



ECPAT UK Briefing

Guardianship for Child Victims of Trafficking

KEY RECOMMENDATION

As part of its *Three Small Steps* campaign to protect child victims of trafficking, ECPAT UK is calling for a system of guardianship for child victims of trafficking.

The UK Government should establish a system of guardianship for child victims of trafficking. Such a system would mean that every child victim of trafficking would have someone with legal authority to take decisions based on their best interests and to care for and support them. A guardian would ensure that these children receive the educational, medical, practical and legal support they need.

WHY THE NEED FOR GUARDIANSHIP FOR CHILD VICTIMS OF TRAFFICKING?

Child victims of trafficking are amongst some of the most vulnerable children in the UK and are of particular concern to ECPAT UK. In addition to having suffered physical, sexual and/or psychological abuse at the hands of their traffickers, child victims of trafficking find themselves alone in the UK without parents or legal guardians. The level and quality of support provided to them varies widely and is often found to be inadequate.

In recent years the UK Government has issued a range of guidance to ensure a higher level of support for child victims of trafficking. However, despite these developments there remains concern that there are substantial gaps in this system of support and that these children are not able to turn to any responsible adult for guidance through the welfare, legal and immigration processes.

The main gaps in the current system of support for child victims of trafficking in the UK include:

- No system of independent monitoring on matters involving safeguarding children who are victims of trafficking;
- A lack of protection caused by a combination of inadequate legal advice and representation, with children having to instruct their own legal advisers, and a lack of appropriate frameworks for decision-making on children's cases;

- The absence of someone who can understand the wishes and feelings of children and ensure that all decisions are taken in their best interests;
- The absence of someone to coordinate all agencies working with individual children who are victims of trafficking and to ensure that their support and care needs are met.

ECPAT UK's call for a system of guardianship for child victims of trafficking is supported by the members of the Anti-Trafficking Monitoring Group.

ECPAT UK's call for a system of guardianship is also part of a wider campaign by other children's charities and organisations, such as the Immigration Lawyers' Practitioners' Association (ILPA), which are calling for a system of guardianship for all separated children¹ who arrive in the UK and are subject to immigration control.

THE ROLE AND RESPONSIBILITIES OF GUARDIANS

ECPAT UK believes that a system of guardianship would fill these important gaps and provide child victims of trafficking with the care and support they need to successfully negotiate the welfare, legal and immigration system, access all the services to which they are entitled and find durable solutions to their situations.

In September 2007, ECPAT UK and UNICEF published a report entitled *Rights here, rights now: Recommendations for protecting trafficked children*, which outlines the main responsibilities of a guardian. These responsibilities include:

- Ensuring that all decisions are taken in the child's best interests;
- Ensuring that the child victim has appropriate care, accommodation, health care provisions, psycho-social support, education and language support;
- Ensuring the child victim has access to legal and other representation where necessary;
- Consulting with, advising and keeping the child victim informed of his/her rights;
- Contributing to the identification of a durable solution in the child's best interests;
- Providing a link between the child victim and various organisations which may provide services to the child.

ECPAT UK also believes that such guardians for child victims of trafficking must be independent. Guardians should be appointed by an independent guardianship service, which can act in the best interests of the child and monitor the guardians. It is important that guardians are accountable to an independent guardianship service and not directly to government.

A good example of an independent guardianship service for separated children is the *Nidos* system in the Netherlands. Set up by the Dutch government in the early 1990s, its role is to exercise the authority of supervising these young people on their way to adulthood and to promote their interests. The guardian provides long-term continued support and has responsibility for the mental and physical well-being of the child.

¹ ECPAT UK uses the Separated Children in Europe Programme definition of a separated child: Separated children are under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver. Some children are totally alone while others may be living with extended family members.

INTERNATIONAL CALLS FOR GUARDIANSHIP

ECPAT UK's call for a system of guardianship for child victims of trafficking is in line with the UK's international obligations.

The 2005 Council of Europe Convention on Action against Trafficking in Human Beings, which the UK Government ratified in December 2008, calls for a system of guardianship:

Council of Europe Convention on Action against Trafficking in Human Beings

Article 10 – Identification of the victims [of trafficking]

4. As soon as an unaccompanied child is identified as a victim, each Party shall:

- a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;*

In 2005 the UN Committee on the Rights of the Child (UNCRC), the UN treaty monitoring body for the UN Convention on the Rights of the Child, clearly outlined the responsibility of States to provide guardians for unaccompanied and separated children. This reflected a call the UNCRC had previously made to the UK Government in 2002:

UNCRC General Comment No.6 (2005) – Treatment of Unaccompanied and Separated Children outside their Country of Origin

V. Response to General and Specific Protection Needs

(b) Appointment of a guardian or adviser and legal representative (Arts. 18 (2) and 20(1))

33. States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child's best interests. Therefore, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations.

In 2006 UNICEF published *Guidelines on the Protection of Child Victims of Trafficking*, which are outlined in the joint report with ECPAT UK, *Rights here, rights now*.

UNICEF Guidelines on the Protection of Child Victims of Trafficking

Guideline 4

Appointment of a Guardian by a competent authority to accompany the child throughout the entire process, either if the child is accompanied or separated until the child reaches maturity, ensuring that:

- *The child's views will be heard and the child shall be kept informed.*
- *A monitoring mechanism will be put in place for acts of the appointed guardian.*
- *Any action taken by the guardianship service is in the best interests of the child.*
- *Guardians must have child protection experience and knowledge of child rights.*
- *Guardians shall be given specific training, support and assistance.*

In March 2011, the Government announced that it will opt in to the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Victims. The Directive requires Member States to appoint guardians for child victims of trafficking.

EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Victims

Article 16 – Assistance, support and protection for unaccompanied child victims of trafficking in human beings

16(2) 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.

16(3) 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.

THOUGHTS FROM ECPAT UK'S YOUTH GROUP ON GUARDIANSHIP

The ECPAT UK Youth Group is a peer support group for child victims of trafficking. The group meets on a weekly basis to socialise, support each other and develop projects which reflect on the UK response to child trafficking.

During a workshop in early July 2010 the Youth Group explored what child victims of trafficking need to feel safe and discussed their views on guardianship:

- *I don't like it when my social worker keeps changing and I have to explain everything again.*
- *They shouldn't change; just one person that I can call anytime.*
- *Because you don't have any family you need someone to talk to, to listen to you. Someone to tell you what is good and bad.*
- *The more time you spend with a person, the more open you can be.*

UK GOVERNMENT RESPONSE TO DATE

To date the UK Government has not been supportive of the idea of a system of guardianship for child victims of trafficking.

On 25 May 2011, in a letter to ECPAT UK, the Immigration Minister, Damian Green MP, stated:

"As you will be aware, trafficked children are protected by the statutory duties placed on local authorities under the Children Act 1989 to safeguard and promote the welfare of children. Most children who enter the country without an adult to take parental responsibility will become looked after in the care system. They will be allocated a qualified social worker who will arrange a care placement where they will be safeguarded.

The social worker must assess the child's needs and draw up a care plan which will include plans for accommodation, educational support, and other services based on need (e.g. health services, which could include specialist treatment because of past experiences or pre-existing medical conditions).

The care plan will also include a risk assessment setting out how the local authority intends to safeguard the young person, including minimising the risk of any traffickers being able to re-involve a child in exploitative activities. This plan should include arrangements to be followed if the young person goes missing. The child will also be allocated an Independent Reviewing Officer, who is responsible for chairing reviews of care plans at regular intervals.

Additionally, every child has the right to be supported by an advocate. The local authority must have a system in place to provide written, age appropriate information to each looked after child about the function and availability of an advocate and how to request one.

Therefore, with such comprehensive arrangements currently in place, the Government does not support the idea of introducing a further "guardian" to the range of professionals who already have responsibility for looked after children. We remain of the view that we are compliant with the EU Directive on Human Trafficking, and that adding a new "guardian" to the current framework risks creating unnecessary complexity and confusion, which would not help to improve current practice."

ECPAT UK RESPONSE TO GOVERNMENT'S POSITION

ECPAT UK's believes that the Government's stance must change as child victims of trafficking are suffering unnecessarily due to the lack of continuity and support from a dedicated individual who can represent their best interests and advocate on their behalf.

No-one with parental responsibility

Child victims of trafficking will be unaccompanied children, without parents in the UK or with family who have been involved in their exploitation. They will have experienced rape, trauma, physical abuse or neglect. They will almost certainly have had their identity documents removed and been deceived or groomed into believing they were coming to the UK for a better life. Many of these children will also have experienced abuse of some description before they arrive in the UK.

Currently, the Government does not believe a system of guardianship is necessary. However, these children are likely to come face-to-face with the complex demands of the health, social care, immigration and police services within the first week after they have been rescued. As they are often without education and English language skills and lack an understanding of the safeguarding responsibilities of the statutory agencies, they are simply not able to process information and make informed choices.

Social workers do not have 'parental responsibility', a legal concept introduced by the Children Act 1989. As a result, these traumatised children are expected to instruct their own solicitors (they may have a criminal solicitor, an immigration solicitor and a welfare solicitor or any combination of these). As many of these children may still be under the control of their traffickers (e.g. psychologically or through debt bondage), it is inconceivable that they would be in a position to advise solicitors effectively and build trusting relationships with them. In addition, if their case is rejected by the National Referral Mechanism (and statistics show that they frequently are), the only way to appeal is by going to Judicial Review. Yet again, however, the children have to instruct their own legal team which will involve a solicitor and a barrister engaging in complex legal arguments. In their traumatised state and with their limitations as highlighted above, this is something these children are not in a position to do.

Similarly, these children have to authorise their own medical treatment because no-one has 'parental responsibility'. Again, their lack of understanding of the services available to them means that they are placed in a situation they are unable to cope with.

ECPAT UK therefore believes that expecting abused, confused and traumatised children to handle these responsibilities is unacceptable.

On the Government's approach

The Government has not consulted organisations such as ECPAT UK, Barnardo's and the National Association of Guardians Ad Litem and Reviewing Officers (NAGALRO) about guardianship for child victims of trafficking. It is therefore unclear as to how the Government's assessment has been made that a system of guardianship as required by the EU Directive is not needed in the UK.

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