk of trafficking and the appropriate multi-agency response to child victims.
2. The National Referral Mechanism for Children should be embedded in a Multi-Agency Safeguarding Hub or similar multi-agency child protection system.<sup>103</sup>

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<sup>102</sup> Stephen Chapman

<sup>103</sup> See Proposal for a revised National Referral Mechanism (NRM) for Children, Chloe Setter and Nadine Finch, ATMG, August 2014. The UK Government did not accept these proposals and further work has not yet been undertaken by NGOs to follow up on these proposals

## 4: OBSTACLES TO IDENTIFICATION

### CHILDREN GOING MISSING

In 2016, Europol<sup>104</sup> announced that it estimated that at least 10,000 unaccompanied children had gone missing since arriving in Europe in the past 18-24 months. Brian Donald, chief of staff at Europol, also said that there was evidence of a criminal infrastructure being established since 2014 to exploit children in the refugee flow.<sup>105</sup> This was said to be an under-estimate by Michael O’Flaherty, the Director of FRA.<sup>106</sup>

The European Network of Ombudspersons for Children<sup>107</sup> has also expressed concerns of children being trafficked within these same migration flows.

### ESTIMATED NUMBERS

Concern has been expressed about both unaccompanied migrant and trafficked children going missing within the United Kingdom. There are no official statistics on the number of trafficked children who go missing in the UK each year. The Missing Persons Bureau, which is part of the National Crime Agency, is the hub for the exchange of information about people who have gone missing and it also provides expertise to other professionals. But it has not undertaken any work specifically relating to trafficked children going missing.<sup>108</sup> Neither does any other part of the National Crime Agency currently collect data on trafficked children who have gone missing.<sup>109</sup>

In a recent research project<sup>110</sup> researchers sent freedom of information requests (“FOIs”) to all local authorities in England. One of its fields of research was the number of unaccompanied migrant children in local authority care who were going missing. The replies indicated that, of the 2,253 unaccompanied asylum seeking children in local authority care in England in 2014, 87 had gone missing. Of these, 71 were boys and 4 were girls. However, the data needs to be viewed with some

<sup>104</sup> *The Guardian*, 30 January 2016 – this was said to be an under-estimate by Michael O’Flaherty, the Director of FRA at the 10<sup>th</sup> European Forum on the Rights of the Child: The Protection of Children in Migration, 2016

<sup>105</sup> *Ibid*

<sup>106</sup> Presentation at the 10<sup>th</sup> European Forum on the Rights of the Child: The protection of children in migration, 28-30 November 2016

<sup>107</sup> Safety and Fundamental Rights at Stake for Children on the Move, *November 2016*

<sup>108</sup> In addition, the data collected by the Missing Persons Bureau is different to that used by the Department of Education, that has ultimate responsibility for the welfare of unaccompanied and separated children

<sup>109</sup> This was not the position when CEOP had responsibility for child trafficking and in its 2011 report Scoping Report on Missing and Abducted Children it noted that 52 (or 64%) of children identified as trafficking had gone missing

<sup>110</sup> *Mapping unaccompanied asylum seeking children in Europe*, Rachel Humphris & Nando Sigona, Becoming Adult Research Brief Series No. 1, July 2016

caution as “missing” for some local authorities was classified as “any missing episode” and not necessarily those where the child remained missing.<sup>111</sup> Whereas for other local authorities “missing” was defined as all contact having been interrupted or ended with the Home Office. 15 % of children had gone missing in Kent, which amounted to 116 children. In other local authorities, with fewer unaccompanied children in their areas, fewer children went missing but this amounted to a higher percentage of the children in their care. For example, 16 children (or 47%) of the total went missing in Portsmouth and 8 (or 31%) in Nottinghamshire.

ECPAT UK, in partnership with Missing People, also recently completed research specifically looking at missing separated and trafficking children, and published its *Heading Back to Harm* report in November 2016.<sup>112</sup> Some 217 local authorities in the United Kingdom were asked to provide information under the Freedom of Information Act 2000. 174 (or 80%) replied and 68 (or 40%) said that they had at least one child who may have been trafficked in their care.<sup>113</sup> Overall the research identified 4,744 unaccompanied migrant children in care and 590 of these children may have been trafficked. Of the children thought to have been trafficked, 167 (or 28%) had gone missing from care on at least one occasion.<sup>114</sup> The report makes important recommendations about the UK’s response to children who have been trafficked or who are at risk of trafficking and missing.

CTAC also keeps detailed records. It has worked on 1,518 cases involving children who have been trafficked since its service started in September 2007. Seventy-four of these children went missing. Sixty-two of these cases are now closed as CTAC could do no more to find them and had referred them to the Missing Persons Bureau.<sup>115</sup> Of the remaining cases, five are still open and the allocated CTAC social worker is working with other agencies<sup>116</sup> to investigate what has happened to the child. CTAC believes that the other seven children may have returned to their countries of origin and their social workers are liaising with other agencies to establish whether this is true. The CTAC data also indicates that children from particular nationalities are at particular risk of going missing.

### For example:

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<sup>111</sup> Non-migrant children who have been trafficked and/or been subjected to child sexual exploitation tend to go missing for short periods but also return for periods of time. Trafficked migrant children are more likely to go missing on a permanent basis

<sup>112</sup> *Heading Back to Harm: a study on trafficking and unaccompanied children going missing from care in the UK*, ECPAT UK, November 2016

<sup>113</sup> *Ibid*, page 14

<sup>114</sup> *Ibid*, page 11

<sup>115</sup> A paper copy of the referral is kept on file and the case is followed up with the Missing Persons Bureau every three months until the child becomes 18. The paper copy is then placed in CTAC’s own historic files

<sup>116</sup> These agencies include the police, children’s services, the UK Border Force, UK Visas and Immigration and other NGOs

**87 were from Vietnam**  
**31 were from Romania**  
**6 were from China**  
**5 were from Nigeria**  
**4 were from Albania**  
**4 were from the United Kingdom**

In the Child Trafficking Advocate Trial, 72 of the children in the trial went missing<sup>117</sup> on at least one occasion but it was noteworthy that of the 27 children who remained missing, 23 were nationals of Vietnam.<sup>118</sup> Prosecutors have also noted that a high number of Vietnamese children go missing<sup>119</sup> In Northern Ireland, it was noted that many Chinese children arrive from the Republic of Ireland on the way to England and then go missing.<sup>120</sup> Further research into why children of particular nationalities go missing will help develop tools which guardians and other professionals can use to best protect children who may have been trafficked from going missing.<sup>121</sup>

The Independent Anti-Slavery Commissioner has pledged<sup>122</sup> to establish close working relationships with the Children’s Commissioners for England and for Wales and the Children’s Commissioners for Children and Young People in Scotland and Northern Ireland to focus on implementing improved safeguards to prevent children going missing from care and ensuring appropriate reporting procedures if trafficked children do go missing. The Home Office also recently convened a meeting to discuss conducting a “deep dive” into the question of children going missing but no strategy has yet emerged from the meeting.<sup>123</sup>

Fewer trafficked children appear to have gone missing in Scotland but the Scottish Government has now set up a Missing Persons Working Group and will consider the issue.<sup>124</sup> It is also the case that few<sup>125</sup> trafficked children have gone missing in Northern Ireland. This may be because many of the

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<sup>117</sup> It is important to note that seven of these children went missing between being identified by a local authority and actually being referred by the local authority to the trial: *Evaluation of the Independent Child Trafficking Advocate Trial: Final Report*, Ravi Kohli et al. University of Bedfordshire, December 2015, page 29

<sup>118</sup> *Ibid*

<sup>119</sup> Pam Bowen

<sup>120</sup> Julie Bell

<sup>121</sup> Ravi Kohli

<sup>122</sup> *Strategy Plan 2015-2017*, October 2015, paragraph 1.21

<sup>123</sup> Mandy John-Baptiste

<sup>124</sup> Catriona MacSween

<sup>125</sup> One child who did go missing was found in England and was then made subject to a child protection order



children will have been in transit from Dublin to Belfast and beyond when identified and, therefore, their traffickers may not even be in Northern Ireland themselves.<sup>126</sup>

## FACTORS WHICH TEND TO INCREASE THE RISK OF GOING MISSING

It was recognised that children who may have been trafficked are at risk of going missing if they are not placed in appropriate accommodation.<sup>127</sup> NGOs have also agreed that placing trafficked children in bed & breakfast accommodation or hostels increased their risk of going missing - as did not immediately providing a trafficked child with one to one support by a key worker or an independent trusted adult and not placing them out of the area in which they had been identified as being trafficked.<sup>128</sup> Failing to undertake an introductory visit to a Vietnamese child's accommodation was also thought to increase the risk of the child going missing.<sup>129</sup> It was also noted<sup>130</sup> that the provision of safe accommodation was very important and that foster care was not always available. In addition, if a trafficked child went missing, a strategy meeting could be delayed for weeks and there may not even be an existing photograph of the child.<sup>131</sup> It was generally agreed that trafficked children were safer and were more likely to thrive if placed in specialist foster care<sup>132</sup>. There is as yet little academic research to support this belief but Barnardo's ran a safe accommodation project between 2011 and 2013, which was evaluated<sup>133</sup> by the University of Bedfordshire. The project provided 16 placements with specialist foster carers and the evaluation found that these placements provided trafficked children with a safe placement. Since 2013 Barnardo's has continued to provide such placements from its own resources. The Northern Ireland Commissioner for Children and Young People would prefer separated children to be placed in specialist foster care but no such provision is presently available.<sup>134</sup> ECPAT UK has also highlighted the need for specialist foster care for trafficked children.<sup>135</sup>

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<sup>126</sup> Julie Bell

<sup>127</sup> Stephen Chapman

<sup>128</sup> *Still at risk: A review of support for trafficked children*, Refugee Council & The Children's Society, 2013

<sup>129</sup> Lucy Coen

<sup>130</sup> Lucy Coen

<sup>131</sup> Lucy Coen

<sup>132</sup> Tara Topteagarden & NGO Manager

<sup>133</sup> *Evaluation of Barnardo's Safe Accommodation for Sexually Exploited and Trafficked Young People*, University of Bedfordshire, July 2014

<sup>134</sup> Fidelma O'Hagan

<sup>135</sup> *Heading back to harm*, ECPAT UK, November 2016

It was stressed<sup>136</sup> that it was very important to use an interpreter to explain to the trafficked child what is happening in any proceedings as soon as possible. The need for interpreters is recognised in Northern Ireland but, due to the small migrant population,<sup>137</sup> obtaining a suitable interpreter who can attend the centre where trafficked children are accommodated can be a challenge and at times interviews have to be conducted in a child's second language or through a remote service such as Big Word.<sup>138</sup> In addition, many of the children are Chinese and there have been some concerns about relying on members of the local Chinese community who may themselves be in touch with traffickers.<sup>139</sup>

Conducting an age assessment, when there was no significant evidence to show that the child was not the age he or she said, may also led to him or her going missing.<sup>140</sup> This is particularly the case when it can take five or six months to resolve an age dispute.<sup>141</sup>

By 2016 "Gateway" authorities were having to accommodate an increasing number of unaccompanied migrant children and at least one of them was failing to place children whose profiles indicated that they may have been trafficked in appropriate accommodation.<sup>142</sup> Instead they were being placed in residential accommodation only staffed by security guards and the local authority did not seek placements through private and voluntary foster care agencies, which had foster carers who had previously worked with trafficked children.<sup>143</sup> In some local authorities strategy conferences were held and the police put a "flag" on addresses thought to be connected with trafficking. But it is essential that allocated social workers visit the placement very quickly and where there is a high turnover<sup>144</sup> of social workers trafficked children are not provided with the necessary support<sup>145</sup>. In some London boroughs children over 16 and those who were EEA nationals were not even being accommodated.<sup>146</sup>

In Scotland, children aged over 16 are not placed in children's units and are often placed in residential or homelessness accommodation with the support of key workers or are placed in flats on their own with limited support.<sup>147</sup> In one case, three boys were found in a cannabis farm in a rural

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<sup>136</sup> Tara Topteagarden & Judith Dennis

<sup>137</sup> For example, there were no Albanian interpreters and only one for Mandarin

<sup>138</sup> Julie Bell

<sup>139</sup> Julie Bell

<sup>140</sup> Lucy Coen

<sup>141</sup> Kirsty Thompson

<sup>142</sup> Judith Dennis

<sup>143</sup> Hannah Stott

<sup>144</sup> The increased pressure on social workers of reduced resources, increased workloads and denigration of the profession in the media has led to many experienced social workers leaving the profession in England recent years

<sup>145</sup> Judith Dennis

<sup>146</sup> Mandy John-Baptiste

<sup>147</sup> Catriona MacSween

area and were then placed in a flat on their own and one of them went missing two days later.<sup>148</sup> It was also noted that accommodating a child in a rural setting can also increase the risk of going missing due to isolation and young people not being able to engage in social networks with other young people who they can relate to and communicate with in their own language.<sup>149</sup> In contrast in Northern Ireland, trafficked children are placed in a specialist centre<sup>150</sup> and staff there have worked hard to understand the needs of trafficked children and to date have been able to provide the children placed with them the necessary support and consistency to make them feel safe.<sup>151</sup>

There was also a perception that trafficked children in the UK who have been mistakenly criminalised are more likely to go missing<sup>152</sup> and concern was raised that a child's criminality was prioritised over his or her vulnerability before and after the child went missing.<sup>153</sup> As many children went missing when they were bailed by the criminal courts, experienced criminal solicitors would arrange for the children to give them instructions before they were released on bail in case appeals needed to be brought in their absence.<sup>154</sup> There was also a lack of a national UK-wide strategy to tackle the risks which arose when children who may have been trafficked were released on bail or because charges had been withdrawn before steps had been taken to safeguard them.<sup>155</sup> In some cases, police officers and social workers just accepted certain might children go missing and did not take the necessary steps to make sure that they did not, such as starting to build a relationship with them.<sup>156</sup> They also underestimated the pressure and mistaken feelings of loyalty which could be played on by criminal trafficking networks.<sup>157</sup> Trafficked children need to feel secure and be able to establish some form of stability to ensure that they did not go missing if released on bail; being placed with a foster carer who did not speak his or her language, without any assistance of an interpreter did not provide the necessary security.<sup>158</sup>

In addition, many police officers and social workers failed to recognise that child trafficking was not a one-off event and that children were at risk of going missing because they had been re-

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<sup>148</sup> Kirsty Thompson

<sup>149</sup> Catriona MacSween

<sup>150</sup> Glenmona

<sup>151</sup> Julie Bell

<sup>152</sup> Lucy Coen

<sup>153</sup> *Heading Back to Harm: a study on trafficking and unaccompanied children going missing from care in the UK*, ECPAT UK, November 2016, page 15

<sup>154</sup> Philippa Southwell

<sup>155</sup> Phil Brewer & Judith Dennis

<sup>156</sup> Tara Topteagarden

<sup>157</sup> Tara Topteagarden

<sup>158</sup> Judith Dennis

trafficked.<sup>159</sup> In some cases children were even placed back in the same supported lodgings from which they had previously gone missing.<sup>160</sup>

There was also concern about the lack of an integrated child protection model for EEA children who may have been trafficked and the lack of an international multi-agency safeguarding team, which could identify whether a child had previously gone missing elsewhere in Europe.<sup>161</sup>

## PROVIDING ENHANCED PROTECTION

The NSPCC's CTAC plays a significant role in locating missing children who may have been trafficked. In one case, another NGO contacted it after it had been told that a child had gone missing in Kent. CTAC was able to liaise with the police, local authorities and other agencies and discovered that the child had been accommodated by a local authority in Glasgow. It was also reported that children were less likely to go missing if they had been allocated a Children's Society advocate or a Refugee Council adviser.<sup>162</sup>

Vietnamese children do not appear to go missing as regularly in Scotland as they do elsewhere.<sup>163</sup> It was thought that this may be because trafficked Vietnamese children were linked with appropriate social groups and educational opportunities in Glasgow.

A number of NGOs have argued<sup>164</sup> that the lack of a legal guardian rendered trafficked children at risk of going missing. This has yet to be tested and the Child Trafficking Advocate trial in England was not designed to test whether the provision of advocates would reduce the number of trafficked children going missing. But the research did indicate that where professionals were working together, children who may have been trafficked are more likely to be successfully protected from going missing. For example,<sup>165</sup> between 2007 and 2009, the London Borough of Hillingdon reduced the number of trafficked children going missing from its care from 79 to 8 by establishing a three-level multi-agency model which had strategic, policy and operational aspects. It was also said that providing information to improve a child's understanding of their situation can significantly reduce the risk of him or her going missing.<sup>166</sup>

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<sup>159</sup> Judith Dennis

<sup>160</sup> Judith Dennis

<sup>161</sup> Mandy John-Baptiste

<sup>162</sup> Philippa Southwell

<sup>163</sup> Catriona MacSween

<sup>164</sup> See, for example, *Missing Out: A Study of Child Trafficking in the North-West, North-East and West Midlands*, ECPAT UK, 2007, p

<sup>165</sup> *Joint APPG Runaway and Missing Children and Adults and APPG on Looked after children and care leavers*, 2012

<sup>166</sup> Catriona MacSween

In Northern Ireland lawyers work closely and productively with staff at the residential home accommodating trafficked children.<sup>167</sup> A risk management meeting is held after four weeks and once a child has given a statement about his or her history to his or her lawyer, this is used as basic information for other professionals and the child does not have to keep repeating his or her account.<sup>168</sup> There are also two on-site psychologists who the children can consult or they can be referred to an anger management class, if needed.

## CROSS-BORDER CO-OPERATION

In three cases, where the National Crime Agency was informed that a child has gone missing from a camp in the Calais region and was thought to be in the United Kingdom, it contacted CTAC for its assistance. CTAC has encouraged NGOs in Calais to inform the French police if a child goes missing. The police can then inform Europol if a child is believed to be in Europe and then the National Crime Agency if the child is thought to be in the United Kingdom. In one of the three cases a boy was found to be in the United Kingdom.<sup>169</sup> CTAC has also assisted the RYS<sup>170</sup> in France to design a form and procedure<sup>171</sup> to refer cases to CTAC where there are safeguarding and trafficking concerns about a child believed to be in the United Kingdom.<sup>172</sup> When a form is received, the immigration officer assigned to CTAC's multi-disciplinary team checks to see if the child has come to the attention of the UK authorities. A social worker member of the team will then contact the relevant local authority social worker to establish that the child is safe and is receiving the support and protection he or she is entitled to. The social worker also shares any information about medical or other services the child may have been receiving when in the refugee camp. Out of the 135 children referred to CTAC, its immigration officer was able to locate 49 of them. CTAC was able to ensure that two brothers were accommodated together despite initially being placed in different parts of the United Kingdom.<sup>173</sup> The Refugee Council has also been undertaking work with these children.<sup>174</sup>

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<sup>167</sup> Fidelma O'Hagan

<sup>168</sup> Fidelma O'Hagan

<sup>169</sup> CTAC

<sup>170</sup> A project supporting 12-18 year old children living in refugee camps in Calais and Dunkirk

<sup>172</sup> Mandy John-Baptiste

<sup>173</sup> Mandy John-Baptiste

<sup>174</sup> Judith Dennis

## SECURE ACCOMMODATION

There has also been discussion as to whether trafficked children would be better protected by being placed in secure accommodation. There is limited provision in the Children Act 1989 (or similar legislation in Scotland and Northern Ireland) to use accommodation to restrict a child's liberty. In England and Wales, if a child has been accommodated by a local authority or made subject to a care order by the Family Court, he or she can only be placed in secure accommodation if (i) he had a history of absconding and is likely to abscond from any other description of accommodation and (ii) if he absconds, he is likely to suffer significant harm.

An expert group<sup>175</sup> brought together by the All Party Parliamentary Groups on Runaway & Missing Children & Adults and All Party Parliamentary Group on Looked After Children & Care Leavers concluded that there were no legal powers available to place trafficked children in secure accommodation and, in any event, locking children up would feed into assertions previously made by their traffickers that, if they talked to anyone in authority, they would be arrested and detained. More recently, some professionals have concluded that decisions should be based on the individual profile of the child and that in some cases a child may need to be placed in secure accommodation.<sup>176</sup> The police were also concerned that children's services had very limited specialist accommodation which was suitable for children who may be at risk of going missing or the powers to stop them going missing.<sup>177</sup> It was also noted that placing children who may have been trafficked with strangers was more likely to encourage them to seek the company of those from their own communities who may turn out to be traffickers.<sup>178</sup> Reference was made to the protected reception facilities provided to trafficked children in The Netherlands and the need for similar provision here.<sup>179</sup> In Northern Ireland, the Glenmona Centre takes mobile phones from the children who may have been trafficked and their movements are initially restricted.<sup>180</sup> There is also a review of any risk after four weeks.<sup>181</sup>

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<sup>175</sup> Meeting held in UK Parliament in June 2012

<sup>176</sup> Mandy John-Baptiste

<sup>177</sup> Phil Brewer

<sup>178</sup> Phil Brewer

<sup>179</sup> Phil Brewer

<sup>180</sup> Fidelma O'Hagan

<sup>181</sup> Julie Bell

## RECOMMENDATIONS

1. All children should be provided with specialist safe accommodation within 12 hours of their being identified.
2. They should also be provided with a suitable interpreter so that the actions being taken to keep them safe can be explained in detail.
3. Resources should be made available so that children who may have been trafficked can be placed in specialist foster care if this is deemed to be appropriate.
4. Official data should also be compiled about the number and circumstances in which children who may have been trafficked go missing.
5. The relevant authorities in England and Wales, Scotland and Northern Ireland should adopt strategies designed to protect children who may have been trafficked from going missing.

## B. AGE DISPUTES

Article 13.2 of the EU Anti-Trafficking Directive states that “Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection.”

Article 10.3 of the Council of Europe Anti-Trafficking Convention states that “when the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.”

There was a clear consensus between interviewees from various professions and in different locations that age disputes continued to be a major factor which militated against children who may have been trafficked being provided with the protection and support to which they were entitled. This is despite the fact that both the Anti-Trafficking Convention and the Anti-Trafficking Directive requires authorities to apply a presumption that a child is the age he or she claims to be until his or her age had been verified and that this presumption has been incorporated into UK legislation to a varying degree in the three pieces of anti-trafficking legislation which apply in the different parts of the United Kingdom.

Section 51(2) of the Modern Slavery Act 2015 states that “until an assessment of the person’s age is carried out by a local authority or the person’s age is otherwise determined, the public authority must assume for the purposes of its functions under relevant arrangements that the person is under 18.” This section applies where (a) a public authority with functions under relevant arrangements has reasonable grounds to believe that a person may be a victim of human trafficking, and (b) the authority is not certain of the person’s age but has reasonable grounds to believe that the person may be under 18.”<sup>182</sup> However, public authorities are narrowly defined in the Act and there is no statutory obligation for the Home Office or any court or tribunal in England and Wales to apply the presumption. Section 12 of the Human Trafficking and Exploitation (Scotland) Act 2015 contains similar wording<sup>183</sup> to section 51 of the Modern Slavery Act 2015 but in sub-section 12(2) reference is made to “relevant enactments” as opposed to “relevant arrangements.” However, the effect is the

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<sup>182</sup> Sub-section 51(1)

<sup>183</sup> In sub-sections 12(1) and (2)



same as the enactments<sup>184</sup> referred to are those which oblige local authorities in Scotland to provide services and accommodation to children in need.

Section 25(3) of the Human Trafficking and Exploitation (Criminal Justice & Support for Victims) Act (Northern Ireland) 2015 contains a far wider interpretation of the presumption of age provision and states that “for the purposes of the exercise of any function under this Act relating to a child, if (a) the age of a person (P) is uncertain and (b) the person exercising the function has reason to believe that P is a child, P is to be treated as a child.” As a consequence, all professionals coming into contact with a trafficked child in any setting have to apply the presumption. This includes the police, the prosecution service and the judiciary, as well as those with welfare duties.

Other obligations arise in England and Wales as a result of case law. In *L, HVN, THN and T*<sup>185</sup> the Court of Appeal (Criminal Division)<sup>186</sup> found that section 99(1) of the Children and Young Persons’ Act 1933 requires a criminal court to “make due inquiry” about a defendant’s age and courts must “take such evidence as may be forthcoming at the hearing of the case” for this purpose.<sup>187</sup> The Court of Appeal also found that, if at the end of the “due inquiry” into age, there remained a doubt he or she should be treated as a child. However, a criminal solicitor<sup>188</sup> with considerable experience in similar cases commented that this case is not generally followed by the duty solicitors in criminal courts, who are often first allocated to children who may have been trafficked. The Crown Prosecution Service for England and Wales also published guidance on age assessments where a child defendant may have been trafficked.<sup>189</sup> This states that where it is not clear whether the young person is a child (i.e. under 18 years of age) then in line with the United Nations Convention of the Rights of the Child, the benefit of the doubt should be given and the young person should be treated as a child”. It also states that “the court should consider any evidence of age that is available at the hearing of the case, which may include documentary evidence such as a passport, school records or a Police National Computer (PNC) printout verified by fingerprints as well as oral evidence from people who know the child”. However, it was reported that the presumption and the decision in *L & Others* is not being regularly applied in the criminal courts in England.<sup>190</sup>

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<sup>184</sup> Sub-section 12(3)

<sup>185</sup> [2013] EWCA Crim 991

<sup>186</sup> A case involving children who had been trafficked in order to be exploited in cannabis farms and subsequently wrongfully prosecuted and found guilty on account of their activities in the cannabis farms

<sup>187</sup> See also CPS guidance concerning age assessment

<sup>188</sup> Philippa Southwell

<sup>189</sup> *Guidance on the Prosecution of Defendants (Children and Adults) Charged with Offences who might be trafficked victims*, Crown Prosecution Service, 2011

<sup>190</sup> Philippa Southwell

Statutory Guidance<sup>191</sup> for England and Wales issued by the Department of Education states that “many unaccompanied and trafficked children arrive in the UK without documentation or with fake documents. Where the age of a person is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Article 10(3) of the European Convention on Action against Trafficking in Human Beings. Where an age assessment is required, local authorities must adhere to standards established within case law. Age assessments should only be carried out where there is significant reason to doubt that the claimant is a child. Age assessments should not be a routine part of a local authority’s assessment of unaccompanied or trafficked children.”

It is widely accepted in the United Kingdom that the Royal College of Paediatrics and Child Health was correct when it advised that “age determination is extremely difficult to do with certainty, and no single approach to this can be relied on. There may also be difficulties in determining whether a young person who might be as old as 23, could, in fact, be under the age of 18. [Therefore] age determination is an inexact science and the margin of error can sometimes be as much as 5 years either side.”<sup>192</sup> In one High Court case a consultant paediatrician advised the Court that there was “no reliable scientific basis for the estimation of age” and “all the factors relied on to assess age in reality can only assess maturity and maturity and chronological age are two different things.”<sup>193</sup>

Age assessments in the United Kingdom are undertaken by social workers and, if there is a dispute about the outcome of the age assessment, the child can bring a claim for judicial review in the High Court and, if the High Court for England and Wales considers that it is arguable that the decision on age was not correct, it will transfer the case to the Upper Tribunal (Immigration and Asylum Chamber) for a hearing on the facts. The decision on age is a question of fact for an Upper Tribunal Judge but he or she will consider all relevant evidence when reaching a decision. The Upper Tribunal (Immigration and Asylum Chamber) recently found<sup>194</sup> that “the decision of the Court of Appeal in *London Borough of Croydon v Y*<sup>195</sup> should not be read as prohibiting a person from refusing to undergo a dental examination. It also found that (i) the risk inherent in the exposure to x-rays during the taking of the dental panoramic tomograph is not likely to be a reasonable ground for refusing to allow the tomograph to be made, given the advantages stemming from ascertainment of an individual’s true age, and (ii) despite the reservations expressed herein, analysis of a person’s dental

<sup>191</sup> *Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children*, Department of Education, July 2014, paragraph 22

<sup>192</sup> *The Health of Refugee Children – Guidelines for Paediatricians*, November 1999

<sup>193</sup> Dr. Stern, a consultant paediatrician emeritus to the Guy’s and St. Thomas’ Hospital Trust, in *A v London Borough of Croydon and Secretary of State for the Home Department (as an interested party)* [2009] EWHC 939 (Admin) , paragraph 25

<sup>194</sup> *R(on the application of ZM & SK) v The London Borough of Croydon (Dental age assessment)* [2016] UKUT 559 (IAC)

<sup>195</sup> [2016] EWCA Civ 398

maturity may well have something to add to the process of assessing chronological age. But in paragraph 78 the Upper Tribunal found that “there is obviously room for doubt whether dental evidence should be received in age assessment cases. It seems to me that as long as there is no risk of its being over-valued it is or may be of use at the present time.

Further, in this very active field of research, it may be that the relevance of ethnic background may be decisively shown to be negligible, which would enormously widen the range of reference data available to every investigator. And further investigation and more published research may establish the reliability of one or more of the Mandibular Maturity Markers. In the meantime, and despite all the reservations, a dental tomograph may provide information making a claim extremely likely or extremely unlikely, and may identify features of assistance between those extremes.”

In order to improve practice in assessing the age of unaccompanied the Association of Directors of Children’s Services<sup>196</sup> issued guidance on age assessments to social workers in England<sup>197</sup> in October 2015.<sup>198</sup> This states that “where there is uncertainty about age, a suspected victim of trafficking must be presumed to be a child and be accorded special protections measures pending assessment of their age.”<sup>199</sup> It stresses that age assessments should not be routinely used in cases involving children from abroad. The guidance also cautioned social workers not to place undue weight on discrepancies in the child’s account of his or her past. It noted that “there is a large body of research which indicates that emotional disorders affect autobiographical memory specificity. Young people who have arrived in the UK as unaccompanied asylum seekers are likely to have comparative difficulty in recalling specific autobiographical events.<sup>200</sup> By 22 April 2016, this guidance had been downloaded over 20,000 times.<sup>201</sup> One interviewee<sup>202</sup> said that the feedback given during Refugee Council training on age assessments was that the guidance was making a positive contribution to social work practice.

There is no training strategy in place in England to ensure that all social workers who are likely to come into contact with children who may have been trafficked have had the necessary training on age assessments. But there are clearly areas of good practice. For example, a number of local

<sup>196</sup> An association for directors working in children services departments in local authorities in England

<sup>197</sup> See also *Age Assessment Practice Guidance: Age Assessment Pathway for Social Workers in Scotland*, Glasgow City Council, 2012, and Scottish Refugee Council, June 2012 & *Age Assessment of Unaccompanied Asylum Seeking Children: All Wales Multi-Agency Toolkit*, Wales Strategic Migration Partnership, July 2015

<sup>198</sup> *Age Assessment Guidance: Guidance to assist social workers and their managers in undertaking age assessments in England*, ADCS, October 2015

<sup>199</sup> *Ibid* page 7

<sup>200</sup> See, for example, *Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum*, Herlihy, Jobson & Turner, *Applied Cognitive Psychology*, 26, 661-676, (2012)

<sup>201</sup> Email from Debbie Busler, Head of Refugee Support (East), British Red Cross

<sup>202</sup> Judith Dennis

authorities, including Manchester, do not assess a child’s age as a matter of course.<sup>203</sup> But a senior police officer<sup>204</sup> commented that the prevalence of age disputes by children’s services did not assist the police in investigating modern slavery and child trafficking and, in some cases, held up such an investigation for almost a year or more and meant that children went missing. He also noted that, as the UK parliament had failed to include a child specific trafficking or exploitation offence in the Modern Slavery Act 2015, the emphasis on age was misplaced.<sup>205</sup>

Despite the comprehensive guidance on age assessments in Scotland,<sup>206</sup> which recommends the application of the benefit of the doubt and not conducting age assessments on a merely routine basis,<sup>207</sup> it was not clear whether the presumption of age was being properly applied in Scotland. One professional<sup>208</sup> commented that the “benefit of the doubt” was not applied as such in Scotland and local authorities outside Glasgow had mistakenly believed that an age assessment had to be conducted in all cases. This was echoed by a solicitor<sup>209</sup> in Scotland who noted that there were a high number of age disputes and social workers were unclear when and whether to age assess trafficked and unaccompanied migrant children. She added that the Legal Services Agency was concentrating on bringing test cases to clarify the issue. The Scottish Government has also established an age assessment working group that are currently reviewing the Scottish guidance to improve on the quality of assessments.<sup>210</sup> At the same time, guardians from the Scottish Guardianship Service continue to act as appropriate adults in age assessment interviews and often make an independent written record of such interviews.<sup>211</sup>

It was noted<sup>212</sup> that age disputes were not such an issue in Northern Ireland and that lawyers had not had to challenge an age assessment by way of judicial review for around five years. This was thought to be because there were only a small number of social workers in the Gateway Team undertaking these assessments and they had been provided with information about how to make accurate assessments and how to apply the presumption of age.<sup>213</sup> When a new social worker was unclear whether an age assessment should be undertaken as a matter of course, she took

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<sup>203</sup> Hannah Stott

<sup>204</sup> Phil Brewer

<sup>205</sup> Phil Brewer

<sup>206</sup> *Age Assessment Practice Guidance: An Age Assessment Pathway for Social Workers in Scotland*, Karen Dyball, Graham McPhie & Clare Tudor, Glasgow City Council & Scottish Refugee Council, June 2012

<sup>207</sup> Catriona MacSween

<sup>208</sup> Catriona MacSween

<sup>209</sup> Kirsty Thompson

<sup>210</sup> Catriona MacSween

<sup>211</sup> Catriona MacSween

<sup>212</sup> Fidelma O’Hagan

<sup>213</sup> Fidelma O’Hagan

appropriate advice from a lawyer and did not carry out such an assessment.<sup>214</sup> Usually social workers only disputed a child's age if there appeared to be a huge discrepancy between his or her stated age and other evidence and if a child says that he or she is 16 or 17 that is usually accepted.<sup>215</sup>

## RECOMMENDATIONS

1. All professionals working with children who may have been trafficked should apply the presumption of age contained in the EU Anti-Trafficking Directive and the Council of Europe Convention on Action against Trafficking in Human Beings.
2. Independent legal guardians and child trafficking advocates should be enabled to apply this presumption, ensure that other professionals involved in the case of a child who may have been trafficked also apply it and, if necessary, instruct lawyers on behalf of the trafficked child, to challenge a decision that he or she is not a child.
3. Until a final decision is taken in relation to the trafficked child's age, he or she should remain in appropriate safe accommodation and have a guardian or advocate to represent his or her best interests in relation to all relevant issues.

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<sup>214</sup> Fidelma O'Hagan

<sup>215</sup> In one such case, Children & Families Across Borders (CFAB) was then instructed to undertake a Home Study report in China and it was disclosed that she was an adult and she was returned to her family

## 5. THE PROVISION OF GUARDIANS AND INDEPENDENT CHILD TRAFFICKING ADVOCATES

The UN Committee on the Rights of the Child's General Comment No. 6 on the Treatment of Unaccompanied and Separated Children outside their Country of Origin says: "States should appoint a guardian or advisor as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has reached the age of majority or has permanently left the territory and/or jurisdiction of the State."

Article 16.3 of the EU Anti-Trafficking Directive says: "Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings."

Until 2015 there was no provision in legislation for any form of legal guardianship in the United Kingdom. The UK Government had argued consistently for over a decade that it was not necessary to provide unaccompanied children or trafficked children with guardians. For example, in England and Wales, the Department for Education relied on the fact that they already had a social worker, an advocate and an Independent Reviewing Officer (IRO) if a child was accommodated by a local authority and that these roles fulfilled the role of a legal guardian. However, in England and Wales, local authorities only make advocates available<sup>216</sup> when a child wishes to make a complaint about the local authority.<sup>217</sup> The role of the Independent Reviewing Officer<sup>218</sup> is generally limited to chairing meetings of regular reviews of the child's case and monitoring the extent to which the local authority is meeting his or her needs. As many of the IROs are employed by the local authority, there is a clear question about their ability to be effectively independent. Children may also be provided with a Children's Rights Officer but their role is generally limited to engagement with Looked After Children Reviews.<sup>219</sup> In the rare instances<sup>220</sup> where an unaccompanied migrant child is the subject of child protection proceedings in the Family Courts, they are provided with a guardian ad litem<sup>221</sup> for the purposes of the court proceedings but for no other wider purpose.

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<sup>216</sup> Children Act 1989, section 26A

<sup>217</sup> Children Act 1989, section 26

<sup>218</sup> Children Act 1989, section 25A

<sup>219</sup> Ilona Pinter

<sup>220</sup> There will be a small number of other unaccompanied children who are identified as being unaccompanied during a child protection case in England and Wales in which it emerges that they are not a child of the family but have been the subject of an illegal adoption or have been trafficked for the purposes of domestic servitude. But in Northern Ireland many unaccompanied children are made the subject of care orders and, therefore, also have guardian ad litem

<sup>221</sup> These professionals are called curators ad litem in the Scottish courts

Research by UNICEF UK has indicated that the provision of a legal guardian may be “particularly important if an unaccompanied child had a social worker allocated to them who was not sympathetic to their needs, due to his or her belief that they had come here to obtain a free education and access to a larger job market. Many unaccompanied or separated migrant children also reported experiencing frequent changes in social workers or key workers and said that they were not given information about what services they were entitled to. There was also sometimes a wider failure by the local authority itself to meet such children’s needs or simply a financial inability to do so without further central government assistance. In such instances, the child needs an independent adult who can take responsibility for him or her and advise him or her of any appropriate legal or other remedies, and guide them if they decide to take such action.”<sup>222</sup> Research<sup>223</sup> in England and Wales has also looked at special measures that can be taken to protect children in court proceedings in cases involving child sexual exploitation. This noted<sup>224</sup> “all of the experts by experience commented on the critical importance of support from a ‘known and trusted’ individual during the court process.”

More recently, as a result of the development of understanding of the needs trafficked children and the need to comply with the EU Anti-Trafficking Directive, proposals have been developed to provide legal guardians or independent child trafficking advocates for children who may have been trafficked. However, the difficulties that may arise in identifying children who may have been trafficked strongly suggests that legal guardians and independent child trafficking advocates should be provided for all unaccompanied and separated children.<sup>225</sup>

## NON-STATUTORY SCOTTISH GUARDIANSHIP SERVICE

A non-statutory Scottish Guardianship Service<sup>226</sup> became operational in September 2010, which provided guardians for unaccompanied migrant children in Scotland. Guardians are appointed as soon as an unaccompanied asylum-seeking (some of whom may have been trafficked) is identified and continue to work with the child until he or she has regularised his or her immigration status<sup>227</sup>, has been returned to his or her country of origin or a durable solution has been found for them. It is

<sup>222</sup> : *Levelling the Playing Field: A UNICEF report into the provision of services to unaccompanied or separated migrant children in three local authority areas in England*; Laura Brownlees and Nadine Finch, UNICEF, March 2010, pp 133- 133

<sup>223</sup> *Making Justice Work: Experiences of criminal justice for children and young people affected by sexual exploitation as victims and witnesses*, Helen Beckett and Camille Warrington, University of Bedfordshire, March 2015

<sup>224</sup> Ibid

<sup>225</sup> Judith Dennis

<sup>226</sup> It is staffed by a guardianship service manager, three guardians and a service administrator and it is funded by the Big Lottery Fund, the Scottish Government and the Paul Hamlyn Foundation

<sup>227</sup> The Service has worked with children and young people for up to six years to resolve their immigration status

run by the Scottish Refugee Council and Aberlour Child Care Trust and it remains in operation pending the formation of the proposed statutory guardianship scheme.

The Service was evaluated<sup>228</sup> at the end of its first year and found to be adding value for unaccompanied migrant children. It was noted that “guardians support by helping unaccompanied migrant children navigate the immigration and welfare processes and feel supported and empowered throughout the asylum process, assisting them to access the help they need when they need it and make informed decisions about their future.” A second evaluation<sup>229</sup> was carried out between 1 September 2010 and 31 August 2012. The evaluators stressed that there was clear evidence of guardianship helping young people to navigate the complexities of the asylum process resulting in timely and effective positive outcomes for those who are seeking asylum or who have been trafficked into Scotland.<sup>230</sup>

However, a considerable amount of effort and planning was involved in ensuring effective inter-agency co-operation due to the fact that the service had no statutory powers. During Year 2 of the pilot improved collaborative and joint working between other professionals and the Guardianship Service occurred but this increasingly took place outside the confines of formal meetings.<sup>231</sup> As the service had no statutory footing and its role was not fully defined, the guardians and the Service Manager found themselves having to negotiate (and sometimes re-negotiate) their positions in order to assist the young people with whom they worked.<sup>232</sup> This meant that social workers continued to decide whether a child should apply for asylum or institute other legal proceedings and the guardians merely accompanied children to an age assessment and played no part in the assessment.<sup>233</sup> However, as the Service matured, guardians took over the role of locating and briefing lawyers on behalf of the unaccompanied migrant children.<sup>234</sup> They also obtained documents, letter and reports to support a child’s case.<sup>235</sup>

The evaluation did find that the Guardianship Service was “creating a context, which increased communication and information-sharing between all of the professionals involved in the asylum

<sup>228</sup> *First Annual Evaluation of the work of the Scottish Guardianship Service Pilot*, Heaven Crawley & Ravi K. S. Kohli, December 2011

<sup>229</sup> *She Endures with Me: An evaluation of the Scottish Guardianship Service Pilot*, Heaven Crawley and Ravi K. S. Kohli, Swansea University and the University of Bedfordshire,

<sup>230</sup> *First Annual Evaluation of the work of the Scottish Guardianship Service Pilot*, Heaven Crawley & Ravi K. S. Kohli, December 2011, page 86

<sup>231</sup> *Ibid* page 30

<sup>232</sup> *Ibid* page 32

<sup>233</sup> Catriona MacSween

<sup>234</sup> Catriona MacSween

<sup>235</sup> Catriona MacSween



process.”<sup>236</sup> In addition, it found that guardians acted as a bridge between and focal point for the young person and the other actors involved<sup>237</sup> and lifted the overall quality of service provision by encouraging professionals to work together more closely and demonstrating the advantages for young people when they do.”<sup>238</sup> As part of its work the service developed a Practice Framework for Guardians.<sup>239</sup> It does not address the totality of the children’s engagement with legal and judicial proceedings but instead focuses on the fact that the vast majority of the children had applied for asylum. One particularly noteworthy aspect of the service is its recognition that guardians need regular support in what is a challenging role. Individual guardians are supervised by the Service Manager and supervision meetings were held every 4-6 weeks. The Service Manager is supervised by a manager from the Aberlour Child Care Trust. There is also a Joint Management Board comprised of senior managers from the Scottish Refugee Council and the Aberlour Child Care Trust. This system ensures both supervision and accountability.

## STATUTORY SCHEMES

Different schemes are now on the statute books in England & Wales, Scotland and Northern Ireland but are not fully functioning. In all areas, apart from Northern Ireland, they will cater for unaccompanied child who may or who have been trafficked and not for all unaccompanied migrant children. The obvious risk that this creates is that children, who have not yet been identified as having been trafficked, will not be provided with a guardian, despite their obvious vulnerabilities.

## STATUTORY PROVISION IN SCOTLAND

Section 11 of the Scottish Anti-Trafficking Act states that Scottish Ministers must make such arrangements as they consider reasonable to enable an independent child trafficking guardian when there are reasonable grounds to believe that a child is or may be a victim of child trafficking or is vulnerable to becoming such a victim and there is no one with parental responsibility for that child. There has been a delay in establishing such a service and there is as yet no clarity about how the service will interact with the existing non-statutory Scottish Guardianship Service for unaccompanied migrant children, nor have any regulations yet been issued. The Act requires a guardian to remain in place until a child becomes 18 and also leaves open the possibility that the guardian will remain in

<sup>236</sup> *First Annual Evaluation of the work of the Scottish Guardianship Service Pilot*, Heaven Crawley & Ravi K. S. Kohli, December 2011, page 86. This led to the development of written protocol between the Scottish Guardianship Service, the UK Border Agency (as it then was) and Glasgow City Council’s social work department

<sup>237</sup> *Ibid*, pages 87-88

<sup>238</sup> *Ibid*, page 88

<sup>239</sup> *Practice Framework*, Scottish Refugee Council & Aberlour (Scotland’s Children’s Society), April 2013

place after he or she becomes 18.<sup>240</sup> Once a child has been identified he or she will be referred to an independent child trafficking guardian as soon as is reasonably practicable.<sup>241</sup> Other professionals will also have to pay due regard to the guardian's functions and provide him or her with such information about the child as will enable the guardian to carry out his or her functions effectively.<sup>242</sup>

Despite this, the Act does not provide a guardian with the power to instruct a lawyer on behalf of a child. This was partly as result of the confusion caused by the fact that in Scotland the age of legal competence is 16.<sup>243</sup>

## STATUTORY PROVISION IN NORTHERN IRELAND

The proposed service in Northern Ireland is the closest to the model recommended by FRA in its Best Practice Handbook and includes a number of important features not replicated in other services within the United Kingdom. Most importantly, it provides an independent guardian for all separated children and defines a separated child as a child who:-

*“(a) is not ordinarily resident in Northern Ireland;*

*(b) is separated from all persons who—*

*(i) have parental responsibility for the child; or*

*(ii) before the child's arrival in Northern Ireland, were responsible for the child whether by law or custom; and*

*(c) because of that separation, may be at risk of harm.”<sup>244</sup>*

It then defines a trafficked child as one where: -

*“(a) a reference relating to that child has been, or is about to be, made to a competent authority for a determination for the purposes of Article 10 of the Trafficking Convention as to whether there are reasonable grounds to believe that the child is a victim of trafficking in human beings; and*

*(b) there has not been a conclusive determination that the child is not such a victim;*

*and for the purposes of this subsection a determination which has been challenged by way of proceedings for judicial review shall not be treated as conclusive until those proceedings are finally determined.”<sup>245</sup>*

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<sup>240</sup> Section 11(7)

<sup>241</sup> Section 11(4)(b)

<sup>242</sup> Section 11(6)

<sup>243</sup> Age of Legal Capacity (Scotland) Act 1991

<sup>244</sup> Section 21(11)

The independent guardian is comprehensively described<sup>246</sup> to include ascertaining and communicating the views of the child in relation to matters affecting the child,<sup>247</sup> assisting the child to obtain legal or other advice, assistance and representation, including (where necessary) the appointment and instructing of legal representatives to act on behalf of the child<sup>248</sup> and providing a link between the child and anybody or person who may provide services to the child.<sup>249</sup>

The service is in the process of being established and the independent guardians will be professionals employed by an independent charity<sup>250</sup> and will now<sup>251</sup> have to show that they have five year's post-qualification experience as a social worker. They will also be expected to qualify to level 2 in examinations run on asylum and immigration law by the Office of the Immigration Services Commissioner as soon as possible after joining the guardianship service. It is expected that in Year 1 of the Service only one independent guardian will be needed as the expected ratio of guardian to child is to be 1 to 10 or 12 and the number of children being identified in Northern Ireland is still small. But in Year 2 an additional or more than one additional guardian will be needed as further children arrive.<sup>252</sup> Useful discussions have already taken place with other professionals. For example, at a roundtable meeting in Belfast on 3 November 2015, it was agreed that the Gateway Team of the relevant Health and Social Care Trust would still undertake an initial assessment of any unaccompanied or separated child and that social workers would then be responsible for the child's accommodation and welfare needs. If the child is subject to care proceedings,<sup>253</sup> he or she would also be provided with a guardian ad litem from the Northern Ireland Guardian Ad Litem Agency, whose role is to advise the courts of the child's wishes and feelings and to independently represent and safeguard their interests in any family court proceedings.<sup>254</sup> Guardians will also work with advocates from VOYPIC and residential social workers at the Glenmona Resource Centre. It was agreed at this round table that the guardian would have a distinct and co-ordinating role. He or she

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<sup>245</sup> Section 21(2)

<sup>246</sup> Section 21(7)

<sup>247</sup> Section 21(7)(a)

<sup>248</sup> Section 21(7)(c)

<sup>249</sup> Section 21(7)(f)

<sup>250</sup> Sub-section 21(4)

<sup>251</sup> There has been a heated debate in Northern Ireland about whether other professionals may not be equally qualified with Care NI, Voice of Young People in Care, the Northern Ireland Commissioner for Children and Young People, the Children's Law Centre, ECPAT and the Law Centre (NI) all favouring a wider pool of candidates when asked in 2015. However, subsequent changes in the political party chairing the Committee favoured the view of the Health and Social Care Board and local health and social care trusts who wished for a qualified social worker to hold the post. Whether this view will ultimately prevail may depend on the Assembly Elections set to take place on 2 March 2017

<sup>252</sup> Fidelma O'Hagan

<sup>253</sup> Which is likely to be the case if they are under 16

<sup>254</sup> See *By Their Side and On Their Side: Reviewing the evidence for guardianship for separated children in Northern Ireland*, University of Bedfordshire, February 2014

will also ensure that the child is provided with appropriate accommodation and is referred into the NRM.<sup>255</sup>

The regulations for the Northern Ireland Service state that the charity running the service must make arrangements for the independent guardian to have access to formal supervision provided once a month. They also define “formal supervision” as one-to-one supervision, where a senior employee of the charity is given responsibility to work with the independent guardian to oversee, manage or direct the independent guardian to meet organisational, professional and personal objectives. The guardian will ensure that the child is provided with a safe placement and is referred into the NRM.<sup>256</sup> At the moment, most trafficked children are the responsibility of the Northern Trust in Northern Ireland and this where multi-agency co-operation is most highly developed but it is believed that independent guardians will play a useful role in bringing expertise and consistency across all of the trusts.<sup>257</sup>

## ENGLAND AND WALES

There is presently no guardianship service in England and Wales for unaccompanied children. The need for guardianship for trafficked children was a consistent theme in the debates that preceded the final draft of the Modern Slavery Act 2015. As a consequence, an enabling section<sup>258</sup> was included in the Act, which stated that the Secretary of State must make such arrangements as she considers reasonable to enable independent child trafficking advocates<sup>259</sup> to be available to represent and support children where there are reasonable grounds to believe that they may be victims of human trafficking.

However, the UK Government did not set up any such service immediately. Instead, it commissioned a child trafficking advocates trial, delivered by Barnardo’s, in England for one year from 8 September 2014<sup>260</sup> and this trial was evaluated by a team brought together by the University of Bedfordshire and headed by Professor Ravi Kohli.<sup>261</sup> This report explained that there were six advocates, who were qualified at undergraduate and post-graduate level and who had relevant work experience, including as social or youth workers. Twenty-three local authorities agreed to take part in the trial and refer every other child it identified as being trafficked to the Child Trafficking Advocate Trial. All

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<sup>255</sup> Julie Bell

<sup>256</sup> Julie Bell

<sup>257</sup> Julie Bell

<sup>258</sup> Modern Slavery Act 2015, s48(1)

<sup>259</sup> There has been a great reluctance by authorities in England and Wales to use the word guardian which is being used in Scotland and Northern Ireland

<sup>260</sup> *Evaluation of Independent Child Trafficking Advocates trial: Final Report Research Report 86*, Home Office, December 2015

<sup>261</sup> *Evaluation of Independent Child Trafficking Advocates Trial: Final Report, Research Report 86*, Home Office, December 2015

of the children remained accommodated by their local authority but the ones not provided with an advocate had to rely on the advice and guidance of their social worker in relation to trafficking matters. These children acted as a control group for the purposes of the trial.

Children's services were responsible for referring children in the advocacy part of the trial to the advocacy service within a two-hour time frame or as soon as practicably possible. However, this only happened in 16 of 86 of cases (which is 19%). A further 11 children were referred within two days and in 51 cases (or 69%) there was a delay of more than three days and in eight cases the length of delay was unknown. This occurred due to the unfamiliarity of children's services with child trafficking indicators and the use of a single point of contact in each local authority, whose role was not an operational one. Once the advocacy service received a referral, 84% of the children were allocated an advocate within one day.

The evaluation report noted that being the hub between social care, immigration and criminal justice, and being independent of services within these areas, allowed advocates a holistic view of the child and their life. It also found that in coordinating actions between agencies, advocates ensured that information about the child was shared. Overall the report was very positive about the benefits provided by the advocates to the children in the trial.

Despite this, the UK Government concluded<sup>262</sup> that "overall the evidence about the impact of the independent child trafficking advocates during the trial appears to be equivocal. Aspects of the independent child trafficking advocates model show promise but did not deliver on some key outcomes that trafficked children are entitled to expect." In particular, it noted that there was no evidence that advocates led to a reduction in the number of children going missing.<sup>263</sup> It then added that 15 children who were assigned to an advocate were permanently missing at the end of the trial compared to 12 in the control group. It also said that seven of the 15 children went missing before they were referred to their advocate. This suggests that the advocacy service was at fault. In reality, these seven children had gone missing after a notional "allocation" to the service by a local authority and before an actual "referral" to the Independent Child Trafficking Advocates Service.<sup>264</sup> The evaluation report had also noted that in only 19% of the cases did the local authorities refer a child to the Service within the target time of two hours and in 69% of cases the local authority did not refer the child for more than three days and, in some cases, months. This delay is likely to have significantly increased the risk that a child would go missing. Furthermore, the evaluation

<sup>262</sup> *Report on the trial of independent trafficking advocates and next steps*, UK Government, December 2015, paragraph 12

<sup>263</sup> *Ibid* paragraph 10

<sup>264</sup> Ravi Kohli

commissioned by the Home Office did not include children going missing as one of its fields of research.<sup>265</sup>

It is partially correct that the trial was not able to assess the benefits of an advocate in terms of involvement with the immigration and criminal justice system,<sup>266</sup> although this was something that the evaluation team had argued from the beginning would not be possible during a 12-month trial as immigration and criminal justice processes were likely to last for much longer than a year.<sup>267</sup> In addition, the trial did find that advocates ensured that the children had access to good quality legal representation where possible. They also challenged such representation if they considered that it was poor quality, or advised the children about accessing different lawyers who could offer better quality representation. Where necessary, they provided also expert information via witness statements for asylum claims and tribunals.<sup>268</sup> They also assisted six children who had been charged with offences and four children who were viewed as both offenders and victims. The advocates were able to ensure that the children understood what being part of an investigation would mean, accompany them to the criminal court and explain court processes and outcomes. They also provided written and oral evidence to the criminal court about the impact on individual children of being trafficked and the ways in which a court could consider plans for helping a child to move from a Young Offenders Institution to safe accommodation. Advocates also used the Crown Prosecution Service guidance on human trafficking, slavery and smuggling to identify best practices, and set standards for effective interventions.<sup>269</sup> Towards the final phase of the trial, advocates began to advise the children, where appropriate, on opportunities to claim compensation.

In addition, advocates who had some previous experience of working with trafficked children were able to work more effectively more quickly.<sup>270</sup> Co-operation was also easier where the advocates were operating in areas that already had an understanding of trafficking, such as Greater Manchester but some less experienced local authorities such as Derbyshire were receptive to advice.<sup>271</sup> Other local authorities were not confident about identifying children who may have been trafficked or just classified them as unaccompanied asylum seeking children.<sup>272</sup> Lancashire had a very low rate of referral.

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<sup>265</sup> Ravi Kohli

<sup>266</sup> Paragraph 11

<sup>267</sup> Ravi Kohli

<sup>268</sup> Hannah Stott

<sup>269</sup> Hannah Stott

<sup>270</sup> Lucy Coen

<sup>271</sup> Lucy Coen

<sup>272</sup> Lucy Coen

On 29 July 2016, the Home Office announced<sup>273</sup> that it was looking for suitable organisations to bid for a contract to provide independent child trafficking advocates in “early adopter” sites for a maximum of two years from November 2016. These areas were selected by the Home Office as Hampshire, Greater Manchester and Wales. The further pilot will look at how independent child trafficking advocates assist children who may have been trafficked to navigate social care, educational and health systems and, where relevant, immigration and criminal justice systems. The contract for this further trial was awarded to Barnardo’s and became operational from the end of January 2017. In this trial the advocates should benefit from a further amendment to section 48<sup>274</sup> of the Modern Slavery Act 2015 that requires public authorities that provide services or take decision in relation to a child to give “due regard” to the advocate’s functions and provide them with the access to such information relating to the child as will enable the advocate to carry out such functions.

The Home Office intends to evaluate this further trial itself but it has been suggested<sup>275</sup> that an important aspect of any future research is consideration as to whether the provision of an advocate was a factor that sufficiently stabilised a trafficked child’s situation so that his or her fears of his or her traffickers or motivation to return to their sphere of influence was diminished to the point which they did not contact their traffickers or take sufficient steps to avoid contact with them. It was also thought to be important that the visibility of an advocate was maximised as soon as possible in the new service and that the differing needs of British, EEA and foreign national children were explored.<sup>276</sup> It is also the case that the provision of an advocate is not likely of itself to be sufficient to protect children from going missing.<sup>277</sup> Children will also have to be provided with other protective measures such as safe accommodation<sup>278</sup> and multi-agency protection system.<sup>279</sup>

## RECOMMENDATIONS

1. Independent legal guardians with statutory powers should be provided for all unaccompanied migrant children in England and Wales and Scotland so as to ensure that children who have been trafficked are identified and protected as the earliest opportunity and so that there is parity with services provided for unaccompanied children in Northern Ireland.

<sup>273</sup> Contract Summary, Home Office, 29 July 2016

<sup>274</sup> Section 48(6)(e)

<sup>275</sup> Ravi Kohli

<sup>276</sup> Ravi Kohli

<sup>277</sup> Ravi Kohli

<sup>278</sup> Ravi Kohli

<sup>279</sup> Hannah Stott

## 6. ACCESS TO SUITABLY TRAINED AND EXPERIENCED LAWYERS

Article 15.2 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims states that in criminal proceedings Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.

The UN Committee on the Rights of the Child recently found that the reforms concerning the reduction of legal aid in all four jurisdictions of the United Kingdom appear to have a negative impact on the right of children to be heard in judicial and administrative proceedings affecting them.<sup>280</sup>

This is very significant as trafficked children are often involved in multiple and complex legal proceedings. For example, Vietnamese boys, who had been trafficked for the purpose of criminal exploitation, may have to instruct up to four different lawyers; one relating to the criminal proceedings, one relating to a claim for asylum or other protection, another in connection with decisions reached by the NRM and a fourth in relation to any age dispute. A criminal solicitor may also have to refer a child to a civil solicitor in order to ensure that the child can bring an action for professional negligence or to challenge the failure by a local authority to investigate whether a child may have been trafficked.<sup>281</sup> However, access to free legal aid varies both in relation to the type of legal proceedings and the location of the child within the United Kingdom. It was said that access to good quality legal advice can help to reassure a child about the support and entitlements they can expect to receive.<sup>282</sup>

Free legal advice and representation is available if a child, including a child who may have been trafficked, is charged and prosecuted for a criminal offence.<sup>283</sup> But, unlike some other EU states, a child is not provided with a lawyer and/or free legal aid if he or she is a witness in any criminal proceedings. But he or she will be provided with advice from the start of the process by a qualified

<sup>280</sup> *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/5, 3 June 2016, paragraph 29(b)

<sup>281</sup> Philippa Southwell

<sup>282</sup> Catriona MacSween

<sup>283</sup> *Ibid* sections 13-20



solicitor. They are not just provided with legal counselling by an NGO or organisation, as in some other EU states. As it is increasingly being recognised that children are trafficked and exploited for criminal purposes, access to competent and experienced criminal defence lawyers is of central importance. On 29 October 2015, the Law Society of England and Wales published a Practice Note for criminal solicitors.<sup>284</sup> In England there are a few experienced criminal defence lawyers who are concerned to obtain the best outcomes for children who may have been trafficked.<sup>285</sup> However, many others seem to not even consider why children who may have been trafficked would commit the offences they were charged with and simply advise them to plead guilty in order to obtain a shorter sentence.<sup>286</sup> This research also found that, if a child is mistakenly advised to plead guilty by a solicitor, the local CPS office is usually not willing to re-consider any charges and plea until there is a conclusive grounds decision within the NRM that the child has been trafficked.<sup>287</sup> Meanwhile, the child remains categorised as a criminal and held in a Young Offenders Institution.

This often has occurred because the trafficked child did not have access to criminal solicitors who specialised in representing children who may have been trafficked and the fact that there were very few of such specialist solicitors. Therefore, they had to rely on duty solicitors contacted on their behalf by the police.<sup>288</sup> These solicitors frequently have little or no knowledge of modern slavery and/or child trafficking and did not recognise that any crimes these children may have committed, such as cannabis cultivation or the use of false identity documents were consequent upon or integral to their trafficking and exploitation from criminal purposes.<sup>289</sup> In particular, they did not understand the difference between labour exploitation and criminal exploitation.<sup>290</sup> However, it was said that duty solicitors were open to advice once they had been alerted to the risk that a child had been trafficked.<sup>291</sup> It was also asserted that some criminal solicitors do not accept advice given to them by NGOs, despite being inexperienced<sup>292</sup> and it was stressed that even some senior criminal counsel had little, or no, understanding of child trafficking.<sup>293</sup>

If a trafficked child wishes to transfer his or her instructions to a more experienced and committed criminal solicitor, he or she will have to apply for his or her legal aid certificate to be transferred on the basis that communication with the solicitor has broken down or the solicitor has not followed his

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<sup>284</sup> Criminal Prosecution of Victims of Trafficking

<sup>285</sup> Phil Brewer

<sup>286</sup> Phil Brewer

<sup>287</sup> Lucy Coen

<sup>288</sup> Philippa Southwell

<sup>289</sup> Philippa Southwell

<sup>290</sup> Philippa Southwell

<sup>291</sup> Lucy Coen

<sup>292</sup> Judith Dennis

<sup>293</sup> Philippa Southwell

or her instructions.<sup>294</sup> The judge will also have to consent to the transfer and may not so if it is only to obtain more experienced legal representation.<sup>295</sup> It is also the case that the fixed fees which are provided for much criminal representation do not encourage solicitors to take the necessary comprehensive instructions from a child who may have been trafficked.<sup>296</sup>

Access to free legal aid for civil matters is more limited.<sup>297</sup> Trafficked children are entitled to a lawyer to advise and represent them at public expense if they apply for asylum or if there are reasonable grounds to suspect that they may have been trafficked or seek compensation for their exploitation.<sup>298</sup> Yet they are not entitled to free legal advice or representation if they have applied for leave to remain under any non-asylum or non-Humanitarian Protection provisions of the Immigration Rules or seek to rely on their rights under articles other than Articles 2, 3 and 4 of the ECHR – apart from in exceptional circumstances where the failure to provide free legal aid would amount to a breach of the European Convention on Human Rights or EU law.<sup>299</sup> Legal aid<sup>300</sup> is also available if a child wishes to challenge an age assessment by way of judicial review. Such a claim would have to be started in the High Court in England and Wales but the fact-finding element would be conducted by the Upper Tribunal (Immigration and Asylum Chamber) if the High Court finds that the claim is arguable.<sup>301</sup> In Scotland, challenges to age assessments still have to be brought in the Court of Session but it is unclear how the fact-finding exercise is to be conducted.<sup>302</sup> Historically, age assessments have been decided at asylum appeal hearings.<sup>303</sup>

Furthermore, due to cuts to public funded legal aid by successive governments, access to high quality immigration advice in England and Wales has become something of a “postcode lottery.”<sup>304</sup> There is seen to be a core group of barristers and solicitors who have an in-depth knowledge of the law relating to child migration and child trafficking; indeed, it was some of these lawyers who were the first to recognise that children were being trafficked into and within the United Kingdom.<sup>305</sup> This group of lawyers, along with some newer to the field, continue to develop case law relating to the United Kingdom’s compliance with European and international law relating to child trafficking and are constantly pushing the legal boundaries to assist their clients but those outside this group had

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<sup>294</sup> Philippa Southwell

<sup>295</sup> Philippa Southwell

<sup>296</sup> Philippa Southwell

<sup>297</sup> Kalvir Kaur

<sup>298</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012

<sup>299</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 10(3) & Kalvir Kaur

<sup>300</sup> Kalvir Kaur & Kirsty Thompson

<sup>301</sup> Kalvir Kaur

<sup>302</sup> Kirsty Thompson

<sup>303</sup> Kirsty Thompson

<sup>304</sup> Kalvir Kaur

<sup>305</sup> One example was immigration lawyers in Sussex and London who began to represent the Nigerian girls rescued within Operation Newbridge at Gatwick Airport in the mid-1990s

very little knowledge and understanding.<sup>306</sup> Their commitment to their clients also varies.<sup>307</sup> Some solicitors start working with a child immediately and others wait for a legal aid certificate to be issued.<sup>308</sup> It was also said that the quality and commitment of some of these lawyers is poor and that this sometimes leads to them submitting letters of application that are completely inadequate.<sup>309</sup> In addition, these lawyers do not always have any experience of working with children who were reluctant or too traumatised to disclose their past experiences.<sup>310</sup> This was particularly a problem in many areas of England and Wales outside London but there is access to high quality advice and representation in Manchester and NGOs working with trafficked children were very happy with the service provided.<sup>311</sup>

In the United Kingdom, it is unlawful for individuals to provide advice and representation on asylum and immigration matters unless they are solicitors or barristers or are regulated by the Office of the Immigration Services Commissioner.<sup>312</sup> In England and Wales, a child bringing a claim for judicial review in relation to an age assessment in the Upper Tribunal (Immigration and Asylum Chamber) will have to instruct a barrister or a solicitor with higher rights of audience.

In Scotland, legal aid still appears to be available for human rights cases involving trafficked and unaccompanied migrant children and it is also easier to obtain funding for expert reports, although it is necessary to make more extensive arguments to justify the funding and this may be refused if an application is made at a very early stage in the proceedings.<sup>313</sup> In Glasgow, the Legal Services Agency receives legal aid and charitable funding and employs one full-time dedicated immigration lawyer. In addition, the manager also takes on immigration and trafficking cases.<sup>314</sup> Other private firms also take on cases and are increasing their expertise. But access to appropriate lawyers is much more limited outside Glasgow and especially in the north of Scotland where knowledge of trafficking and the NRM is limited.<sup>315</sup> Experienced and good quality immigration legal representatives tend to be based with the central belt within Scotland and lawyers based in Glasgow and Edinburgh have to travel to see children living in other areas. At the same time, legal aid is not always available to pay

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<sup>306</sup> Judith Dennis

<sup>307</sup> Kalvir Kaur

<sup>308</sup> Lucy Coen

<sup>309</sup> Tara Topteagarden

<sup>310</sup> Tara Topteagarden

<sup>311</sup> Lucy Coen

<sup>312</sup> Immigration and Asylum Act 1999, section 84(1)

<sup>313</sup> Catriona MacSween & Kirsty Thompson

<sup>314</sup> Kirsty Thompson

<sup>315</sup> Catriona MacSween

for appropriate interpreters to travel to more remote locations.<sup>316</sup> Immigration solicitors also said that they required more training about the difference between criminal and labour exploitation.<sup>317</sup>

Access to free legal aid is still more generous in Northern Ireland and there is a specialist lawyer available to take on the cases of trafficked children at the Law Centre (NI) and other lawyers who can be approached if this individual is not available.<sup>318</sup> However, it was said that most other lawyers remain unaware of child trafficking.<sup>319</sup>

## LEGAL CAPACITY

Lawyers who are representing trafficked children are doing so despite the fact that these children do not generally have the legal capacity<sup>320</sup> or indeed the intellectual maturity to give them full instructions and have no adults with legal capacity to give instructions on their behalf. Many legal representatives are concerned about this potential conflict of interest.<sup>321</sup> In the absence of the child having legal capacity or a legal guardian, they face the option of following the child's inadequate instructions or trying to decide how to act in the child's best interests. This may well distract them from their primary duty, which is to protect and promote the child's legal interests.<sup>322</sup> Lawyers and other professionals noted that it is difficult to take instructions directly from a child who may have been trafficked and that there are particular challenges that arise from non-disclosure or a refusal to provide details of exploitation.<sup>323</sup> In Northern Ireland this had led to social workers seeking expert assistance from CTAC.<sup>324</sup> It was also stressed that lawyers need to know how to ask appropriate questions.<sup>325</sup>

In Scotland, the Law Society advised lawyers that they had to act on the instruction given by the child, even if the instructions were not comprehensive and cogent.<sup>326</sup> If the lawyer believed that this would not be in the child's best interests, they have to withdraw and disclose any concerns they may

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<sup>316</sup> Catriona MacSween

<sup>317</sup> Kirsty Thompson

<sup>318</sup> Fidelma O'Hagan & Julie Bell

<sup>319</sup> Philippa Southwell

<sup>320</sup> In Scotland children over the age of 16 are deemed to automatically have legal capacity. In other areas of the United Kingdom solicitors will have to undertake an individual assessment of their capacity and few children under the age of 14 will be found to have the necessary legal capacity See *Gillick v West Norfolk & Wisbech Area Health Authority & Department of Health & Social Security [1984] QB 581*

<sup>321</sup> Kalvir Kaur

<sup>322</sup> See discussion in *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.K.*, Jacqueline Bhabha and Nadine Finch, Harvard University Committee on Human Rights Studies, November 2006, pp 90-91

<sup>323</sup> Fidelma O'Hagan, Kalvir Kaur, Julie Bell

<sup>324</sup> Julie Bell

<sup>325</sup> Philippa Southwell & Kalvir Kaur

<sup>326</sup> Kirsty Thompson

relating to any safeguarding issues to the child's guardian, who would then share this with the child's social worker.<sup>327</sup>

## RECOMMENDATIONS

1. Free legal aid should be available to children who may have been trafficked from the point at which they are first identified until the time at which they are provided with a durable solution in both criminal and civil proceedings.
2. The Law Societies and Bar Councils in England & Wales, Scotland and Northern Ireland should co-operate with NGOs currently providing training to lawyers representing children who may have been trafficked to devise and deliver comprehensive training to any lawyer who may be instructed to represent a child who may have been trafficked in criminal or civil proceedings.

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<sup>327</sup> Kirsty Thompson

## 7. NON-PROSECUTION

Article 8 of EU Anti-Trafficking Directive states that Member States shall, in accordance with the basic principles of their legal system, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Article 26 of Council of Europe Anti-Trafficking Convention states that each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities to the extent that they have been compelled to do so.

UNICEF's 2006 Guidelines on the Protection of Child Victims of Trafficking also states that judicial authorities should ensure that child victims are not subjected to criminal procedures or sanctions for offences related to their situations as trafficked persons including violations of migration laws.

The report of the Modern Slavery Bill Evidence Review<sup>328</sup> states that “the Panel strongly believes that the current CPS guidance on non-prosecution of victims must be put into legislation in order to be effective, having been advised that successive DPP-issued guidance has failed to prevent victims from being prosecuted. The Panel recommends that the Modern Slavery Bill includes a statutory statement of the policy of non-prosecution of victims of modern slavery, creating an obligation across all sectors of the criminal justice system to make further enquiries if there is evidence to suggest that a defendant may be a victim of modern slavery.” However, the UK Government was not persuaded that it should include a non-prosecution section in the Modern Slavery Act 2015, despite strong arguments in favour of doing so. The Human Trafficking and Exploitation (Further Provisions and Support for Victims) Act (Northern Ireland) 2015 also does not contain a non-prosecution section.

In contrast, although the Human Trafficking (Scotland) Act 2015 does not contain a non-prosecution section, it does explicitly provide for the Lord Advocate to publish instructions<sup>329</sup> on the prosecution of victims of trafficking. In particular, it states<sup>330</sup> that instructions should be given where (a) the child

<sup>328</sup> *Establishing Britain as a world leader in the fight against modern slavery: Report of the Modern Slavery Bill Evidence Review*, published and presented to the Home Secretary on 16 December 2013, page 20

<sup>329</sup> The Lord Advocate's Instructions for Prosecutors when considering Prosecution of Victims of Human Trafficking and Exploitation issued under section 8

<sup>330</sup> Sub-section 8(4)

does an act which constitutes an offence and (b) the act appears to be done as a consequence of the child being a victim of an offence of human trafficking or of slavery, servitude or forced or compulsory labour. The Lord Advocate’s Instructions also acknowledges in its first paragraph that “individuals who have been the victims of human trafficking or exploitation are particularly vulnerable to finding themselves in a situation where they commit criminal acts in the course of or as a consequence of having been trafficked or exploited. To commence or continue with a prosecution against someone who has committed a criminal act as a result of being trafficked or exploited would risk re-traumatising the individual, would in some circumstances be contrary to obligations imposed by European and national law and would not be in the public interest.” Interviewees<sup>331</sup> confirmed that there had been a significant decrease in prosecutions for cannabis cultivation and that the Crown Office and Procurator Fiscal Service ensured that trafficked children were not prosecuted. However, there was some doubt about how many criminal solicitors knew how to use the guidance.<sup>332</sup>

In England and Wales some additional protection for children who have been trafficked for criminal exploitation is provided by case law following *R v L & Others*<sup>333</sup> where the Lord Chief Justice sitting in the Court of Appeal (Criminal Division) held that the correct test to be applied when a child had been trafficked and then criminally exploited was whether the offence committed by the child was consequent upon or integral to the exploitation for which he or she was trafficked. This wording was agreed by the Court after it was successfully argued that Article 8 of the EU Directive did not give effect to the fact that the definition of child trafficking did not include a need to prove the means by which a child had been trafficked, including whether a child had been compelled to undertake any criminal act.

This case remains a precedent that should be followed at all levels of the criminal courts in England and Wales but it remains unclear as to whether judges in these courts are following this precedent.<sup>334</sup> One interviewee<sup>335</sup> doubted that judges sitting in criminal courts have a sufficient understanding of the non-prosecution principle. She said that one judge had told a child found in a cannabis farm that if he saw him back in court for a similar offence, he would be convicted that time. This clearly abrogated the non-prosecution principle. But another interviewee<sup>336</sup> working in the Greater Manchester area said that judges are receptive to waiting for the result of an NRM referral to confirm whether a child had been trafficked.

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<sup>331</sup> Catriona MacSween,

<sup>332</sup> Kirsty Thompson

<sup>333</sup> [2013] EWCA Crim 991

<sup>334</sup> Philippa Southwell

<sup>335</sup> Ibid

<sup>336</sup> Hannah Stott

A senior police officer<sup>337</sup> also commented that many criminal judges do not understand that those kept in domestic servitude had been criminally exploited and noted that the independence of the judiciary is sometimes a barrier to their recognition of the need for further training in areas such as modern slavery and child trafficking. A criminal lawyer<sup>338</sup> also gave the example of a crown court judge accepting a guilty plea from a defendant who had been trafficked and then ordering a Newton Hearing to ascertain whether he had been exploited; thus identifying that he had not understood that once movement and exploitation had been established, it was not necessary to show that a child had been compelled to undertake any criminal act. It was also said, due to long delays in the NRM process, it may be difficult to persuade a judge to adjourn a hearing in order to await to see whether there is a conclusive decision that the child had been trafficked<sup>339</sup> and, even if adjournments were granted, this would mean that the child had to appeal before a number of different judges who knew very little about child trafficking, debt bondage and criminal exploitation.<sup>340</sup>

Yet the failings in the criminal court cannot merely be laid at the door of the judges. One interviewee<sup>341</sup> noted that, even when a child was a defendant in criminal proceedings, social workers remained ignorant of the exploitation of Vietnamese and other national children for criminal purposes and failed to refer the child into the NRM or ensure that they had had appropriate legal advice. It was also noted that many defence lawyers merely advise their clients to make a guilty plea in order to mitigate their sentence and that, even when they were advised about the NRM, they have little knowledge of how it works.<sup>342</sup>

It was said that individual police officers did not always treat Vietnamese boys and Roma girls as victims as child trafficking.<sup>343</sup> But it appeared that trafficked children are better protected within the criminal justice system where there are specialist teams of police officers and prosecutors in place.<sup>344</sup> Police Scotland has a National Human Trafficking Unit and 14 Divisional Human Trafficking Champions and this was seen to be a factor that had reduced the number of prosecutions of those who had been subject to criminal exploitation.<sup>345</sup> The Police Service for Northern Ireland also has a Human Trafficking Unit, which is part of C2 Serious Crime Branch, Specialist Investigation Unit, based in Belfast and staffed by experienced detectives. This has assisted in the identification of those who

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<sup>337</sup> Phil Brewer

<sup>338</sup> Philippa Southwell

<sup>339</sup> Philippa Southwell

<sup>340</sup> Philippa Southwell

<sup>341</sup> Hannah Stott

<sup>342</sup> Pam Bowen


<sup>343</sup> The Lord Advocate's Instructions for Prosecutors when considering Prosecution of Victims of Human Trafficking and Exploitation issued under section 8

<sup>344</sup> Pam Bowen

<sup>345</sup> Pam Bowen



have been trafficked.<sup>346</sup> In England and Wales, the fact that there are 43 individual police forces and that not all of them have specialist units is thought to be problematic.<sup>347</sup> But the Metropolitan Police has a specialist Kidnap and Trafficking Team and Greater Manchester, the West Midlands and West Yorkshire also have specialist anti-trafficking units and they have conducted a number of successful operations.<sup>348</sup> Other police forces take part in multi-agency anti-trafficking and anti-slavery task forces. In addition, where there are specialist units, more traffickers are being prosecuted.<sup>349</sup>

Prosecution services also play a major part in preventing the prosecution of children who may have been trafficked. For example, in England and Wales, the Crown Prosecution Service has issued detailed guidance on Human Trafficking, Smuggling and Slavery<sup>350</sup> on its website. This includes a section entitled ‘Statutory defence for slavery or trafficking victims who commit an offence’ and prosecutors now have to consider whether the statutory defence applies before moving on to more a general consideration of the non-prosecution principle.<sup>351</sup> This includes detailed advice on the indicators which may suggest that a child has been trafficked. It also states that prosecutors have a duty to make proper enquiries if it is suspected that someone may have been trafficked and should advise the police to investigate and see that a child is referred into the NRM. It also makes clear that a child does not have to show that he or she had been subjected to threats, force, deception, inducement or an abuse of power or of a position of vulnerability, or use of debt bondage. However, it was noted that it was sometimes very difficult to identify whether a British child had been trafficked if he had been arrested in possession of drugs and a knife.<sup>352</sup> It was also said that some traffickers were “cuckoo nesting” (moving into accommodation where young drug users were living and then forcing them to take drugs across county lines) and that this posed difficult judgment calls for prosecutors.<sup>353</sup> In Northern Ireland the PPS has issued a code of practice that replicates the CPS  
 LIGHTING THE WAY  
Guidance.

In Scotland, paragraph 12 of the Lord Advocates Instructions<sup>354</sup> states that “prosecutors must be aware that the accused person will not always identify themselves as a victim and may not provide information relevant to this to those they come into contact with. There are a number of reasons for this, including (but not restricted to); cultural differences, fear of authority, threats made by those involved in the trafficking or exploitation towards the victim or their families and the significant

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<sup>346</sup> Fidelma O’Hagan

<sup>347</sup> Pam Bowen

<sup>348</sup> Pam Bowen

<sup>349</sup> Pam Bowen

<sup>350</sup> See CPS

<sup>351</sup> Pam Bowen

<sup>352</sup> Pam Bowen

<sup>353</sup> Pam Bowen

<sup>354</sup> Lord Advocate’s Instructions for Prosecutors when considering Prosecution Victims of Human Trafficking and Exploitation  
[www.copfs.gov.uk/.../Lord%20Advocates%20Instructions%20for%20Prosecutors%2](http://www.copfs.gov.uk/.../Lord%20Advocates%20Instructions%20for%20Prosecutors%2)

impact of recalling traumatic events. This is particularly true of children. Where the accused has not mentioned or denies being a victim of human trafficking or exploitation proper investigation should still be made of the circumstances surrounding the accused.” The Prosecution Service in Scotland has a National Lead Prosecutor and he or she is assisted by four Federal Lead Prosecutors. It is also noteworthy that paragraph 29 of the Lord Advocate’s Instructions states that “where information comes to light after there has been a conviction and the assessment is that the case should be discontinued then the Appeals unit should be contacted and an application should be made to the Court under section 188 of the Criminal Procedure (Scotland) Act 1995 for the conviction to be set aside.”

In Wales, the Anti-Slavery Co-ordinator<sup>355</sup> works with the Complex Case Unit at the CPS to organise three-day organised crime and modern slavery courses for senior investigators of rank of Detective Inspector and above, and senior CPS and crown advocates. Part of the course concentrates on cases involving children and one exercise involves a missing child who may have been trafficked. Police officers and prosecutors can only be assigned to such cases if they have completed this training.<sup>356</sup>

Section 45 of the Modern Slavery Act 2015 creates a defence for children who have been trafficked and compelled to commit criminal offences in England and Wales. The Guidance<sup>357</sup> states that “prosecutors should consider whether or not there is clear evidence of a credible common law defence of duress.” If not, he or she must consider whether the trafficking victim was compelled to commit the offence. But it goes on to advise that “in determining whether a child is a victim of trafficking, his or her consent to being trafficked is irrelevant and the means by which they are trafficked is also irrelevant. Therefore, it is not necessary for any of the following to be present: threats, use of force, fraud and deception, inducement, abuse of power or of a position of vulnerability, or use of debt bondage.” However, this does not necessarily prevent a child who has been trafficked being arrested, charged and taken to court, and during this time the child is likely to be detained in a young offender institute.<sup>358</sup> There appears to be no evidence of police officers taking this defence into account before referring a case to the CPS.<sup>359</sup> It is also still too earlier for any case law to have emerged about its use.<sup>360</sup> The CPS is undertaking a review of old trafficking cases to

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<sup>355</sup> Stephen Chapman

<sup>356</sup> Stephen Chapman

<sup>357</sup> Statutory defence for slavery or trafficking victims who commit an offence, CPS website

<sup>358</sup> Those under 15 are likely to be held in a secure children’s home, older children are likely to be held in a secure training centre or a young offender institute

<sup>359</sup> Pam Bowen


<sup>360</sup> Pam Bowen

see how the defence would have applied had it then been in force in order to assist in providing guidance now that it does apply.<sup>361</sup>

It also appears to be harder to get a charge dropped since the introduction of the statutory defence and was said that now the CPS in England will not consider whether to withdraw a charge until the offender has been granted a conclusive decision within the NRM.<sup>362</sup> However, the CPS also seemed to be more serious about reviewing cases and providing written responses.<sup>363</sup> A major difficulty that is said to arise from the statutory defence is that the child is required to disclose his or her account of exploitation at a very early stage and, if he or she subsequently makes further disclosures, this may have an adverse effect on his or her credibility.<sup>364</sup> Confusion also existed as to whether being used for benefit fraud amounts to exploitation.<sup>365</sup>

The Independent Anti-Slavery Commissioner has pledged to promote the use of this statutory defence.<sup>366</sup>

## RECOMMENDATIONS

1. Legislation in England & Wales, Scotland and Northern Ireland should be introduced to ensure that individuals who have been criminally exploited or involved in a criminal offence as a consequence or in the course of being trafficked are not prosecuted for these offences.
2. Meanwhile, guidance on non-prosecution in England & Wales should be applied prior to consideration as to whether an individual who had been trafficked is entitled to the  statutory offence contained in section 45 of the Modern Slavery Act 2015. **LIGHTING THE WAY**
3. The Crown Prosecution Service for England and Wales should establish a specialist prosecution unit to review any past cases where a child has been arrested and may have been exploited as a result of being trafficked.

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<sup>361</sup> Pam Bowen

<sup>362</sup> Philippa Southwell

<sup>363</sup> Philippa Southwell

<sup>364</sup> Philippa Southwell

<sup>365</sup> Philippa Southwell

<sup>366</sup> *Strategy Plan 2015-2017*, October 2015, paragraph 1.31

## 8. IMMIGRATION STATUS

Article 14.1 of the Council of Europe Convention on Action against Trafficking in Human Beings states that “each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

- a. the competent authority considers that their stay is necessary owing to their personal situation;
- b. the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.”

Article 11.3 of the EU Directive on preventing and combating trafficking in human beings and protecting its victims states that “ Member States shall take the necessary measures to ensure that assistance and support for a victim (of trafficking) are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC<sup>367</sup> on the residence permits issued to third party nationals who are victims of trafficking in human beings or similar national rules.”

Trafficked children are often advised to apply for asylum. This may be appropriate where a child is from a country, such as Syria, where there is a general risk of persecution and the child is likely to be granted refugee status.<sup>368</sup> However, it should be noted that the UK government recently announced that any grant of asylum will be reviewable after five years or if there is a non-temporary change of conditions in the country where the individual was previously at risk of persecution.<sup>369</sup> Trafficked children are also often encouraged to apply for asylum, because the relevant local authority providing care receives additional funding for each asylum-seeking child it is accommodating.

Trafficked children will be granted asylum if it can be shown that he or she is a member of a particular social group for the purposes of the Refugee Convention. But, as the test for asylum is a prospective one, a child will have to establish that he or she will be re-trafficked or exploited if removed to his or her country of origin. This may be difficult when a child comes from a large state as it may successfully be argued that he or she can live in another part of that state.<sup>370</sup> It may also be argued that steps are being taken by the authorities to combat child trafficking and so there is a

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<sup>367</sup> The United Kingdom has opted out of this Directive

<sup>368</sup> Kalvir Kaur

<sup>369</sup> *Refugee Leave, Version 4.0*, Home Office, 2 March 2019

<sup>370</sup> Kalvir Kaur

sufficiency of protection for the child.<sup>371</sup> In addition, trafficked children often find it difficult to disclose the full extent of their past experience and exploitation, which may mean that there is insufficient evidence upon which to base a claim for asylum.<sup>372</sup> This is often the case with Vietnamese children who are still subject to debt bondage.<sup>373</sup> There was a perception in Scotland that not as many children were now being granted asylum<sup>374</sup> and it is certainly the case that the success rate for claims by trafficked children for asylum in the United Kingdom tends to correlate with the expertise of their immigration and asylum lawyers.<sup>375</sup>

The Anti-Trafficking Convention<sup>376</sup> obliges States to issue a resident permit to a person who has been trafficked if a competent authority considers that their stay is necessary owing to their personal situation or a competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigations or criminal proceedings. The Home Office has provided detailed guidance<sup>377</sup> for the Competent Authority on handling referrals to the NRM and granting residence permits. It states that when a child receives a positive Conclusive Grounds Decision in the NRM, the Competent Authority should consider whether they require a residence permit. This could be a renewable residence permit, granted for a minimum of 12 months and up to 30 months (2 ½ years) but discretion remains to provide a permit for less than 12 months or more than 30 months should this be appropriate. It notes that residence permits can be granted to trafficked children in the UK if there are particularly compelling personal circumstances, such as medical conditions, mental health issues or the need for recovery or if they need to stay in the UK in order to pursue a claim for compensation against their traffickers or assist with the police with an investigation into or prosecution of their trafficker.

This obligation has been recognised by the Upper Tribunal (Immigration and Asylum Chamber)<sup>378</sup> but a conclusive decision that a child has been trafficked rarely leads to him or her being granted a residence permit.<sup>379</sup> Instead it is the UK Visas and Immigration's practice to grant him or her limited leave to remain<sup>380</sup> as an unaccompanied migrant child until the age of 17.5 and will then expect him or her to apply for further leave before this initial leave expires. It has been reported that only one trafficked child in Northern Ireland has been granted a residence permit as a trafficked child.<sup>381</sup> This

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<sup>371</sup> Kalvir Kaur

<sup>372</sup> Kalvir Kaur

<sup>373</sup> Luch Coen

<sup>374</sup> Kirsty Thompson

<sup>375</sup> Kalvir Kaur

<sup>376</sup> Article 14.1

<sup>377</sup> *Victims of trafficking: guidance to competent bodies, Version 3.1*, Home Office, 21 March 2016, pp 71 - 79

<sup>378</sup> *EK (Article 4 ECHR: Anti-Trafficking Convention) Tanzania [2013] UKUT 00313 (IAC)*

<sup>379</sup> Kalvir Kaur

<sup>380</sup> Under paragraphs 352ZC – 352ZF of the Immigration Rules

<sup>381</sup> Fidelma O'Hagan

appears to be at odds with article 14.2 of the Convention which states that any residence permit for child victims should be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions. The Government's own policy also states that if a child found to be a victim of human trafficking or modern slavery applies for any leave to remain the issue of children's best interests must be considered before deciding whether to grant leave.<sup>382</sup>

The Children's Society has also noted that "separated children's protection needs are wide-ranging and may not be catered for within the Refugee Convention."<sup>383</sup> Even if a child is granted asylum, this does not necessarily mean that they will be provided with the necessary measures to aid his or her psycho-social recovery as required by the Anti-Trafficking Directive.<sup>384</sup> UNICEF UK has also asked the Home Office "to review and revise current forms of leave and ensure that an additional form of leave is available to those children who are formally recognised as child victims of trafficking through the National Referral Mechanism and for whom a best interests determination establishes that it is in their best interests to remain in the United Kingdom." In these circumstances it also recommended that such children are granted indefinite leave to remain.<sup>385</sup>

The Independent Anti-Trafficking Commissioner has also advised<sup>386</sup> the UK government that children on the move are particularly vulnerable to human trafficking and slavery and other forms of exploitation. He welcomed section 67 of the Immigration Act as a route to safety for trafficked children but noted that the process needed to be fully funded to ensure that when they arrived in the United Kingdom they were safe and did not go missing.

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<sup>382</sup> *Victims of Modern Slavery: Competent Authority Guidance*, Home Office, 21 June 2016, page 122

<sup>383</sup> *Not just a temporary fix: The search for durable solutions for separated migrant children*, Lucy Gregg and Natalie Williams, page 49

<sup>384</sup> Article 14.1

<sup>385</sup> *Achieving a durable solution for trafficked children*, UNICEF, 2015, Laura Tuggey & Terry Smith, page 34

<sup>386</sup> *Statement on Protecting unaccompanied child refugees against modern slavery and other forms of slavery*, IASC website, 22 February 2017

## 9. BEST INTERESTS

Article 3 of the UN Convention on the Rights of the Child states that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” The Committee on the Rights of the Child<sup>387</sup> has also explained that the concept has three components:

It is a substantive right for a child to have his or her best interests assessed and taken as a primary consideration.

It is a legal principle meaning that if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen.

A rule of procedure whenever a decision is made that will affect a specific child, group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child concerned.

The recital to Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims states that in the application of this Directive, the child’s best interests must be a primary consideration in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.

The Secretary of State for the Home Department and its employees are under a duty arising from section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children when exercising any duty towards a trafficked child. This obligation is explained in more detail in *Every Child Matters: Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children*,<sup>388</sup> where it is equated with the obligation contained in Article 3 of the UN Convention on the Rights of the Child. The need to take into account an unaccompanied migrant child’s best interests is also regularly referred to in individual policies and protocols relating to unaccompanied migrant children.

<sup>387</sup> *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration*, 29 May 2013, CRC/C/GC/14

<sup>388</sup> Home Office, November 2009

For instance, a national transfer protocol<sup>389</sup> was recently agreed to ensure that local authorities, such as Kent County Council, who were receiving a disproportionate number of unaccompanied children who need accommodation and support, could transfer them to other local authorities that did not have so many of these children in their care. This protocol states that “where a UASC first presents in a local authority which is over the ceiling of 0.07% UASC to child population, the local authority can choose to arrange for transfer of the child through the national transfer scheme if it is in the best interests of the child.” However, where decisions relate to a child’s immigration status, UK Visas and Immigration do not accept that the best interest determination process should be a discrete process. It viewed it as being subordinate to the asylum determination process.<sup>390</sup>

Scottish<sup>391</sup> and Northern Irish<sup>392</sup> legislation states that guardians must at all times act in a trafficked child’s best interests. The same duty is contained in the enabling clause in the Modern Slavery Act 2015<sup>393</sup> in relation to the independent child trafficking advocate service, which is currently being rolled out in early adopter sites in England and Wales. In the case of *R v L & Others*<sup>394</sup>, the Court of Appeal (Criminal Division) in England gave weight to paragraph (8) of the recital to the EU Anti-Trafficking Directive, which states that a child’s best interests must be treated as a primary consideration in accordance with Article 24 of the EU Charter of Fundamental Rights and Article 3 of the United Nations Convention on the Rights of the Child.

The Supreme Court<sup>395</sup> has also confirmed that, before the Secretary of State for the Home Department undertakes family tracing<sup>396</sup> for a separated (or trafficked) child, a best interests assessment must be carried out in case undertaking tracing would put a child or his or her parents at risk or there are factors such as debt bondage that are militating against the child giving adequate information about his or her previous address or any contact details for a parent.

But none of the interviewees identified any formalised best interests assessment and determination process in any part of the United Kingdom. For example, in Northern Ireland a child was risk assessed within 24 hours under usual social practices and the fact that many separated children were taken into care was thought by the authorities to be sufficient.<sup>397</sup> No references were being

<sup>389</sup> *Interim National Transfer Protocol for Unaccompanied Asylum Seeking Children 2016-2017 Version 0.8*, Department of Education, Home Office & Department for Communities and Local Government, which is operational from 1 July 2016

<sup>390</sup> Dragan Nastic

<sup>391</sup> Human Trafficking and Exploitation (Scotland) Act 2015, section 11(5)

<sup>392</sup> Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland), section 21(6)

<sup>393</sup> Section 48(4)

<sup>394</sup> [2013] EWCA 991

<sup>395</sup> *TN & MA (Afghanistan) v Secretary of State for the Home Department* [2015] UKSC 40

<sup>396</sup> As obliged to do under Article 19.3 of the EU Reception Directive 2003/9/EC

<sup>397</sup> Fidelma O’Hagan



made to the recent recommendations by the UNHCR/UNICEF.<sup>398</sup> The Home Office has also made it clear that it will not support any best interests determination process that does not ensure that it could have final approval of any proposal made about an unaccompanied migrant child.<sup>399</sup>

It was also noteworthy that the eligibility criteria for transfer to the UK from Europe only referred to one limited category of children who may have been trafficked. This was children who had been referred by the French authorities or by an organisation working on behalf of the French authorities as being at high risk of sexual exploitation.<sup>400</sup>

UNICEF and UNHCR have published a short briefing paper<sup>401</sup> on the findings contained in *Safe & Sound*, which they are using for advocacy purposes. It includes a number of key areas of concern. A major one is the fact that the best interests of the child are currently considered through an immigration prism, rather than as a process where the decision maker is required to weigh and balance all the relevant factors of a child's case, as required by the UN Committee of the Rights of the Child.<sup>402</sup> They also noted that immigration officials tend to consider a child's best interests only as part of a pro forma exercise, rather than a substantive determination, and that a child's best interests are usually only considered when it is proposed to return a child to a country of origin and not throughout a child's residence here.

However, in one recent protocol<sup>403</sup> there was a useful Annexe 1, which alerts officials to the factors that should be taken into account when assessing a child's best interests. It was based on the contents of the United Nations Committee's General Comment No. 14 and, when referring to situations of vulnerability, referred to specific protection needs such as being a victim of trafficking.

During this ReACT research, there was also concern about how local authorities determined a trafficked child's best interests. In particular, it was noted<sup>404</sup> that many children's services departments tend to presume that the parents of a child who has been trafficked still play a significant part in his or her life. Many may also presume that an accompanying adult is related to the child, when this may not be the case, and that parents and other relatives are not likely to be exploiting the child. They also do not consider whether the adult is him or herself being

<sup>398</sup> *Safe and Sound – What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, UNHCR & UNICEF, October 2014

<sup>399</sup> *Guidance: Implementation of section 67 of the Immigration Act 2016 in France*, Home Office, 8 November 2016, page 9

<sup>400</sup> *Ibid* page 6

<sup>401</sup> *What the United Kingdom can do to ensure respect for the best interests of unaccompanied and separated children*, June 2016

<sup>402</sup> *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art 3. Para 1)*, 29 May 2013

<sup>403</sup> *Interim National Transfer Protocol for Unaccompanied Asylum Seeking Children 2016-2017 Version 0.8*, Department of Education, Home Office & Department for Communities and Local Government, which is operational from 1 July 2016

<sup>404</sup> Mandy John-Baptiste

exploited.<sup>405</sup> This leads them to assess risk within a standard child protection framework. In contrast, CTAC advocates the use of an international child protection model,<sup>406</sup> which considers all adults who had been involved in their lives and the environment and cultures they originated from and had passed through. The ICARUS project applied to Romanian children but the same concerns arise in relation to all trafficked EEA children.<sup>407</sup> The Department of Education has issued guidance on the care needed by trafficked children, however, it does not monitor compliance with the guidance but expected a local authority to monitor itself.<sup>408</sup>

## RECOMMENDATIONS

1. A trafficked child's best interests should be treated as a primary consideration whenever his or her needs are being assessed, services are being provided or protection is being offered.
2. Guardians and lawyers should be provided with training in relation to the concept of best interests and the manner in which a child's best interests can be identified and protected.

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<sup>405</sup> Mandy John-Baptiste

<sup>406</sup> See *Free to Move, Invisible to Care: Coordination and Accountability towards Romanian Unaccompanied Minors' Safety*, NSPCC, EU Commission funded ICARUS project, October 2015, pp 57-71

<sup>407</sup> Mandy John-Baptiste. See also an article on *Human Trafficking and Brussels IIR*, *International Family Law*, December 2013, pp 318-321

<sup>408</sup> Dragan Nastic

## 10. DURABLE SOLUTIONS

Article 16.2 of the EU Directive on preventing and combating trafficking in human beings and protecting its victims states that where an unaccompanied child has been trafficked “Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.”

The Fundamental Rights Agency<sup>409</sup> believes that a durable solution should ensure that the child’s rights should be protected in the future.

Article 11.3 of the EU Directive on preventing and combating trafficking in human beings and protecting its victims states that “ Member States shall take the necessary measures to ensure that assistance and support for a victim (of trafficking) are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC<sup>410</sup> on the residence permits issued to third party nationals who are victims of trafficking in human beings or similar national rules.”

Article 14.1 of the Council of Europe Convention on Action against Trafficking in Human Beings states that “each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

- (a) the competent authority considers that their stay is necessary owing to their personal situation;
- (b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.”

It may seem counter-intuitive to begin with what appears to be the “end point” of a trafficked child’s journey. However, as Guy Goodwin-Gill has stressed,<sup>411</sup> “refugee advocates tend to speak of durable solutions in terms of voluntary repatriation, local integration or third country resettlement. The solution is seen as a desirable post-flight goal, the realisation of which may be postponed for want of a political settlement, resources, or for other justifiable reason. Solutions for children, however,

<sup>409</sup> *Guardianship for children deprived of parental care; A handbook to reinforce guardianship services to cater for the specific needs of child victims of trafficking*, Fundamental Rights Agency, 2014, page 93

<sup>410</sup> The United Kingdom has opted out of this Directive

<sup>411</sup> *Unaccompanied refugee minors: The role and place of international law in the pursuit of durable solutions*, *The International Journal of Children’s Rights* 3: 405-416, 1995

have another dimension; they cannot be mortgaged to some future time and place, but to be durable must contribute now to the full development of the child.”

A durable solution has been defined<sup>412</sup> as one “long-term and sustainable and that will ensure that an unaccompanied or separated child is able to develop into adulthood in an environment which will meet his or her needs as well as fulfil his or her rights as defined by the Convention on the Rights of the Child and will not put the child at risk or persecution or harm.”

No process has been put in place to meet the obligations that arise from the Anti-Trafficking Convention and the Anti-Trafficking Directive to find a durable solution for each individual trafficked child. At best, some local authorities are undertaking parallel or triple planning with children they were accommodating in case they were not granted leave or remain when they reached 18.<sup>413</sup> This does not equate with a process to find a durable solution for these children. This approach has also been adopted in new guidance<sup>414</sup> to local authorities where there is a section on Immigration Status and Transition Planning but ties any durable solution very firmly to a child qualifying for refugee status, Humanitarian Protection or discretionary leave until the age of 17.5 years. If a child does not qualify for any of these statuses, it is expected that they will return to their country of origin.

There was also strong concern about local authorities returning Roma children to Romania and Slovakia without a determination of a durable solution.<sup>415</sup> It was also noted<sup>416</sup> that no risk assessments were being undertaken before Roma children were being returned to Slovakia, despite the fact that police officers may often have relevant information and intelligence. There was also concern about returns of children to Albania, even though the law enforcement agencies in Albania are not necessarily capable of putting safeguarding measures in place and EU enforcement agencies believed that intelligence disclosed to the Albanian police force may be disclosed to traffickers.<sup>417</sup>

It was also recognised that, even if a trafficked child does have a parent in his or her country of origin, the fact that the child has been trafficked may strongly indicate that his or her parent does not have capacity to effectively protect and support them.<sup>418</sup>

In Northern Ireland, social workers at the residential centre that accommodates children who may have been trafficked were said to be not considering durable solutions for these children.<sup>419</sup> In

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<sup>412</sup> *Safe & Sound: What states can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, UNHCR/UNICEF, October 2014

<sup>413</sup> Dragan Nastic

<sup>414</sup> *Care of unaccompanied migrant children and child victims of modern slavery*, Department of Education, March 2017, paragraph 74

<sup>415</sup> Dragan Nastic

<sup>416</sup> Phil Brewer & Dragan Nastic

<sup>417</sup> Phil Brewer

<sup>418</sup> Kalvir Kaur & Mandy John-Baptiste

Scotland, guardians from the Scottish Guardianship Service continued to work with trafficked children after they became 18 but as no durable solutions had necessarily been put in place many of them had become destitute and homeless.<sup>420</sup>

Furthermore, granting a trafficked child limited leave to remain until the age of 17.5 or 18 undermines the ability of the child, or those supporting the child, to find an individual durable solution for that child and prevents local authorities making long-term plans for the child, which can facilitate a clear pathway to adulthood.<sup>421</sup> A failure to find a durable solution for the child leaves them at risk of further exploitation and re-trafficking.<sup>422</sup>

## RECOMMENDATIONS

1. The UK parliament, the Scottish Parliament, the Welsh Assembly and the Northern Irish Assembly should establish a best interests determination process with a view to providing each individual trafficked child with a durable solution as required by Article 16.2 of the EU Anti-Trafficking Directive.

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<sup>419</sup> Fidelma O'Hagan

<sup>420</sup> Catriona MacSween

<sup>421</sup> Dragan Nastic

<sup>422</sup> Kalvir Kaur

## 11. OPPORTUNITIES TO OBTAIN TRAINING

### ABOUT CHILD TRAFFICKING

A number of statutory and non-statutory organisations are providing training about child trafficking and the number of professionals being trained and the breadth of that training compares very favourably with the other states involved in the ReACT Project. However, training was not available for all professionals who come into contact with children who may be trafficked and there is no UK-wide strategy to ensure that this is remedied nor quality assuring of existing training provision. This was seen by many interviewees as a major deficit in provision due to the risk posed to unaccompanied children if they have been trafficked and this was not identified at the earliest possible opportunity.

In a recent report<sup>423</sup> UNICEF UK asked the Home Office and the Department of Education to work with the College of Policing, the Association of Directors of Children's Service and the Local Government Association, as well as individual local authorities in England, to develop and deliver a comprehensive programme of training on child trafficking for the police, commissioners of children's services, child protection social workers, care teams, leaving care teams, foster carers and residential care workers. No response has yet been received. The Home Office did hold a meeting<sup>424</sup> with NGOs in England about training but there was no agreement about possible content.

Social work degrees do not generally contain modules on child trafficking and there is no nationally organised continuing professional training for social workers or strategy on social worker training, within which such modules could be located. In England and Wales, the Children Act 2004 established local safeguarding children boards in local authority areas in England and Wales. They are now responsible for ensuring the training is provided to social workers on child trafficking. But such training is patchy. For example, the London Safeguarding Children Board published the London Safeguarding Trafficked Children Toolkit in 2004 and training was then arranged in London and certain pilot local authority areas outside of London. The Toolkit or versions of it was subsequently adopted by most LSCBs.<sup>425</sup>

LIGHTING THE WAY

Police Scotland and the College of Policing in England and Wales and the Police Service of Northern Ireland all provide training in trafficking to police officers but the College of Policing course is a basic

<sup>423</sup> *Achieving a durable solution for trafficked children*, Laura Tuggey and Terry Smith, 2015, page 32

<sup>424</sup> *Mandy John-Baptiste and Debbie Beadle*

<sup>425</sup> *Richard Ross, consultant, working on a review of access to services for unaccompanied children in the UK*

e-learning training package on human trafficking.<sup>426</sup> However, although all officers have to complete it, this is in their own time and no-one monitors whether they fully comprehend its contents or is there to answer any queries.<sup>427</sup> There was no general ongoing professional improvement training but that the Metropolitan Trafficking and Kidnap Unit had co-operated with ECPAT UK to provide safeguarding training in the London Boroughs of Croydon and Haringey. However, it would take about a year and a half to provide such detailed training to all London boroughs.<sup>428</sup> In Greater Manchester, the Greater Manchester Modern Slavery Co-ordinating Unit has trained its tactical advisers and victim liaison officers to ensure that they can identify human trafficking.<sup>429</sup>

Other training that is provided in England is often delivered by NGOs such as CTAC and ECPAT UK. For instance, the former has provide bespoke training to the Local Safeguarding Children Board in Kent and co-operated with courses at Goldsmiths, Bristol, Wolverhampton and South Bank Universities.<sup>430</sup> The latter is presently providing a half-day course on the Modern Slavery Act and National Referral Mechanism for children and those who have attended include social workers, legal professionals, psychologists, police officers and academics.<sup>431</sup> ECPAT UK also provides a full-day training course on the NRM and safeguarding indicators. In addition, it provides bespoke training for individual local authorities in England and Northern Ireland, the police, the UK Border Force, Multi Agency Safeguarding Hubs and professionals working in the recent NRM pilot projects.<sup>432</sup> In 2016-2017, the Department of Education also funded ECPAT UK and the Refugee Council to provide training about child trafficking to foster carers and accommodation support workers throughout England.

A number of other NGOs and commercial providers have provided one-off courses but budget cuts in the public sector have reduced the profitability of these courses, as public sector agencies can no longer afford to pay for their employees to attend such courses. Within the first English Child Trafficking Advocates Trial the advocates received training on the UNCRC, child protection and child care law, age assessments, the various stages of the asylum process for children, identifying children who have been trafficked and functions of NRM, child sexual exploitation and CPS guidance on human trafficking, slavery and smuggling.<sup>433</sup>

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<sup>426</sup> *Authorised Professional Practice on Modern Slavery, College of Policing*

<sup>427</sup> Phil Brewer

<sup>428</sup> Phil Brewer

<sup>429</sup> Jayne Horan

<sup>430</sup> Mandy John-Baptiste

<sup>431</sup> Debbie Beadle

<sup>432</sup> Debbie Beadle

<sup>433</sup> Hannah Stott

Training on trafficking is generally well developed in Wales.<sup>434</sup> In 2013, the Anti-Slavery Commissioner established a multi-agency training group. Training is delivered in various ways. There is a three-hour basic awareness course for social workers and other front line professionals and a full day course for first responders, such as social workers. In the latter, there is a session on best practice when completing an NRM referral form. In addition, there is a three-hour CSE awareness course aimed at classroom assistants and NGOs. Eighty people have been trained as trainers by June 2016 and there are regular courses to expand and maintain the necessary pool of trainers. Training materials are also refreshed and uploaded onto a cloud which these trainers can access. For example, when the Anti-Slavery Monitoring Group launched a report<sup>435</sup> in February 2016 this material was immediately put up on the cloud. The training courses are also regularly evaluated by outside evaluators. Despite this, there is still concern that there is not sufficient training on the issue of child trafficking in particular, specifically regarding other exploitation types and the child protection response.

In Scotland, the Crown Office and Prosecutor Fiscal Service trains its prosecutors on child trafficking but further training is seen to be needed in the criminal justice system.<sup>436</sup> Policing Scotland has developed an on-line training package and an aide memoir for all its officers.<sup>437</sup> The Scottish Government is also considering providing training on child trafficking and its proposals will be contained in its forthcoming Trafficking and Exploitation Strategy.<sup>438</sup> In the meanwhile, an NGO, the Legal Services Agency, is providing the majority of the training about human trafficking.<sup>439</sup> It noted that such training has not been provided on a multi-agency basis, as it had been easier to persuade professionals to 'buy into' training provided by other professionals in the same field.<sup>440</sup>

The non-statutory Scottish Guardianship Service has developed a Knowledge Framework for Guardians to underpin its training<sup>441</sup> programmes but it does not include specific training about legal and judicial procedures apart from training for working with interpreters. Instead, it concentrates on procedures for joint working, roles and responsibilities in the child protection process and asylum law and procedures.<sup>442</sup> Guardians in the non-statutory Scottish Guardianship Service have to obtain a Level 2 qualification in immigration and asylum law awarded by the Office of the Immigration

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<sup>434</sup> Stephen Chapman

<sup>435</sup> *Time to Deliver: Considering pregnancy and parenthood in the UK's response to human trafficking*, Anti-Trafficking Monitoring Group, 2016

<sup>436</sup> Kirsty Thompson

<sup>437</sup> Written submissions from Police Scotland to the Justice Committee discussing the Human Trafficking and Exploitation (Scotland) Bill, 25 February 2015

<sup>438</sup> Kirsty Thompson

<sup>439</sup> Kirsty Thompson

<sup>440</sup> Kirsty Thompson

<sup>441</sup> Training has been provided by the Immigration Law Practitioners Association, Compass Mental Health, Freedom from Torture, Lifelink and the Service itself

<sup>442</sup> Training is provided by the Immigration Law Practitioners Association and OISC



Services Commissioner and either an SCQF social work qualification at level 8 or equivalent knowledge acquired by other means in advocacy or support for asylum seekers.<sup>443</sup>

A substantial amount of training is provided in the Northern Ireland. The Police Service for Northern Ireland has also provided training for officers who specialises in combatting trafficking and exploitation. The Law Society of Northern Ireland does not provide any training about trafficking for lawyers but the Law Centre (NI) has run one-day course for solicitors and barristers. There is also a regional anti-trafficking group that meets every three or four months, which is attended by both statutory and non-statutory agencies and trainers will be invited to attend if a particular training need has arisen, such as information about a new country of origin or modus operandi by traffickers.<sup>444</sup>

## RECOMMENDATIONS

1. All frontline professionals who come into contact with children should be provided with mandatory, appropriate and comprehensive, face-to-face, multi-agency training on child trafficking.
2. All training must aim to break down the culture of disbelief, must encourage anyone in contact with trafficked, unaccompanied and separated children to recognise and understand their vulnerability and must promote a culture of trust.

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<sup>443</sup> Catriona MacSween

<sup>444</sup> Fidelma O'Hagan

## APPENDIX A: METHODOLOGY

The United Kingdom is made up of England, Wales, Scotland and Northern Ireland. The UK parliament is responsible for certain central functions, such as immigration, foreign policy and defence. Other functions, such as child protection, have been devolved to the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly; although their functions are not entirely the same. In England, a range of functions are devolved to local areas but overseen by Central Government departments. As a consequence, a number of interviews were conducted with those working in England, Wales, Scotland and Northern Ireland to capture the diversity of provision.

The content of the field research built upon the data collected in the desk research phase and on information obtained in the EU Commission funded CONNECT Project, in which two of the particular fields of research were child trafficking and children going missing. There was neither the time nor the resources to conduct quantitative research. Therefore, this report largely represents a snapshot of provision in the spring and summer of 2016 when the interviews took place. It was also partly augmented by information subsequently provided by those interviewed before the report was completed.

As there was no existing statutory guardianship services for children who may have been trafficked, it was not possible to test the effectiveness of such services. Instead it was necessary to collect qualitative data from those acting in quasi-guardianship roles in NGO projects and those planning and creating the emergent guardianship services. As a consequence of this and the limited number of interviews provided for in the research brief, the data obtained was necessarily heavily dependent upon the experience and understanding of those interviewed. A number of lawyers who represent children who may have been trafficked in all four jurisdictions were also interviewed as to date they have played a key role in protecting these children.

One notable feature of the existing system of identification, protection and support for children who may have been trafficked is that best practice has tended to emerge where professionals from different disciplines are working together. Therefore, a number of these individuals from both statutory and non-governmental agencies involved in such multi-agency work have been interviewed.

The report was also refined following the ReACT Project's Training for Trainers event which took place in The Netherlands in January 2017, as a number of particular features relating to practice in

the UK emerged from the presentations by the trainers, who were largely from the UK, and also from the discussion groups which followed these presentations.