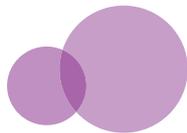


Protecting Children Everywhere



Watch over me

A system of guardianship for child victims of trafficking

who will speak for me when i can't?
who will explain things i don't understand?
who will keep me safe?
who will know my rights?



ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) is a leading UK children's rights organisation campaigning since 1993 to protect children from commercial sexual exploitation.

ECPAT UK works at the highest levels of government but also reaches out to practitioners and those working directly with children through research, training and capacity building.

ECPAT UK works with child protection agencies, communities and government, UK and international police, NGOs, to identify strategies to combat the exploitation of children in tourism, increase prosecutions of offenders and improve protection for child victims.

ECPAT UK is the national representative of ECPAT International, a global movement in over 70 countries.

ECPAT UK is a registered charity (Charity number 1104948) and a Company Limited by Guarantee (Company number 5061385).

ISBN 13 978-0-9553760-5-4

Written by Kalvir Kaur, ECPAT UK
Acknowledgement to Nadine Finch,
Barrister, Garden Court Chambers

Published by ECPAT UK
Copyright © ECPAT UK 2011

Designed and printed by The Printed Word
www.printedword.co.uk
Cover design by Andrew Roberts
www.andyrobertsdesign.com



Printed with the kind
support of The Body Shop



ECPAT UK
Grosvenor Gardens House
35-37 Grosvenor Gardens
London SW1W 0BS
T: 0207 233 9887
F: 0207 233 9869
info@ecpat.org.uk
www.ecpat.org.uk



Watch over me
A system
of guardianship

ECPAT UK
October 2011



Contents

Executive Summary	5
Introduction	6
Chapter 1 A system of guardianship for child victims of trafficking: a legal framework	8
Chapter 2 The UK Government's response: an untenable position	11
Essential components for a system of guardianship	20
Chapter 3 The additional role of a guardian	24
Chapter 4 Child victims of trafficking: their needs, their words	26
Chapter 5 Models of guardianship: Scotland & The Netherlands	33
Chapter 6 Failing to act: the cost implications	35
Conclusion	36
Appendix	38

Executive Summary

"If you don't have help you may go back to the same situation you were in and even die there. How can you have a good life?"

– Young person, ECPAT UK Youth Group

ECPAT UK calls upon the Government of the United Kingdom to 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 make decisions based on their best interests and advocate for long-term solutions. A guardian would ensure that, in the short term, child victims of trafficking received the educational, medical, practical and legal support necessitated by their history of trauma and exploitation.

Child victims of trafficking are among some of the most vulnerable children in the 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 woefully inadequate.

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 long-term solutions to their situations.

The UK is a signatory to the United Nations Convention on the Rights of the Child which, as this report will demonstrate, places an obligation on the UK Government to ensure that it offers a level of support to a child victim of trafficking that could be best provided by a guardian.

Sadly, the Government is resisting calls to meet its international obligations to introduce a system of guardianship for child victims of trafficking. This was made explicit to ECPAT UK in letters sent by the Prime Minister, Rt. Hon. David Cameron MP, on the 6 July 2011, Damian Green MP, Minister for Immigration, on 25 May 2011, and Tim Loughton MP, Parliamentary Under-Secretary of State for Children and Families, on 31 May 2011. The Government's present view is that the procedures already in place for children who are being looked after by children's services are sufficient to meet the specific needs of those that are the victims of trafficking.

It is unclear how the Government has reached this conclusion. To our knowledge, there has been no consultation with any child rights organisations, professionals or the young people themselves who are directly impacted by this issue. As such, it is our strong view that the Government's position is lacking in transparency, uninformed and without foundation.

This report represents ECPAT UK's response to the Government's position. It has been drafted on the basis of communication with a range of parliamentarians, countries in which a system of guardianship has been introduced, two workshops with ECPAT UK's Youth Group¹, and a comprehensive legal analysis of the UK's national and international obligations to child victims of trafficking. It finds that the UK has failed to prioritise the best interests of child victims of trafficking, and has failed to identify and subsequently provide for the distinct needs of these children. The impact of these failures continues to be disproportionate, serious and a real cause for concern.

ECPAT UK believes that a system of guardianship is essential to ensure the safety and wellbeing of child victims of trafficking. It will minimise the risk of child victims of trafficking going missing, assist in severing their links with traffickers, and provide a secure foundation to begin what, for many, will be a long and traumatic recovery. A system of guardianship is one that is supported by the young people themselves who recognise how a guardian could have impacted their lives for the better. Finally, it will ensure that the UK complies with the bold international obligations to which it has committed itself.

¹ The ECPAT UK Youth Group is a peer support group for female child victims of trafficking. The group meets on a weekly basis to socialise, support each other and develop projects that reflect on the UK response to child trafficking



Introduction

The call for a system of guardianship for child victims of trafficking has been an integral part of ECPAT UK's campaign since 2007. This report illustrates why this call even more relevant now, and requires immediate action.

In September 2007, ECPAT UK and UNICEF published a report entitled *Rights here, rights now:*

Recommendations for protecting trafficked children, which outlined the main responsibilities of a guardian; this has subsequently been reinforced, restated and expanded upon in our briefing papers.

Building on that foundation, ECPAT UK convened two workshops with members of its Youth Group, one in July 2010 and another in July 2011, to explore their views on a system of guardianship. The Scottish Refugee Council and Stitching Nidos, in The Netherlands, have also been consulted, owing to their own experiences of guardianship, together with a range of parliamentarians.

In May 2011, ECPAT UK and The Body Shop submitted a petition to 10 Downing Street calling for a system of guardianship to be introduced. With 735,889 signatures, it was one of the largest petitions ever received by the UK government. In the Government's response, the Prime Minister, Rt Hon David Cameron MP, Damian Green MP, Minister for Immigration, and Tim Loughton MP, Parliamentary Under-Secretary of State for Children and Families, all reiterate their belief that the existing arrangements for children are comprehensive.

Key extracts from letter to ECPAT UK from the Rt. Hon. Prime Minister, David Cameron MP, 5 July 2011:

"...we believe that existing arrangements for children are comprehensive – and that introducing a further professional... would be unhelpful. Trafficked children are protected by the statutory duties placed on local authorities under the Children Act 1989. All trafficked children are allocated a qualified social worker, who must assess the child's needs, and draw up a care plan covering accommodation, educational support, and other services based on need – for example, health services, which could include specialist treatment...The care plan must 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 also include arrangements to be followed if the young person goes missing.

"In addition the child will also be allocated an Independent Reviewing Officer, who is responsible for chairing reviews of care plans at regular intervals. Every child also has the right to be supported by an advocate. I therefore believe that the current arrangements for safeguarding trafficked children are sufficiently comprehensive... and there is a real risk that the addition of a further layer would add confusion and complexity..."

Watch over me: A system of guardianship

This report comprehensively demonstrates why the Government's response is uninformed and unsustainable.

ECPAT UK recognises that the UK Government has taken some important steps to identify and protect children being trafficked into the UK for the purposes of sexual and labour exploitation, forced marriage, illegal adoption, enforced criminality and benefit fraud, such as the publication of its Human Trafficking Strategy², on 19 July 2011. However, this has not led to a significant decrease in this trade and children who are identified as potential victims of human trafficking are continuing to go missing, even after they have made contact with children's services and the UK Border Agency. Disappointingly, the Human Trafficking Strategy fails to address the complex nature of child trafficking.

One reason for continued harm to child victims of trafficking is the failure by the UK Government to fully comply with its obligations under the United Nations Convention on the Rights of the Child (1989) (UNCRC) and the Council of Europe Convention on Action against Trafficking in Human Beings (2005) (the Convention)³ in relation to the provision of a legal guardian for each child victim of trafficking. Further obligations also arise under Article 16 of the EU

Directive on combating trafficking⁴ to "take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings".

Chapter 1 of this *Watch over me* report contains an exploration of the legal framework giving rise to the UK's obligation and the concept of a child's best interest. Chapter 2 analyses the Government's response and illustrates why such a position is untenable. The centre spread provides essential components for a system of guardianship. Chapter 3 identifies the additional role of a guardian for child victims of trafficking. Chapter 4 considers the views of the ECPAT UK Youth Group. In Chapter 5, ECPAT UK examines the Scottish Guardianship Pilot and the Netherland's guardianship model and Chapter 6 reflects on the arguments surrounding costs of a guardianship system. The conclusion demonstrates how child victims of trafficking are continuing to be failed. The appendix provides definition of key terms used in this report.

To put right the wrongs that have been suffered by this highly traumatised, vulnerable group of children whose voice we rarely hear, ECPAT UK believes that a system of guardianship is essential.

² Human Trafficking: The Government's Strategy : <http://www.homeoffice.gov.uk/publications/crime/human-trafficking-strategy?view=Binary>

³ Warsaw 16.V.2005

⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims

Chapter 1 A system of guardianship for child victims of trafficking: a legal framework

"Someone who is meant to guide you through your life stages like education, relationships and life generally, like a parent"

– Young person, ECPAT UK Youth Group

In its recent response to the Munro Review⁵, the UK Government acknowledged that "the United Nations Convention on the Rights of the Child (UNCRC) provides the framework within which to build a child-centred system [for the protection of all children at risk in the UK]".

This chapter provides an introduction to the principle of the best interests of the child, and considers why the Government's refusal to introduce a system of guardianship means it is falling short of its international obligations.

(i) United Nations Convention on the Rights of the Child 1989 (UNCRC)

Article 3 of the UNCRC states that in all actions concerning children their best interests shall be a primary consideration. In the recent case of *ZH (Tanzania)*⁶, the Supreme Court held that "Article 3 was a binding obligation in international law and that the spirit, if not the precise language [of this article] had been translated into our national law".

In the same paragraph, the Supreme Court went on to equate the duty to have regard to the need to safeguard and promote the welfare of children who are in the UK, which arises from Section 11⁷ of the Children Act 2004 and Section 55⁸ of the Borders, Citizenship and Immigration Act 2009 with the contents of Article

3 of the UNCRC. Therefore, even though the UK has not incorporated the UNCRC into national law, it can now be said to have to apply Article 3 when taking action in relation to all children who are present here.

Therefore, in all actions taken in relation to child victims of trafficking into and within the UK, the Government is under a duty to give primary consideration to their best interests. In her judgment⁹ in *ZH*, Lady Hale explained that the wording used in Article 3 meant a child's best interests must be considered first and could only be outweighed by the cumulative effect of other considerations. Lord Hope¹⁰ agreed with her and concluded:

*"The proper approach, as was explained in *Wan v Minister for Immigration and Multicultural Affairs* [2001] FCA 568, para 32, is, having taken this as the starting point, to assess whether their best interests are outweighed by the strength of any other considerations."*

Lord Kerr¹¹ went further and held that:

"It is a universal theme of the various international and domestic instruments to which Lady Hale has referred that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will

⁵ A child-centred system: The Government's response to the Munro review of child protection Department of Education, July 2011, page 5

⁶ *ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent)* [2011] UKSC 4, paragraph 23

⁷ The section imposes a duty on a wide range of public authorities to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children

⁸ This section imposes a duty on the Secretary of State for the Home Department to make arrangements to ensure that her functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK

⁹ *ZH (Tanzania)* at paragraph 33

¹⁰ *ZH (Tanzania)* at paragraph 44

¹¹ *ZH (Tanzania)* at paragraph 46

Watch over me: A system of guardianship

prevail over all other considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them. It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms."

Therefore, in taking any actions in relation to child victims of trafficking, it is our resolute view that the starting point for those in authority will be whether the actions they propose will be in that child's best interests.

The decision reached by the Supreme Court was a departure from previous case law, in which the rights of migrant children tended to be balanced against the need for immigration control¹². Furthermore, this departure does not merely resonate in the courts; it has practical consequences for the measures that should be adopted by the Government to ensure the best interests of a child victims of trafficking are met on a day-to-day basis. It also strongly suggests that it should now be adopting additional measures to ensure the best interests of migrant children, including child victims of trafficking, are identified, communicated and met. ECPAT UK believes the most important additional measure that must now be adopted is a system of guardianship.

(ii) The UK Government's position on a system of guardianship

It is the UK Government's present view that the procedures already in place to protect and care for children who are being looked after by local authority children's services are also sufficient to meet the specific needs of child victims of trafficking.

However, this is not an approach that is in keeping with the guidance provided by the United Nations Committee on Human Rights in relation to the proper interpretation of the UNCRC. In paragraph 20 of its General Comment No. 6¹³, which is an authoritative source of interpretation in relation to the UNCRC, the Committee stated that:

"A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs."

This clearly suggests that any provision must be designed to meet the individual needs of the child in question and in particular his or her needs as a child victim of trafficking. It is not sufficient to merely rely on a system designed to meet the needs of children in general.

This was further clarified by the UN Committee on the Rights of the Child in paragraph 33 of its General Comment No. 6, where it stated that:

"States are required to create the underlying framework and to take necessary measures to secure proper representation of an unaccompanied or separated child's best interests."

Any doubt that this guidance should be applied to child victims of trafficking was dispelled in paragraph 2 of the General Comment, in which it referred to child trafficking as being one of the primary reasons for migrant children becoming unaccompanied or separated.

Paragraph 33 then goes on to state that:

¹² See, for example, *Uner v the Netherlands* (2007) 45 EHRR 421, *Naidike v Attorney-General of Trinidad and Tobago* [2004] UKPC 49, [2005] 1 AC 538, at paragraph 75

¹³ on the *Treatment of Unaccompanied and Separated Children outside their Country of Origin* CRC/GC/2005/6 1 September 2005

"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 either reaches the age of majority or has permanently left the territory or jurisdiction of the State, in compliance with the Convention and other international obligations."

It is therefore our assertion that the UK Government is breaching its own obligations under the UNCRC. It is simply not sufficient to equate the needs of child

victims of trafficking with all other children in general without taking into account the child's distinct needs – this is simply a deficient outlook with catastrophic consequences for child victims of trafficking.

ECPAT UK's call for a system of guardianship would ensure the best interest of each child victim of trafficking is determined in accordance with the needs of that child, while simultaneously ensuring that the UK Government is compliant with its obligations under the UNCRC.



Chapter 2 The UK Government's response: an untenable position

It is the Government's position that it is not necessary to appoint legal guardians to represent child victims of trafficking as they are already represented in practice by a social worker from the local authority in whose area they are accommodated.

The arguments being relied upon by the Government are made more explicit in letters sent to ECPAT UK by the Prime Minister, Rt. Hon. David Cameron MP, on the 6 July 2011, Damian Green MP, Minister for Immigration, on 25 May 2011, and Tim Loughton MP, Parliamentary Under-Secretary of State for Children and Families, on 31 May 2011. This section of the report will analyse these arguments in turn, expose their weaknesses, and demonstrate that the Government's position is untenable.

(i) Allocation of a qualified social worker and arrangement of a care placement

Communication to ECPAT UK from the Government began by asserting that:

"...the Government is committed to combating this heinous crime – and to ensure that victims, especially children are properly safeguarded... Trafficked children are protected by the statutory duties placed on local authorities under the Children Act 1989. All trafficked children are allocated a qualified social worker..."¹⁴

In a separate communication, it also stated:

"Most children who enter the country without an adult to take parental responsibility for them will become looked after¹⁵ in the care system. They will be allocated

a qualified social worker who will arrange a care placement where they will be safeguarded."¹⁶

In the UK, primary responsibility for safeguarding and promoting the welfare of children is delegated to local authorities¹⁷ and it is not disputed that, in general, the Children Act 1989 should be applied to child victims of trafficking. However, it is not the case that once a child victim of trafficking comes into contact with local authority children's services he or she will automatically be provided with representation and a placement, which will be sufficient to ensure that his or her best interests are met.

Firstly, this presupposes that the child victim of trafficking will immediately disclose his or her history of abuse and exploitation to a duty social worker, the person who the child will initially encounter. Research and the experience of professionals working in the field indicate that this is not the case. For example, the NSPCC¹⁸ found that:

"Disclosure by a child or young person who has been trafficked takes time. Details are rarely available on the first day, either through purposeful or accidental disclosure. It was shown that disclosure of trauma, abuse or exploitation often only occurs after a relationship of trust has been built up between the practitioner and the child or young person. Like adults, when a child or young person first arrives in the UK, they will not know who they can trust... Establishing this knowledge and confidence in the relationship will take time. In this way, it was more likely for disclosure to result from prompting or eliciting once a trusting relationship had been established."

¹⁴ Letter to ECPAT UK from the Prime Minister, Rt. Hon David Cameron MP, 5 July 2011

¹⁵ That is they will become subject to a care order under Section 31 of the Children Act 1989 or will be accommodated under Section 20 of the Children Act 1989

¹⁶ Letters to ECPAT UK from Damian Green MP, Minister for Immigration, on 25 May 2011, and Tim Loughton MP, Parliamentary Under-Secretary of State for Children and Families, on 31 May 2011

¹⁷ By the Children Act 1989 (for England and Wales), the Children (Scotland) Act 1995 and the Children (Northern Ireland) Order 1995

¹⁸ *Breaking the Wall of Silence Practitioners' responses to trafficked children and young people* Pearce JJ, Hynes P and Bovarnick S, NSPCC (June 2009) paragraph 4.5

The same research also found¹⁹ that:

"Disclosure was shown to be part of a process: it was rarely a single event. It was common for the young people to provide details intermittently, at points when they felt safe to disclose... Sometimes disclosure took several months, sometimes up to a year or more..."

It was for this reason, among others, that the UN Committee on the Rights of the Child stated at paragraph 21 of its General Comment No. 6 that:

"The appointment of a competent guardian as expeditiously as possible, serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child."

The need for a guardian who would be able to ensure that the best interests of child victims of trafficking are met, even when the child his or herself cannot articulate them, was also echoed by Article 10.4 of the Convention, which was brought into force in the UK on 1 April 2009. This states that:

"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 the child."**

It is also the case that child victims of trafficking are not always allocated a qualified social worker who meets with them on a regular basis. The difficulties facing local authorities children's services in terms of budget cuts and the recruitment and retention of staff means that there may be a long gap before a child victim of trafficking is allocated a permanent social worker in some authorities and even then this worker

may leave after a short time and the process will have to start again. Therefore, a relationship of trust is not usually built up and sustained.

Even if a child victim of trafficking is allocated a social worker on a permanent basis, the necessary relationship of trust may not be developed. Recent research into the provision of social work support to unaccompanied and separated children, including child victims of trafficking, indicated that all too often these children had very little actual contact with their social workers.

A 2010 UNICEF report found that :

"In reality, very few unaccompanied or separated migrant children or young people received intensive personalised support from their social workers. In many cases, especially for those in semi-independent or supported accommodation²⁰, contact only took place when they called social workers to make an appointment with them. They were aware that they were one of many cases and did not always see their social worker as often as they would have liked."²¹

Indeed, many of the views of the young people from ECPAT UK's Youth Group bear out these exact failings. Despite the Government's view and reliance in its argument on social workers, the reality is very far from the rhetoric, with child victims of trafficking not being able to build and sustain any real relationship of trust, which is critical for disclosure and thorough assessment of need determining support with any allocated social worker. We resolutely believe such a function could only realistically be fulfilled by an independent guardian who would then be able to convey the child's experiences, disclosed over time and through a solid relationship of trust, to the social worker so that the child's needs are met in their best interest.

¹⁹ *Breaking the Wall of Silence* paragraph 4.11

²⁰ That is children who were not placed in foster care

²¹ *Levelling the playing field: A UNICEF UK report into provision of services to unaccompanied or separated migrant children in three local authority areas in England* Laura Brownlees and Nadine Finch, March 2010, page 124

(ii) The Care Plan

In its letters to ECPAT UK, the Government also asserted that:

"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 child protection procedures, which have been developed in the response to other forms of child abuse, do not necessarily meet the specific needs of child victims of trafficking. For example, the *Framework for the Assessment of Children in Need and Their Families*²² requires a local authority to undertake an initial assessment of a child's needs within seven days. Child victims of trafficking are likely to need far longer than this to disclose the details and the extent of their previous abuse and exploitation. This may be because they have been threatened by their traffickers that if they disclose anything to the authorities they and/or their families will be harmed or because they have been schooled by their traffickers to provide a false account of their past. It may also be because the child is so traumatised that they are unable to initially trust any adult in a position of authority. Therefore, a routine initial assessment is unlikely to alert children's services to their particular needs.

In paragraphs 7.23 to 7.28 of the *Working Together to Safeguard Children: Safeguarding children who may have been trafficked*²³, the Government assumes there will be a variety of different sources for information about the circumstances and history of a child victim of trafficking. This is rarely the case. At best, the social

worker will have to rely on the limited facts ascertained by the immigration or police officer who first encountered the child and the traumatised child themselves. The role of a legal guardian in such a situation is crucial as he or she can eventually encourage the child to disclose an account of the exploitation and abuse they have suffered, but more immediately he or she can also advise the social worker of the proper context and significance of any disclosure even when it is scant and confused.

This is of crucial importance, as a matter of child protection, as the child's trafficker will have every incentive to locate the child and reassert his or her physical and psychological control. The traffickers will view the child as a commodity whose value has yet to be exploited. They will also be concerned that the child will disclose information that may lead to their arrest and prosecution.

Therefore, if the child is not placed in a place of safety with an adult in whom he or she can confide or with whom he or she can feel secure, the chances of the child absconding or being abducted by their traffickers is very high.

A significant number of child victims of trafficking go missing from local authority accommodation within a matter of days and before it has been possible to complete even an initial assessment of their needs. For example, *ECPAT UK's 2007 Missing Out*²⁴ report identified 80 known or suspected victims of child trafficking in a small-scale study in Manchester, Newcastle and the West Midlands. Forty-eight of these children disappeared while in local authority care. In the same year, the Child Exploitation & Online Protection Centre (CEOP)²⁵ estimated in its own

²² Department of Health 4 April 2009, paragraph 3.9

²³ Home Office and Department for Children, Schools and Families, December 2007

²⁴ *Missing Out: A Study of Child Trafficking in the North-West, North-East and West Midlands* Beddoe C ECPAT UK London 2007 at page 20

²⁵ An affiliate of the Serious Organised Crime Agency, whose staff are seconded from that agency

report²⁶ that over an 18-month period, 183 of 330 victims of child trafficking had gone missing from local authority accommodation. The numbers identified by CEOP²⁷ in 2010 had decreased to 53 out of 287 but this still gives cause for concern in light of the guidance on trafficking now available to local authorities²⁸.

It is wrong for the Government to believe that an assessment of need of a child victim of trafficking would be immediate or in any event within seven days, owing to the complex issues of control, fear and mistrust likely to be present in the history of a child victim of trafficking. These fears will be partially alleviated when the child has one single person whom they can trust and speak to when required, who understands the complex psychological profile of child victims of trafficking, and is able to speak for them when they are not able to themselves. ECPAT UK believes this function can only be performed by an independent, legal guardian.

(iii) Risk assessment conducted by the social worker

The Government also relies on the fact that:

"The care plan [to be prepared by the social worker] 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 all arrangements to be followed in the young person goes missing."

In most situations, children's services will be able to use both the initial and the subsequent core²⁹

assessment to calculate the risk factors in relation to the child being assessed. However, children's services will usually have the benefit of statements and evidence provided by any nursery workers, teachers, relatives or neighbours with whom the child in question has been in contact. It will also be able to consult social services or NHS records to discover whether there have been any past indicators of abuse or exploitation.

In cases involving child victims of trafficking there will be no such 'paper trails' and the child is likely to have had very little, if any, contact with anyone except those who have trafficked or exploited him or her. Even if the traffickers are arrested, it is unlikely that they will be prepared to divulge any information about the child prior to any criminal trial, if at all.

In addition, research has shown that:

"The understanding that local authority social workers have of the experience of trafficked children and the risks they run remains patchy and sometimes inadequate... the norm is to place [trafficked children] aged 15 or younger in either foster care or in residential accommodation, whereas local authorities do not always accept the same level of responsibility for arranging accommodation for older children, aged 16 and 17, who consequently end up living in a variety of less protected forms of accommodation."³⁰

Even if risk factors are identified, these are likely to relate to the child being abducted or absconding and as yet there is very little provision³¹ in place to ensure that this does not occur. It is also the case that once child victims of trafficking do go missing, procedures in place to find missing children are of little use. An

²⁶ A Scoping Report on Child Trafficking in the UK Child Exploitation and Online Protection Centre and Border and Immigration Agency, London June 2007 at pages 6 and 8

²⁷ Strategic Threat Assessment : Child Trafficking in the UK 2010

²⁸ For example, the London Child Protection Committee's *London Procedure for Safeguarding Trafficked and Exploited Children* and the London Safeguarding Children Board's *London Safeguarding Children Toolkit 2009*

²⁹ The fuller multi-agency assessment which should be completed within 35 days if there are child protection concerns

³⁰ *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons*, The Anti-Trafficking Monitoring Group, June 2010

Watch over me: A system of guardianship

example from ECPAT UK's 2008 discussion paper³² exemplifies this very well:

"The immigration team at Birmingham airport swooped when they spotted six Chinese girls boarding a plane for Toronto. The suspicious-looking man travelling with them was wanted for trafficking offences in Singapore. The border officials stepped in to cut short his latest illegal trade. Then things started to go wrong.

The girls, aged 16 – 17, were taken into local authority care for their own protection. Within three days, three of them were missing, then four. Two more had been housed with foster parents, but after nine months the youngest was gone. She eventually came back, but refused to say what happened to her. The other four have not been seen since."

ECPAT UK believes that a legal guardian would protect these children whose knowledge, skills and experience would enable them to identify the risks facing the children and take the appropriate steps to protect them using a multi-agency response.

(iv) The provision of health care

The Government asserts that it is capable of providing child victims of trafficking with appropriate health care. There has as yet been little research into the health needs of this particular group of children but studies³³ that have been undertaken highlight the extreme forms of sexual, physical and emotional violence and abuse that these victims are likely to have experienced and the lack of provision designed to meet their particular needs.

More recently, the Anti Trafficking Monitoring Group³⁴ concluded that:

"There is also a lack of specialised mental health services. When presumed trafficked persons try to access those services available for asylum-seekers, they generally find the services are already oversubscribed. Further, the counsellors who are available may not have the expertise to deal with the effects of trafficking per se. One woman who had been identified as trafficked and was taken to hospital due to her very serious mental health condition received a visit from the hospital debt collector to see if it was safe to discharge her. The person was unable to wash herself, speak or make any eye contact."

It is therefore unclear what has informed the Government's position. What is undeniable is that child victims of trafficking are not receiving the health care that they require.

Article 6 of the UNCRC requires States to ensure the survival and development of any child in its territory. Therefore, in order to comply with the UNCRC, the Government must take steps to ensure that any mental health difficulties a child victim of trafficking may have does not threaten his or her survival or development.

The Government is also obliged by Article 12.1 of the Convention to take such measures as may be necessary to assist victims of trafficking in their psychological recovery. A particular duty to assist child victims of trafficking in their physical and psycho-social recovery will arise from Article 14.1 of the EU Directive.

By merely assuming that the general child protection service already in existence in the UK is sufficient has led to the Government once again to fail to meet its international obligations to child victims of trafficking.

³¹ Local action has been taken in Hertfordshire and the London Borough of Hillingdon to enhance protection for trafficked children and Barnardos is now running a small pilot scheme providing safe foster care for trafficked children

³² *Child Trafficking and Missing Children* ECPAT UK Discussion Paper Winter 2008

³³ *Stolen smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe* Zimmerman C et al London School of Hygiene and Tropical Medicine 2006 and *Promoting the emotional wellbeing and mental health of unaccompanied young people seeking asylum in the UK* Chase E, Knight A and Statham J British Association for Adoption and Fostering London (2008)

³⁴ *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons*, June 2010

It also indicates that unless a guardian is provided to such children it is unlikely that such assistance will be provided to child victims of trafficking according to their need on a regular basis as this is a part of a co-ordinating role that social workers are not well equipped to fulfil. This was recognised by the UN Committee on the Rights of the Child in paragraph 33 of General Comment No.6, where it stated that:

"The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes [and]... should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child."

(v) Independent Reviewing Officers [IRO]

In justifying its position, the Government also asserted that it was not necessary to provide child victims of trafficking with a guardian, as they:

"...will also be allocated an Independent Reviewing Officer (IRO), who is responsible for chairing reviews of care plans at regular intervals."

An IRO is appointed by the Local Authority by virtue of Section 118 of The Adoption and Children Act 2002. The statutory duties of the IRO are to:

- monitor the local authority's performance of their functions in relation to the child's case
- participate in any review of the child's case

- ensure that any ascertained wishes and feelings of the child concerning the case are given due consideration by the appropriate authority
- perform any other function which is prescribed in regulations³⁵.

The word independent in this context is misleading since IROs are employed by the local authority and, as such, can never be truly independent.

The National Association of Independent Reviewing Officers³⁶ has stated that:

"A key feature of the IRO role is that they should provide an independent perspective unhindered by managerial or political pressure of the local authority. However, under current arrangements, IROs are either employed directly by local authorities, or (more unusually) work for them as self-employed professionals, on contracts with the local authority."

"There is clearly a potential for significant tension within this arrangement. IROs may seek to make legitimate challenges, which are inconvenient or unwanted by the local authority."

"There is an obvious risk that local authority managers may seek to discourage or suppress such challenges."

"Self-employed IROs are particularly vulnerable, since they do not have the safeguards of the due process involved in disciplinary and grievance procedures. Their employment by the local authority may be terminated immediately, with little or no justification."

"This in-built 'tension' in the arrangement creates a potential difficulty for IROs trying to do their job conscientiously. Much more importantly though, there is a possibility that the welfare of looked-after children will be seriously prejudiced, because the"

³⁵ Department of Education - <http://www.education.gov.uk/childrenandyoungpeople/families/childrenincare/a0065612/independent-reviewing-officers-iros>

³⁶ Protocol for the Management of IROs within Local Authorities, National Association of Independent Reviewing Officers website, 11.6.2011

Watch over me: A system of guardianship

IROs may feel inhibited in making the challenges they think are needed because of the management arrangements to which they are subject."

Case law³⁷ also indicates that, in practice, such officers may fail to take the necessary action to protect the best interests of looked-after children.

In a recent survey³⁸ conducted by the National Association of Independent Reviewing Officers, 67% of respondents thought that IROs should not be located within Children's Services. They believed that they should be distanced from the operational management of service provision for looked-after children and should be situated in Chief Executive's departments or somewhere similar.

ECPAT UK believes it is clear that IROs are not independent, and cannot be equated or substituted in place of a guardian.

In paragraph 33³⁹ of General Comment No. 6, the Committee on the Rights of the Child expressed clear concern about the need for any guardian responsible for protecting a child's best interests to be independent from any authority making a decision about services provided to the child or any long-term solution. Therefore, by analogy, ECPAT UK believes an IRO, as presently located in the management structure of children's services departments, cannot fulfil a role that equates with that of a guardian.

The same argument will apply to the provision of an advocate for a child victim of trafficking by children's services.

In ECPAT UK's opinion, it is only a truly independent guardian that could fulfil the role as called for by the Committee and ensure that the best interests of a child

victim of trafficking is at the forefront of all actions concerning them.

(vi) The role of the guardian

In maintaining its position, the Government then went on to assert that:

"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."

This ignores the fact that social workers, IRO and advocates do not play a role in the many other jurisdictions in which a child victim of trafficking may be an applicant, witness or even defendant. As a consequence of being trafficked, children may be charged with a criminal offence or required to attend as a witness in criminal proceedings. As a migrant, they are also likely to have to apply for leave to remain in the UK. As children, they will not be legally competent to represent themselves and will need a legal guardian to assist them.

Paragraph 69 of the General Comment No. 6 states that unaccompanied or separated children, which will include child victims of trafficking:

...should also, in all cases be given access, free of charge, to a qualified legal representative."

In the UK, a child victim of trafficking is likely to be entitled to free legal aid if he or she is charged with a criminal offence, makes an application for international protection under the Refugee Convention or the European Convention on Human Rights, or brings a claim against the local authority that accommodated

³⁷ *S (a child acting by the Official Solicitor) v (1) Rochdale Metropolitan Borough Council (2) The Independent Reviewing Officer* [2008] EWHC 3283 (Fam)

³⁸ National Association of Independent Reviewing Officers' Response to Family Justice Review Interim Report, June 21st 2011

³⁹ "Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship"

him or her. However, as a child, he or she will not have the legal capacity to understand the extent of these proceedings or give full and accurate instructions. He or she is also likely to be further disadvantaged by a lack of knowledge of the English language or the legal system in the UK.

This will impact directly on his or her ability to make his views heard or reply to any case made against him or her. Therefore, in order to ensure that his or her best interests are met and Article 12 of the UNCRC is complied with, the Government should provide a child victim of trafficking with a legal guardian who could ascertain the child's wishes to the extent possible in relation to his or her age and maturity, and then communicate these to any legal representative on his or her behalf. In doing so, the guardian will also be able to draw on his or her own expertise and experience and so ensure that, if the child has a limited knowledge of what happened to him or her, this is placed in its proper and appropriate legal context.

Many child victims of trafficking will have multiple solicitors acting for them at any one time relating to the different legal issues that arise; this may be in the field of criminal law, welfare law and immigration law. The complexities of the legal process in each field can serve to confuse, alienate and bewilder the child. As a separated child, the child will not have anyone in whom parental responsibility is invested. That will mean there is no-one who can make informed decisions on behalf of the child should the child lack capacity to give instructions.

It is important to note that a solicitor can only act on instructions of the child client and is bound by rules of professional conduct. The Office of the Official Solicitor and the Court of Protection do not have the remit to assist in scenarios, for example at initial stages of any matter, where the child's instructions to

their solicitor are directly in conflict with their best interests. The Official Solicitor can only become involved in court proceedings if invited to do so by a judge, which itself is dependent on criteria. Since the described scenario is one that would occur at the initial stages of an application pending or general advice, and not one where the child's matter has progressed to court, the Official Solicitor would not have the remit to intervene.

The Court of Protection is a specialist court, set up as part of the Mental Capacity Act 2005 to deal with decision-making for adults who may lack capacity to make specific decision. The Court of Protection Rules 2007⁴⁰ when referring to children who lack capacity only do so in the context of a litigation friend, thus only in the context of actual litigation. No provision is made for the circumstances described.

In addition, the solicitor will be bound to conduct themselves in accordance with the Solicitors' Code of Conduct.⁴¹ For this particular scenario, the following rule is particularly relevant:

- Rule 2.01 – Taking on clients

(1) *"You are generally free to decide whether or not to take on a particular client. However, you must refuse to act or cease acting for a client in the following circumstances:*

when to act would involve you in a breach of the law or a breach of the rules of professional conduct;

...

(d) *where you know of have reasonable grounds for believing that the instructions are affected by duress or undue influence, you must not act on those instructions until you have satisfied yourself that they represent the client's wishes."*

⁴⁰ The Court of Protection Rules (2007) London HMSO. Accessed on 07/09/11 at http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/courts/court-of-protection/Court_Rules_2007.pdf

Watch over me: A system of guardianship

The Guidance to Rule 2 explains:

"Rule 2.01 sets out situations in which you must refuse instruction or, where appropriate, cease acting. These might include the following:

(a)

Breach of the law or rules

(iii)...where you may be dealing with a client who does not have mental capacity as defined in the Mental Capacity Act 2005 or where the client is a child special circumstances apply. You need to bear in mind that the question of capacity relates to the particular decision that needs to be made, and it is, for instance, entirely possible for someone to lack capacity to make certain decisions but have the capacity to instruct a solicitor on other matters...

Duress or undue influence

It is important to be satisfied that clients give their instructions freely. Some clients, such as the elderly, those with language or learning difficulties and those with disabilities are particularly vulnerable to pressure from others. If you suspect that a client's instructions are the result of undue influence you need to exercise your judgement as to whether you can proceed on the client's behalf. For example, if you suspect that a friend or relative who accompanies the client is exerting undue influence, you should arrange to see the client alone or if appropriate with an independent third party or interpreter. Where there is no actual evidence of undue influence but the client appears to want to act against their best interests, it may be sufficient simply to explain the consequences of the instructions the client has given and confirm that the client wishes to proceed. For evidential purposes, it would be sensible to get this confirmation in writing."

As such, and in accordance with their own professional code of conduct, a solicitor in the circumstances described can only explain the consequences of the instructions the child client has given and confirm that they wish to proceed in that manner. The solicitor does not have the authority to replace the child client's instructions with their own judgment, even if instructions are contrary to the best interest of the child.

The likelihood of child victims of trafficking being involved in other judicial proceedings is clear from research⁴² conducted by CEOP. It was able to identify the precise form of exploitation that the trafficked children had suffered in 219 cases and found that 76 had been sexually exploited, 19 had been trafficked for domestic servitude, four for illegal adoptions and eight for servile marriages. This suggests that these children may well become involved in family and/or criminal proceedings, as well as having to apply to regularise their immigration status.

The fact that a significant number of the children were also brought here to be exploited as part of a criminal enterprise – 39 for cannabis cultivation, 23 for benefit fraud and 20 for street crime – also confirms the likelihood of such children having to appear as witnesses, or even defendants, in criminal trials.

This is a major failing that ECPAT UK believes has resulted in significant harm to child victims of trafficking. We believe that not only would the provision of a legal guardian resolve this shortcoming but would also comply with Article 12.2 of the UNCRC, which states that:

"The child shall in particular be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body..."

⁴¹ Solicitors Regulation Authority *Solicitors Code of Conduct 2007* accessed on 07/09/11 at <http://www.sra.org.uk/solicitors/code-of-conduct.page>

⁴² *Strategic Threat Assessment: Child Trafficking in the UK 2010*



Essential components of a guardianship system

To ensure that a system of guardianship truly meets the best interest of child victims of trafficking, and to ensure that the UK Government complies with relevant international obligations, ECPAT UK believes that the Government must establish an appropriate guardianship system that has the following components as minimum criteria:

Component 1

A system of guardianship is an independent service that employs a legal guardian to work with each child victim of trafficking or suspected child victim of trafficking.

Component 2

Each guardian would have an overriding duty to act in the child's best interests at all times.

Component 3

The guardian would be appointed as soon as the child comes to the attention of a first responder or anyone employed by central or local government, and would continue until he or she has been provided with a long-term solution, which will be in his or her best interests, and/or he or she has reached the age of 18.

Component 4

The guardian's first task would be to forge a relationship of trust with the child victim of trafficking so as to ascertain his or her wishes and feelings, taking into account his or her age, maturity and abilities (this may take some time given the influence which the person exploiting the child may still be able to exert. This influence is likely to decrease as the trust in the legal guardian grows).

Component 5

The guardianship service would be responsible for monitoring the support provided by the individual guardian to each child victim of trafficking and providing the guardians with regular and appropriate information and training

Component 6

The guardianship service would also be responsible for ensuring that the individual guardian has sufficient background information about child trafficking to enable him or her to understand the child's history and protection needs.

Component 7

The guardian should be provided with all relevant information and be an active participant in the decision-making process leading to any action, which local or national government propose to take in relation to the child. This should include, but not be limited to, any reviews of his or her accommodation and care by a local authority, any involvement in criminal proceedings, any application for compensation, any interviews or appeals in relation to any application for asylum or other international protection made by or on behalf of the child.

Component 8

The guardian would ensure that the child is provided with sufficient information and explanations about his or her right to local government services and international protection. This would enable the child to indicate to the guardian what he or she wishes to say in relation to any choices open to him or her. The guardian would take into account his or her age, maturity and abilities when acting in the interests of the child (when a child is very young or too immature or unable to fully articulate his or her needs, the guardian would advise the authorities or the court on the basis of his or her assessment of what action will best meet the best interests of that child).

Component 9

The guardian would facilitate the child's contact and communication with professionals and persons in authority and monitor their actions to ensure that the services they provide do meet the child's best interests.

Component 10

The guardian would have the authority to give instructions to any legal representative acting for the child in any criminal, community care, public law or immigration and asylum proceedings to which he or she may be a party.

Component 11

Individual guardians should be selected on the basis that they have an appropriate level of knowledge and experience of human trafficking, the child protection system, child development, child psychology, the health care and educational system, international children's rights and human rights law. They should also have been the subject of enhanced CRB checks.

Component 12

The guardian would be truly independent and have no economic or institutional connection with either the local authority providing the child victim of trafficking with accommodation and financial support or Government agency responsible for making formal identification of the child as a child victim of trafficking, including the UK Border Agency.



The UK has also now decided to opt into the EU Directive on combating trafficking⁴³ and Article 15.1 of this Directive will place the Government under a duty to:

"...take the necessary measures to ensure that in criminal investigations and proceedings... competent authorities appoint a representative for a child victim of trafficking in human beings..."

Thus, the obligation on the UK Government will be strengthened for child victims of trafficking. However, right now, the Government must fulfil its existing obligations and recognise that the provision of a legal guardian is a means of ensuring that the best interests of a child victim of trafficking are met, particularly in the legal arena.

⁴³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims

*"If they provide a guardian,
they should stay with you
until you are 21"*

Young people, ECPAT UK
Youth Group

"There would be no drama. Your life would be a bit better. Your life would always include drama but it would be better"

"Someone who takes responsibilities and helps make a decision like a parent"

"Someone who gives you food and money"

"Someone who helps me with my education"

"Someone who will teach you how to read and do homework with you"

"Someone who is meant to guide you through your life stages like education, relationships and life generally, like your parent"

"A guardian is someone who protects you from danger"

"Someone who takes care of you"

Chapter 3 The additional role of a guardian

"I would live in safe accommodation (if I had a guardian)" – Young person, ECPAT UK Youth Group

(i) Compensation

The fact that child victims of trafficking have been victims of crime also suggests that many of these children may be entitled to compensation, as provided for in Article 15.3 of the Convention and Article 17 of the EU Directive. Again, it is unlikely that social workers are going to be aware of such compensation schemes or have the time to pursue them on behalf of a child victim of trafficking; this would be a role better suited to a legal guardian who would be acting in a legal capacity in the best interests of the child.

As such, ECPAT UK believes that the only way a child victim of trafficking is able to pursue any claim to compensation as a victim of crime, something which is his or her right, is with the provision of a legal guardian.

(ii) Parental responsibility

It may be asserted that a local authority acts as the 'corporate parent' for a child victim of trafficking. However, this is not the same as having parental responsibility for such a child, as defined by Section 3 of the Children Act 1989, which states that it means having the rights, duties, powers, responsibilities and authority that by law a parent would have in relation to that child. Instead, a local authority's powers will be limited to those, which are granted by Section 3(5) of the Children Act 1989 to anyone who is actually caring for a child, that say to do what is reasonable in the circumstances of the case for the purpose of safeguarding and promoting the welfare of the child.

A local authority would only acquire parental authority for a child victim of trafficking if it applied for a care order under Section 31 of the Children Act 1989.

However, such an order is usually only made to protect a child from his or her parent and it is only in rare cases that a child will have actually been trafficked into the UK by a parent and that they will still be here.⁴⁴ This is because the threshold criteria for making a care order are that the child is "suffering, or is likely to suffer, significant harm" and that this harm can be attributed to "the care given to the child, or likely to be given to him if the order were not to be made, not being what it would be reasonable to expect a parent to give him" or "the child being beyond parental control".

This means that, although the local authority has the authority to make decisions relating to the welfare of the child victim of trafficking, it would not appear that it has the jurisdiction to make decisions that relate to anything but welfare issues falling within the competence of the Children Acts.

(iii) Access to education

Many child victims of trafficking have severe problems accessing education. Despite Article 10(3) of the Convention stipulating that in instance of age-disputed child victim of trafficking, the child shall be presumed to be a child pending verification of age, this rarely, if ever occurs. Many child victims of trafficking between the ages of 14 to 18 are likely to be age disputed. Due to the lengthy process of age dispute challenges it is not uncommon for periods of up to two years for the challenge to reach conclusion. One member of ECPAT UK Youth Group was 14 when she was identified as a victim of trafficking but was age disputed. Only after two years of litigation was her age accepted; it then took another two years for her to be enrolled at an institution of education – a total of four years. The impact of such a situation impacts negatively on the child.

⁴⁴ In such cases, it is likely that the parent will be subject to criminal proceedings and then a local authority may initiate care proceedings

It is ECPAT UK's firm belief that a legal guardian would be able to ensure that the child's right to appropriate education is accessed promptly without undue delay and take the appropriate steps to ensure that the obligations under the Convention on Action Against Trafficking in Human Beings are fulfilled.

(iv) National Referral Mechanism

ECPAT UK is aware that a number of child victims of trafficking are never referred to the National Referral Mechanism (NRM) for formal identification; some of the reasons for this failure is a lack of knowledge on the part of those who act as first responders, a lack of skills to identify the child as a victims or suspected victim of trafficking, and a lack of clarity of the process and value surrounding the NRM.

ECPAT UK is of the view that a guardian would ensure that all child victims of trafficking are referred without delay to the NRM for formal identification within a multi-agency framework as envisaged by the Convention on Action Against Trafficking in Human Beings. Referral to the NRM acts as a gateway process – it is only then that the child can enforce his or her rights under the Convention to ensure that he or she is properly safeguarded, protected and provided with a recovery period.

ECPAT UK believes that the need for a legal guardian for child victims of trafficking remains valid, real, and in line with the Government's obligations to ensure that the child has an individual with parental responsibility to take decisions informed by the child's best interest.

Chapter 4

Child victims of trafficking: their needs, their words

"Someone to ensure you are safe and happy at home and are a happy child"

– Young person, ECPAT UK Youth Group

(i) What do the children themselves say?

With consideration to Art 12 CRC, ECPAT UK convened workshops with members of its Youth Group, a peer support group for female child victims of trafficking that meets on a weekly basis to socialise, support each

other and develop projects that reflect on the UK response to child trafficking. Two workshops were held, one on the 9 July 2010 and the other on 29 July 2011.

Listed below are the views of the children of the main areas in which they felt their needs were not being met:

<i>Views of the child</i>	<i>Identified unmet need</i>	<i>Requirement fulfilled by a guardian</i>
<p><i>"attention from one person who I could talk to and they will listen to me and tell me how to go about things"</i></p> <p><i>"Someone who could help show me how to look after the baby, because I have no one to show me"</i></p>	Not being listened to and/or given advice when required	Someone who is supportive, a good listener, available, understanding, helping, attends appointments, caring
<p><i>"They shouldn't change, just one person that I can call anytime"</i></p> <p><i>"I don't like it when my social worker keeps changing and I have to explain everything again"</i></p>	Not being provided with one person who is a constant	To have one focal point of assistance
<p><i>"My social worker listens to my foster mum more than me"</i></p> <p><i>"[My social worker] always talking about money, she says 'I don't get paid if I go over five hours so I can't stay longer'"</i></p>	Lack of ownership in one person	For one person to illustrate that they 'belong' to the child
<p><i>"Everything shouldn't stop when you are 18. I don't feel like an adult, my brain is the same, now they tell me I will have no support"</i></p>	Being aged out of support	Continuation of support after turning 18

While ECPAT UK recognises that the above views are applicable to all separated children, it is important to be aware of the disproportionate impact on child

victims of trafficking of these unmet needs owing to their history of exploitation, abuse, control and deprivation.

Watch over me: A system of guardianship

In light of these factors, an environment of trust and support must be fostered before any real disclosure of history will commence. Control and fear of repercussions are tools employed by the trafficker frequently and with great success.

As such, ECPAT UK believes the need for a guardian to be appointed to the child – someone who will act in the child's best interest, be a constant in the child's life, allow them to forge a relationship until such time as they are able to disclose their experiences and assisting them to regain control over their decision making ability by actively encouraging self-

determination – is vital to an appropriate safe-guarding response to child victims of trafficking.

Case studies

The call for a system of guardianship for child victims of trafficking is borne out of the experiences of the children themselves, aside from the UK's legal obligations, and a recognition by professionals, including ECPAT UK, that this group of children have distinct needs over and above that of separated children who are not victims of trafficking while at the same time sharing common needs.

Case study I: Safe accommodation for child victims of trafficking

ECPAT UK is deeply concerned about the number of child victims of trafficking who go missing from local authority care and become vulnerable to further exploitation.

Our 2007 report, *Missing Out: A Study of Child Trafficking in the North-West, North-East and West Midlands*⁴⁵, found that a high number of separated children thought to be trafficked were going missing from local authority care, never to be found again. Of the 80 cases of known or suspected child victims identified in the report, 64% went missing from social services care, of which only four were located. These children tended to go missing within the first seven days of being in care, some within 24–72 hours. In March 2009, this problem was further highlighted by *The Guardian* newspaper, which reported that at least 77 Chinese children had gone missing from a single borough in London since 2006.

In 2009, the Home Affairs Select Committee report on human trafficking raised concerns about suspected child victims in local authority care who go missing and are never located. The Committee was particularly alarmed by accounts that traffickers may be using the "care home system for vulnerable children as holding pens for their victims until they are ready to pick them up".⁴⁶ In May 2009, the then Prime Minister, Gordon Brown, described the situation of potentially trafficked children going missing as "completely unacceptable".⁴⁷

How would a guardian help in these circumstances?

ECPAT UK strongly believes that for children to engage meaningfully in decisions about their own accommodation and care, they need to be kept

informed about their current circumstances, what may have happened to them (the trafficking process), their care and placement plans, the immigration process, any ongoing criminal investigations with respect to their traffickers, and their human rights and entitlements. While all professionals should strive to

⁴⁶ The Trade in Human Beings: Human Trafficking in the UK, Home Affairs Select Committee, May 2009 <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/23/2302.htm>

⁴⁷ Hansard, 13 May 2009, Column 853. <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090513/debtext/90513-0003.htm>

implement this principle, an independent guardian for the child can be especially useful in this regard and in particular to ensure that:

- Such children are placed in safe accommodation
'I would live in safe accommodation (if I had a guardian)' (ECPAT UK Youth Group young person)
- Such accommodation is appropriate with the necessary support structure required for recovery from the trafficking experience
- As part of the therapeutic care, the accommodation must be a place where the child feels happy
'Someone to ensure you are safe and happy at home and are a happy child'
(ECPAT UK Youth Group young person)
- The accommodation is not in the vicinity of either the trafficker or in any area connected to the child's trafficking experience, or that the child has to pass through such an area as part of their travel journey to reach the accommodation
- The accommodation has a system of ensuring missing children are recorded and notified to the appropriate bodies within 24 hours
- The accommodation does not allow unidentified and/or unknown individuals to enter, remain or loiter in or around the accommodation

Case study II: Cannabis cultivation prosecutions of child victims of trafficking

*'On 14 May 2008, X⁴⁸, a 15-year-old Vietnamese boy was arrested by police officers who found him guarding 280 cannabis plants in a house in Doncaster, South Yorkshire. The police smelled marijuana and broke into the house without prior intelligence. X was the only person in the house. The police and the Crown Prosecution Service (CPS) failed to identify him as a victim of trafficking and his case was sent to court. It was only in court that his lawyer announced that the boy had disclosed to her that "an older man and a group of men with sticks had threatened the boy and told him that he had to stay in the house and wait until the plants had grown". The boy had also told her that he was too scared to leave the house and did not know anyone else in Doncaster. He had been trafficked into the UK, via France, and promised a job in a nail bar. Notwithstanding that, the lawyer advised the boy to plead guilty. On 11 June, he was given a one-year sentence and is currently in a Secure Training Centre, which is a euphemism for a children's prison.'*⁴⁹

Following NGO awareness-raising, the problem was formally recognised last year in a report produced by the CEOP, which is part of the Home Office. The report⁵⁰ found that at least four children in the geographical areas covered by CEOP's study, who have been exploited in cannabis factories but had not been identified as victims of trafficking, were arrested for cannabis cultivation.⁵¹ These children have been prosecuted and imprisoned. The report recognises "the need for child victims of trafficking not to be arrested and prosecuted for crimes committed whilst being in their exploitative situation"⁵² as being 'of most importance'.

ECPAT UK has found that children discovered in cannabis factories are going missing from local authority care while, for example, they are waiting to be age assessed or when they have been either released on bail

⁴⁸ The boy's name has been changed

⁴⁹ Doncaster Free Press, 11 June 2008, <http://www.doncasterfreepress.co.uk/free/Child-jailed-for-Intake-drugs.4175563.jp> [accessed on 04 July 2008]

⁵⁰ Home Office (2007) A Scoping Project on Child Trafficking in the UK

⁵¹ Ibid, p.32

⁵² Ibid, p.52

or from a custodial sentence. While undertaking research for its 2007 report *Missing Out: A Study of Child Trafficking in the North-West, North-East and West Midlands*, ECPAT UK identified two Vietnamese boys, one as young as 13 or 14, who had been reported as trafficked for cannabis factory labour. One of these two children went missing before even registering with Social Services.

In its 2010 Strategic Threat Assessment, CEOP reported that Vietnamese children comprise the largest identified group going missing from local authority care. Of the 42 children identified as missing during the reporting period (March 2009 – February 2010), 28 (67%) were Vietnamese. A number of these children were rediscovered in cannabis factories.

It is believed that Vietnamese children go missing from care as they feel pressured to return to situations of exploitation in order to pay off debt bonds to their traffickers who threaten both them and their families back home if they fail to do so. These debts are sometimes secured against relatives' land in Vietnam as insurance, further increasing victim complicity.

How would a guardian help in these circumstances?

It is ECPAT UK's firm view that in such situations, a guardian would be invaluable on many levels, but particularly to ensure that:

- Children encountered in such situations are never the subject of criminal proceedings in accordance with the Association of Chief Police Officers (ACPO) Guidance of 2010 which crucially states that:

"Every individual identified as, or claiming to be, a child or young person in a cannabis farm should be assessed on a case-by-case basis to ascertain whether they may have been trafficked. Where circumstances give rise to reasonable suspicion that they are being exploited or abused, a child welfare response should be taken."

- The child trafficking assessment tool and risk assessment matrix, as developed by the London Safeguarding Children Board, is actively employed to refer children to the National Referral Mechanism. The matrix acknowledges that cannabis cultivation is a form of enforced criminality and that any child identified in a cannabis factory should be referred as a child victim of trafficking
- A trusting relationship is formed with the child in order that the child may be able to provide a comprehensive account of their experiences sooner rather than later, thus limiting attacks on credibility and failure to identify as a child victim of trafficking

'The more time you spend with a person the more open you can be'

(ECPAT UK Youth Group young person)

Case study III: Police failure to investigate a child's complaints of trafficking

In the very recent case of *OOO & Ors v The Commissioner of Police for the Metropolis* [2011] EWHC 1246 (QB), a High Court judge declared that the Metropolitan Police Service (MPS) violated the human rights of four victims of trafficking and child slavery by failing to investigate the alleged perpetrators when asked to do so in 2007. The court found that the MPS breached the victims' rights under Art 3 & 4 ECHR.

All claimants were victims of child trafficking in the UK.

The victims were trafficked into this country from Nigeria when they were 11-15 years old. They were forced to work as unpaid servants for families in North London and subjected to serious physical and emotional abuse. By the time they escaped their abusers and approached the police for help they were young adults. One of the victims (RTF) sought help while she was still in servitude in 2004. The other victims did so in 2007 after they had escaped servitude, with the help of Hackney Community Law Centre ("HCLC") and Africans Unite Against Child Abuse ("AFRUCA").

This judgment follows separate litigation by one of the victims (RTF[2]) against the MPS and the London Borough of Enfield ("LBE") regarding their alleged failure to investigate her abusers in 2004. That claim settled out of court in 2010/2011 without admissions of liability but in return for LBE and the MPS paying RTF substantial damages. The MPS also provided RTF with an apology dated 12 January 2010 for its failure to investigate in 2004. The MPS has not apologised to any of the victims for failing to investigate their abusers in 2007. Instead it argued unsuccessfully in court that it did not owe a legal duty to investigate credible allegations of servitude unless those allegations were reported whilst the servitude was ongoing. MPS lawyers also tried to blame the victims in court for the lack of an investigation by suggesting that they had failed to cooperate with the police. This suggestion was roundly rejected by Mr Justice Wyn Williams, describing it as "wholly improbable"[3]. The MPS persisted in making this allegation even about RTF, despite the letter of apology it offered to her on 12 January 2010. This stance by the Commissioner of the Police for the Metropolis left Wyn Williams J "mystified".[4] He accepted the victims' accounts "without hesitation"[5] and rejected key aspects of senior officers' evidence[6].

RTF said:

"It took all the courage I had to walk into Southgate Police Station and Enfield Social Services to ask for help in 2004 but they sent me back to my abusers and then blamed me."

Another victim and claimant, OOA, said:

"When I got away from my abusers, I went to Walworth Road police station in 2007. I told a police officer that I had been beaten unconscious but he did nothing."

OOO and MTK said: *"Why did the police not help us, why did our lives not matter, is it because we were not born in this country?"*

(Press Release: 'Police failed child victims of slavery', Bhatt Murphy Solicitor May 2011)

How would a guardian help in these circumstances?

ECPAT UK believes that the above case encapsulates exactly why child victims of trafficking require a legal guardian; it is of course of note that in this particular case not only were the children represented by robust lawyers but supported by an active NGO. Despite this, the glaring omission of a legal guardian resulted in no one with legal authority to take decisions based on their best interests, including the authority to speak on their behalf to ensure they received the legal support they required. This was something that only occurred after a significant number of years had passed since the initial complaint and following litigation where the children were questioned on events that had occurred many years earlier.

In particular, ECPAT UK believes a guardian would have ensured that:

- The relevant authorities were provided with sufficient information to instigate an immediate investigation and refer the children to the local child protection team
- The guardian would know of, and ensure that, the local authorities fulfilled their duties to the child
- The child's allegations were taken seriously and they were not faced with the sole prospect of returning to their traffickers

'If you don't have help you may go back to the same situation you were in and even die there. How can you have a good life?'

(ECPAT UK Youth Group young person)

The illustrations demonstrate how the distinct needs of child victims of trafficking are not being met, how those very needs are not at times even being recognised, leading to the positions of these children being compromised by the lack of identification, knowledge and process. We do not believe that there can be any stronger argument for a system of guardianship for child victims of trafficking than a recognition that without such a system we continue to harm and fail these children.

(ii) What would a guardian mean to us?

The members of the Youth Group provided a very passionate response to this discussion question, some of which have been reproduced below accompanied by pictures illustrating their views.

It is clear to us that the young people themselves recognise how their lives could be better if there was an appointed guardian. Reflecting on the failures of the system as relates to them as child victims of trafficking, they have identified gaps and problems that could more appropriately be met by a guardian.



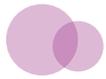
"This shows someone who would help me feel safe and find accommodation. To take me to the hospital when I need and to take me to school"



"My picture shows someone with lots of legs so she can get things done fast. She has lots of hands because she has a lot to carry and care for. She has a smile, because everything she does is with a smile, but it is not a fake one, it is a true smile. She is not pretty because it doesn't matter what she looks like, it is that she is beautiful and happy inside"



"This picture has big ears for listening to me. Helps me with religion, financial help, education, emotional help, sexual health, health guidance, comforting you, warns me about alcohol and drugs, accompanying me to certain appointments, help with socialising, is respectful and keeps me safe"



Chapter 5

Models of guardianship: Scotland & The Netherlands

(i) Scottish Guardianship Pilot

As a result of vigorous advocacy, the Scottish Government agreed to consider the development of a guardianship pilot in Scotland. Consequently, civil servants approached the Scottish Refugee Council seeking guidance and assistance in developing a guardianship pilot project. The project secured funding from the Big Lottery and the Paul Hamlyn Foundation to enable the Guardianship pilot to be funded for 30 months. In partnership with the Aberlour Child Care Trust, the Scottish Refugee Council agreed a service model. The model became active from 1 September 2010.

The aim of the pilot is to serve the specific needs of separated children, not just child victims of trafficking. The guardian's role, (referred to as an independent advocate) is described as:

*"...would be known as an Independent Advocate (IA) and their role would be to support separated children to understand and steer a course through the complexities of the welfare and immigration systems. The IA would occupy the spaces between all the other agencies supporting the child, consciously avoiding encroaching on any other professional role. From their unique, independent viewpoint, they would develop a complete overview of the child's experience. They would be a consistent point of professional contact ensuring that the child's best interests are taken into account in all decision-making affecting them."*⁵³

Early evaluation of the project has shown that the children involved seem to be much more aware of the asylum system, have a better understanding of the roles and remits of the adults working around them,

have felt more involved and supported, have seen to be more confident, assertive, questioning and more aware of their options.

(ii) The Netherlands – Stitching Nidos

Stitching Nidos, an independent guardianship and family supervision agency has, since 1 December 2001, been accepted by the Netherland Ministry of Justice as a Guardianship and Family Guardianship Organisation for refugees and asylum seeker. Since the beginning of the 1990s, the organisation has been working as a guardianship agency for separated child asylum seekers under the name of De Opbouw.

For young people who request asylum in The Netherlands without a parent/parents, and thus no one to exercise parental authority, a guardian must be appointed. Commissioned by the Dutch authorities, Stitching Nidos acts as a guardian for these separated child asylum seekers in the form of temporary guardianship.

Based on that temporary appointment, the guardian is responsible for education and care. The daily care is commissioned to third parties, while the guardian has a supervisory function. The guardian ensures that sufficient conditions exist for a balanced as possible growth to adulthood, takes care of the child and adjusts and interferes if the situation requires. The guardian also supervises adequate execution of the asylum proceedings. The guardian is the legal representative of the child and in that capacity protects their rights. In general, the guardian counsels the child until he or she reaches majority or until the moment that he or she returns to this country of origin.⁵⁴

⁵³ Scottish Guardianship Business Plan

⁵⁴ Information obtained from Nidos website accessed on 20/09/11: <http://www.nidos.nl/Nidospijler/Waar%20Nidos%20voor%20staat.aspx>

By email communication with ECPAT UK, dated 19 September 2011, Tin Verstegen, director of Stitching Nidos, confirmed specifically in relation to child victims of trafficking:

"Since Nidos took responsibility for the guardianship of child victims of trafficking, safe houses were established, central intelligence was involved, many traffickers were arrested and 10 % instead of 100% of the children disappeared. This success is not just because of the work of the guardian, but because of the work of many others. But, the involvement, the management, the power to intervene immediately, and the professionalism of the guardian all make the difference for the interest of the child."

It is apparent that Scotland has identified gaps in the provision of care and support provided to separated children despite having analogous care systems to England. Early learning from the Scottish pilot is positive and the outcomes are compliant with the international duties and standards, such as child participation and the right of the child to be heard. Stitching Nidos has shown irrefutably the positive role of the guardian for child victims of trafficking, both in terms of prevention, protection and prosecution – all informed by the best interest of the child.



Chapter 6 Failing to act: the cost implications

"The more time you spend with a person, the more open you can be" – Young person, ECPAT UK Youth Group

Much has been made of the cost implications of initiating a system of guardianship and such a position has the danger of being used as a blanket justification, however, little noise has been made of the cost implications of not initiating such a system. ECPAT UK believes that the following cost implication would be, and continue to be, apparent should a system of guardianship not be initiated:

Litigation: this refers not only to the direct cost of litigation of court and lawyers' fees and court time, but also to the emotional cost to the child of having to pursue any kind of litigation in the UK courts, a system which is adversarial, whether it be in the immigration, criminal or child law arena. As has been shown above by the illustrations and the young people's views, ECPAT UK believes the appointment of a guardian would result in a substantial decrease in the number of actions. The savings to the public purse and the child's emotional wellbeing would be immense.

Trauma and recovery: directly linked to the aforementioned, any prolonged process concerning any aspect that needs resolving of the child's life, such as secure accommodation or regular status, will be hampered significantly should the child not feel safe enough to establish trust with the adults owing to the fleeting nature of the relationship. The psychological detrimental impact of the trafficking experience on the child cannot be underestimated. Being unsettled in the widest sense does not aid recovery at all but is an important factor that hampers and aggravates it; consequently, there would be greater involvement with public health services at a cost to the public purse. Such a state of mind directly impacts on engagement with any process which will necessarily be longer and

hence more costly. The appointment of a guardian would allow a trusting relationship to be formed with one person who is a constant and therefore not only aid recovery but, as a result, allow speedier and fuller cooperation with authority and those who owe the child a duty; consequently the cost savings would be apparent.

Best interest: without a guardian, child victims of trafficking are, as shown above, frequently denied a course of action that is their best interest, resulting in many agencies who have no real relationship with the child seeking to resolve the issue but without the necessary understanding of the particular issues impacting on child victims of trafficking nor of the duties that one body may owe the child. This 'dead time' has financial implications, as well as emotional implications on the child who may feel that their concerns, anxieties and worries are not been listened to or been taken seriously. The appointment of a guardian would ensure that every decision taken by each body is made in the child's best interest, is made speedily and is made in compliance with their duties. This would undoubtedly not only be a cost-saving measure but would also be in the best interest of the child in accordance with UK's obligations, while at the same time ensuring that the child is protected from further harm that may unwittingly be administered owing to lack of knowledge and process.

ECPAT UK strongly believes that the Government's position is untenable, unfounded, contrary to the best interests of the child, contrary to our international obligations and ironically results in greater long-term cost to the public purse.



Conclusion

"A guardian is someone who protects you from danger" – Young person, ECPAT UK Youth Group

ECPAT UK's call for a system of guardianship is not merely based on abstract theories. It is informed by the real-life experience of child victims of trafficking, detailed research and analysis, and the concern of practitioners. Our work has painted a very bleak yet clear picture: the needs of this highly traumatised and vulnerable group remain unmet and, as a consequence, these children are being failed by the very authorities that have legal duties to protect, safeguard and provide for them.

The fact that international law and major international bodies, such as the UN, call for the appointment of a guardian for child victims of trafficking strongly indicates that it is recognised that such children have specific needs owing to their particular history and abuse. It also indicates that such needs will only be fulfilled with the appointment of a guardian whose conduct will be governed by the overriding principle of the best interest of the child.

The UK has signed up to a number of international obligations that compel it to act in the best interests of child victims of trafficking. The concept of progressive realisation dictates that the UK must strive to fulfil these obligations to the maximum extent possible; adverse economic conditions are no excuse for inaction. Inversely, the cost implications will be greater if no system of guardianship is introduced.

ECPAT UK believes that if the Government maintains its current position, which this report has shown to be uninformed and baseless, those that will suffer the most will be children. In his letter to ECPAT UK the Prime Minister stated he was committed to ensure that victims, especially children, are properly safeguarded. ECPAT UK calls upon the Prime Minister to review his position on guardianship in light of the findings in this report.



Appendix

Definition of Key Terms

Separated child

In this report the term separated child is used, as described in the Statement of Good Practice of the Separated Children in Europe Programme:⁵⁵ separated children are under 18 years of age, outside their country of origin, and separated from both parents, or their previous legal, or customary primary caregiver. This term is preferable to the term unaccompanied minor commonly employed in UK literature owing to the connotation that such a child must also be a refugee-seeking child. In addition, a child victim of trafficking may indeed be accompanied but only by their trafficker. It is therefore considered that the term separated child is more accurate and reflective for the group of children to whom this report refers.

Trafficking

The definition of what constitutes trafficking is derived from the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime, commonly referred to as the Palermo Protocol. The Protocol entered into force on the 25 December 2003 and was ratified by the UK on the 9 February 2006.

Article 3 of the Protocol states:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of

others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under 18 years of age.

Child

The UK ratified the UN Convention on the Rights of the Child (CRC) on 16 December 1991. On 18 November 2008, the general reservation entered into by the UK as regards the entry, stay in and departure from the UK of those children subject to immigration control and the acquisition and possession of citizenship was lifted.

The CRC defines a child as any human being below the age of 18 or a country's legal age of majority (Article 1).

Child victim of trafficking

The definition of trafficking in human beings employed by the Council of Europe Convention replicates that of the Palermo Protocol (above) and, in relation to children, can be summarised as: **the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation**⁵⁶.

The types of exploitation are far-ranging and include, but are not limited to, sexual exploitation, labour exploitation, domestic servitude, enforced criminality, organ removal, benefit fraud and forced marriage.

⁵⁵ Separated Children in Europe Programme, Statement of Good Practice, 4th Revised Edition, 2009, p. 3. Available at: <http://www.separated-children-europe-programme.org/index.html>.

⁵⁶ Article 4.

National Referral Mechanism

A process that has been brought into existence by the UK Government further to the obligation to identify victims of trafficking under Article 10 of the Council of Europe Convention.

Durable solution

The definition of durable solution is derived from UNICEF Guidelines on The Protection of Child Victims of Trafficking 2006 as:

*"Long-term arrangements for child victims of trafficking as opposed to short-term solutions (such as reflection period, emergency assistance and temporary residence permits). More generally, the term takes three forms: local integration, return to the country or place of origin or third country resettlement. Durable solutions can also be seen as a prevention of re-trafficking."*⁵⁷

⁵⁷ http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf



Protecting Children
Everywhere



ECPAT UK

Grosvenor Gardens House

35 - 37 Grosvenor Gardens, London, SW1W 0BS

Tel: +44 (0)20 7233 9887, Fax: +44 (0)20 7233 9869

info@ecpat.org.uk, www.ecpat.org.uk

Charity number: 1104948, Company Ltd. by Guarantee: 5061385