

# **Inquiry into the human rights of unaccompanied migrant children and young people**

Evidence submitted by Scottish Refugee Council

**October 2012**

## **About Scottish Refugee Council**

Scottish Refugee Council is an independent charity which provides advice and information to asylum seekers and refugees in Scotland. We also campaign for the fair treatment of refugees and asylum seekers and to raise awareness of refugee issues.

## **About the inquiry**

The Joint Committee of Human Rights of the UK Parliament is undertaking an inquiry into the human rights of unaccompanied migrant children and young people in the UK, with a particular focus on those who are seeking asylum or have been the victims of trafficking.

### **1. Introduction**

- 1.1 Scottish Refugee Council warmly welcomes the Committee's inquiry and continuing scrutiny of the human rights and children's rights implications of UK Government asylum and migration policy.
- 1.2 As a member of the Refugee Children's Consortium, Scottish Refugee Council shares fully the concerns raised in the Consortium's response. This short submission seeks to provide some additional evidence on the rights of unaccompanied asylum-seeking and refugee children in Scotland. Our submission is based on our advocacy work to improve the rights of unaccompanied asylum-seeking children and trafficked children in Scotland as well as our direct service experience of piloting the Scottish Guardianship Service. The first system of guardianship for separated children ever tested in the UK.

## 2. Competences of the Scottish Government in relation to separated children and UNCRC

2.1 In *Strengthening Scotland's Future*, the command paper to the Scotland Bill in November 2010, the UK Government stated that: "UKBA recognises the statutory responsibility of Scottish authorities for the well-being of children in Scotland."<sup>1</sup> This was in response to concerns raised in the report of the Calman Commission about conflict and lack of respect by UK authorities for the responsibilities of Scottish authorities for child welfare, protection and public well-being.<sup>2</sup>

2.1 Scottish Refugee Council remains concerned by many aspects of the operation of the UK asylum system and its impact on the rights of separated children in Scotland. We do however recognise and welcome the steps that the current Scottish Government and the previous administration in Scotland have taken to ensure that refugee children are treated first and foremost as children within devolved competences and that policies are developed within the framework of the United Nations Convention on the Rights of the Child (UNCRC).<sup>34</sup>

*Asylum seekers must be treated fairly and humanely, particularly when children are involved... The welfare and rights of all children in Scotland are paramount and must be treated as such. This is reflected in Scots law.*<sup>5</sup> And;

*[The Scottish Parliament] affirms its support for the principles of the UN Convention on the Rights of the Child (UNCRC) which states that governments should protect children from all forms of physical or mental violence; recognises that, while the Scottish Executive has no direct responsibility for the operation of the immigration and asylum system, it is responsible for the welfare of children, for schools, and for working with the UK Government to report on compliance with the UNCRC*<sup>6</sup>;

2.3 The current Scottish Government has now committed to incorporating the UNCRC into domestic law and has formally stated that this underpins their approach to children's rights in Scotland, providing them with a framework for ensuring policy and decision makers consider children's rights whenever decisions are taken. The Scottish Government has been proactive in ensuring the principles outlined in the UNCRC are adopted into future law and policy by creating an Action Plan, *Do the Right Thing*, which was published in 2009 in response to the UN Committee on the Rights of the Child's concluding observations in 2008. In relation to refugee and trafficked children it stated that it would:

<sup>1</sup> [http://www.scotlandoffice.gov.uk/scotlandoffice/files/Scotland\\_Bill\\_Command\\_Paper.pdf](http://www.scotlandoffice.gov.uk/scotlandoffice/files/Scotland_Bill_Command_Paper.pdf)

<sup>2</sup> <http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-12-csd-final-report-2009fbookmarked.pdf>

<sup>3</sup> Immigration and nationality are reserved matters under schedule 5 of the Scotland Act 1998 and reserved and devolved competences are further elaborated in the Concordat between the Home Office and the Scottish Executive. Many services and areas of policy which support and impact on asylum-seeking and refugee children living in Scotland are however not listed in this Concordat. These include the wholly devolved competences of education, interpreting and translation, policing, housing, health care, criminal justice, the provision of legal aid, social work and children's services and child protection.

<sup>4</sup> See appendix 1 and 2. See Sections 545-559 of The Scottish Government's Report on the Implementation of the UN Convention on the Rights of the Child in Scotland: <http://www.scotland.gov.uk/Resource/Doc/184924/0052026.pdf>

<sup>5</sup> See Appendix 1

<sup>6</sup> Scottish Executive amendment to Parliamentary debate on asylum-seeking children 22 September 2005

- *Provide training and guidance to those involved in age assessment procedures;*
- *Review and update information and guidance for all those working with separated children to ensure they get the help and support they require;*
- *Ensure information and guidance for separated children themselves is relevant and accessible;*
- *Work with the Scottish Refugee Council and other local partners to develop a pilot scheme to provide independent advocacy support to separated children;*
- *Development of improved systems for collating and understanding information relating to the neglect and abuse of children;*
- *Work with partners to better understand the scope and causes of child trafficking and sexual exploitation in Scotland; and*
- *Work with UK Government and partners on implementing the UK Action Plan on Tackling Human Trafficking, the Council of Europe Convention on Action against Trafficking in Human Beings and the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography.*

In May 2012 the Scottish Government published a progress report on its achievements in implementing the action plan thus far<sup>7</sup> in readiness for its response to the next UN committee report, which will take place in 2014.

2.4 We recommend that developing an action plan based on the concluding observations of the UN Committee on the Rights of the Child is an example of good practice which the UK Government should follow.

### **3. Scottish Guardianship Service pilot**

3.1 In July 2010 Scottish Refugee Council in partnership with Aberlour Child Care Trust launched the 30-month Scottish Guardianship Service Pilot. Funded by the Scottish Government, Paul Hamlyn Foundation and Big Lottery Fund Scotland, the aims of the pilot are to significantly improve the experience of the immigration and welfare processes unaccompanied children and young people in Scotland are subject to; and to develop a child-centred model of practice that (i) promotes interagency working, and (ii) provides better information upon which to base immigration decisions.

3.2 The project is supported by an advisory board which includes the funders, UKBA and UNHCR, and is independently chaired by former Children's Commissioner for Scotland, Kathleen Marshall. Professors Ravi Kohli (University of Bedfordshire) and Heaven Crawley (University of Swansea) are independent evaluators of the project. The evaluation is being funded by the Diana Princess of Wales Memorial Fund.

3.3. The currently agreed definition of guardianship developed with the evaluators and advisory board is that: *A Guardian is someone who accompanies children and young people when they claim asylum or are trafficked and are cared for by health, education and welfare services. A Guardian will help a child or young person to be actively involved in decisions that affect their life and to get the help they need, when they need it. A Guardian is on the*

<sup>7</sup> <http://www.scotland.gov.uk/Publications/2012/05/3593>

*child's side, can explain what is happening to them, will listen to their views and experiences and speak up for them when needed. A Guardian will also help a child or young person to plan their future, whether in the UK or elsewhere.*

3.4 The first external report by the evaluators was published in February 2012<sup>8</sup>. There have also been two internal reports from the evaluators. (2011 and October 2012). The final report will be published in April 2013 when the pilot stage of the project ends. Key findings to date are that:

- As of October 2012, the project is supporting 89 children from 17 different countries. Afghanistan, Iran, Nigeria, Somalia and Vietnam are the top countries of origin of these young people. Around one quarter of young people are noted by the service to have indicators of trafficking with concerns ranging from domestic servitude to drugs trafficking.
- 70% of stakeholders agree that guardians are acting in the best interests of children, whilst 100% of young people think this is the case (feedback from external evaluators). Overall young people are unanimous in the support they have for the service whilst 77% of stakeholders are satisfied with the service.
- The guardians are playing a role in improving immigration decision-making and inter-agency working. They are also advocating for young people in relation to their welfare, they are also supporting young people to build social networks and integrate into Scotland.
- Of decisions served 65% of young people have been granted refugee status, 4% Humanitarian Protection, 11% Discretionary Leave and 7% refusals. These recognition rates are significantly above the national average. Whilst the evaluation is considering the degree to which guardians' involvement is having a bearing on immigration decisions, we contend that guardianship is allowing young people to be more able to fully participate and engage in the trafficking identification and or asylum system through having consistent and independent support.

3.5 We believe that Guardianship is assisting young people in Scotland to access their rights under the UNCRC. We are currently in discussion with the Scottish Government and stakeholders to extend guardianship beyond the pilot stage, including considering legislating for guardianship. We strongly contend that separated children across the UK should benefit from guardianship although it should be recognised that the specific model developed in Scotland may not necessarily be replicated wholly in other jurisdictions due to legal differences in how young people are accommodated; geographical location and demographics.

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<sup>8</sup>[http://www.scottishrefugeecouncil.org.uk/assets/0000/3643/First\\_Anual\\_Evaluation\\_report\\_guardianship\\_Dec\\_2011.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0000/3643/First_Anual_Evaluation_report_guardianship_Dec_2011.pdf)

## 4. Responses to specific inquiry questions

### 1. Is the treatment of unaccompanied migrant children and young people in the UK consistent with the UK's obligations under the UN Convention on the Rights of the Child (UNCRC)

One particular problem which is preventing the Scottish Government from fully complying with its obligations under UNCRC is that under Scottish law a child is deemed to be a person under the age of 16 whereas in the rest of the UK and under UNCRC the age bar is 18. The Scottish Government has announced that provisions in the Children and Young People Bill will recognise the definition set out in Article 1 of UNCRC which identifies a child as every human being below the age of 18. The current situation causes confusion and a lack of clarity to the detriment of children's well-being. Until the intended changes are implemented, the Scottish Government should ensure that young people between 16-18 do not experience any gaps in the provision of services and assistance to which they are entitled under UNCRC and other European, international and domestic law.

### 2. To what extent is the statutory duty in section 55 of the BCI Act 2009, and its accompanying guidance, proving effective in ensuring that in practice public bodies have regard to the need to safeguard and promote the welfare of children

For UKBA to meet its obligations under s.55 effective co-operation with other public bodies is required. Devolution can present particular obstacles in this respect largely due to the fact that policy formulation by the Department of Education or the Home Office rarely takes the Scottish context into account. This leads to confusion in the course of policy implementation and may prevent young people from benefitting from more generous provisions to which they are entitled in Scotland. The Scottish Guardianship Service has proven to be very effective in helping young people navigate complex procedures, mediating between different public bodies and ultimately helping the UKBA meet its statutory obligations.

### 3. Should one department in Government have overall responsibility for unaccompanied migrant children and young people in order to ensure that their rights are best promoted and protected? If so, which one?

We welcome the principle of having a single department responsible for separated migrant children particularly a department which has the focus and rights of children at its core. However, it should be recognised that the Scottish Government has used its devolved powers to ensure that separated children in Scotland can benefit from more generous provisions in devolved policies, including the appointment of a guardian, legal aid and access to higher education. We believe that these provisions must be preserved and policy formulation in the new department should have due regard to the competences of the Scottish Government so as not to jeopardise the progress that has been achieved so far or impinge on the Scottish Government's devolved responsibilities in the area of safeguarding children's rights.

**4. Are Government departments and their agencies satisfactorily 'joined-up' in how they protect and support unaccompanied migrant children and young people?**

We have already mentioned the problems of cooperation and coordination between UKBA and other public bodies in Scotland and the role guardianship can play in overcoming some of them. We wish to highlight the positive multi-agency cooperation approach which exists with regard to child-trafficking in Scotland. This approach, which we believe is the best way to ensure that children's rights are safeguarded, could be extended to other groups of migrant children.

**7. How are unaccompanied migrant children's best interests being considered and upheld in immigration decisions made about the leave to remain or enter?**

The UNCRC requires that in any decision affecting the child, their views must be heard and given due weight in accordance with the child's age and maturity. It is thus essential that the child's views form a part of the best interest assessment. However, in practice the child may not always be known to all those deciding their future and it is unclear how much weight they place on the child's views. Guardianship has been crucial in supporting and listening to young people, helping them formulate and express their views, ultimately contributing to decision-makers' understanding of the best interests of individual children.

***Obstacles to determining the best interests of young people***

Difficulty in deciding on the best interests of the child is compounded by the lack of child related country information reports, lack of understanding and subjective evidence on child specific persecution and assessment of credibility. The fact that the UKBA guidance on processing asylum applications from children states that "the best interests of the child must be taken into account as **a** primary consideration" rather than **the** primary consideration allows a lot of discretion and flexibility so that in practice welfare pro formas are only handed to social workers on a very ad hoc basis and rarely if at all in Scotland.

***Family Reunion***

Scottish Refugee Council has consistently raised the issue of the UK's discriminatory policy towards child refugees who, unlike their adult counterparts, are unable to benefit from the principle of family reunion. The denial of family reunion rights to refugee children is incompatible with the principle of the child's best interest and contrasts sharply with the policy of most other EU countries, some of which allow refugee children to be reunited not only with their parents but also with their siblings and other family members. Scottish Refugee Council has written a paper presenting detailed arguments why the current policy is discriminatory, incompatible with international and domestic obligations, and unduly harsh on vulnerable refugee children trying to rebuild their lives. The paper is enclosed as an appendix to our consultation response.

**9(b) Should there be a system of guardians for unaccompanied and separated migrant children to ensure that their interests are represented?**

Yes. See Section 3.

**10. Are unaccompanied children able to access the legal advice and representation necessary to ensure that they are able to have their voice heard in any judicial and administrative proceedings affecting them, and that their rights are upheld, in accordance with international standards?**

Legal aid is administered differently in Scotland and is under the responsibility of the Scottish Legal Aid Board. All unaccompanied minors have access to legal aid but more efforts should be made to ensure that legal representatives are sufficiently aware of the particular issues surrounding the representation of separated children.

**11. Is there sufficient support and advice for unaccompanied migrant children as they approach eighteen years of age and beyond into adult hood**

In Scotland there is an inconsistent approach to supporting young separated migrant people through their transition into adulthood. The Scottish Guardianship Service has sought to fill this gap in service provision. Confusion lies in the definition of a child being very different between the jurisdictions and the lack of developed case law. Local Authorities are largely left to their own devices when young people in their care are approaching eighteen and beyond. The Scottish Guardianship Service has been able to support and advise young people through these very difficult transition periods (such as applications for extensions to leave) when suddenly agencies stop working with them because their remit only enables them to work with young people up to the age of 18.

**12. Has the Government conducted an assessment of the number of young victims of trafficking in youth or adult custody and of steps being taken to safeguard them?**

Concerning the care for victims of trafficking, there is a well-developed practice of multi-agency working in Scotland. All Child Protection Committees in Scotland have introduced specific inter-agency guidance on child trafficking which establishes the procedures to be followed in such cases. However, despite their considerable experience and expertise, local authorities and Child Protection Committees have not been given a role in identifying child victims of trafficking who currently have to follow the National Referral Mechanism developed for adult victims. For unaccompanied minors outside the EEA this entails undergoing a cumbersome and traumatic procedure through UKBA, with little practical benefit<sup>9</sup>.

The failure to identify and protect child victims of trafficking may lead to their prosecution and imprisonment for criminal activities they were involved in during their exploitation. The Scottish Guardianship Service is currently supporting nine young people all of whom have been criminalised and detained in Young Offenders Institutions for crimes relating to offences they committed whilst being exploited. Neither the Scottish nor the UK Government have, to our knowledge, conducted an assessment of the number of young people in detention who may have been the victims of trafficking. We are actively lobbying the Scottish Government to look more thoroughly at the whole issue of child trafficking and

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<sup>9</sup> Scotland's Commissioner for Children and Young Persons (SCCYP) (2011) Scotland: A Safe Place for Child Traffickers?

have produced a position paper on the failings of the National Referral Mechanism, in identifying, protecting and supporting child victims of trafficking and; on how we might avoid the future detention of child trafficking victims.

Numerous reports assessing the UK's response to human trafficking have emphasised the need to give child protection authorities the responsibility to identify victims of trafficking<sup>10</sup>. The context of re-structuring Government responsibilities for child protection, presents a good opportunity to address the issue of introducing a child-rights-based mechanism for identifying child victims of trafficking. Again, the implications for devolved policies if such mechanism is implemented should be taken into account.

**13. Are local authorities and immigration officials dealing satisfactorily with the issue of children and young people whose ages have been disputed, and has the Government considered developing an independent multi-agency panel-based approach to determining age assessments?**

Scottish Refugee Council fully endorses the independent regional age assessment centre model as proposed in the Immigration Law Practitioners' Report, *When is A Child Not a Child*. However, in the absence of such a resource we have grown increasingly concerned about the quality and consistency of age assessments conducted across Scotland and indeed the UK as several young people are dispersed from England as adults but are then found to be children. In consultation with young people and key agencies including UKBA, the Scottish Government and the Consortium of Scottish Local Authorities (COSLA), Scottish Refugee Council has, in collaboration with Glasgow City Council, created guidance for social workers conducting age assessments<sup>11</sup>. COSLA has also been working with partners to produce an information sharing protocol for use by local authorities and UKBA. This will help ensure that there is consistency and improvements in the information shared by local authorities with UKBA on the results of an age assessment. We have also produced a leaflet for young people to explain to them the process of age assessment and their rights.<sup>12</sup>

X rays and other procedures involving unnecessary medical intervention should never be used or even considered solely for the purpose of assessing age. The ramifications of such interventions may not be immediately evident but manifest in later years and true informed consent will be very difficult to obtain.

**For further information please contact:  
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<sup>10</sup> Group of Experts on Action against Trafficking in Human Beings (GRETA) (2012), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom; Anti-trafficking monitoring group (2010) Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons.

<sup>11</sup> [http://www.scottishrefugeecouncil.org.uk/assets/0000/4415/Age\\_Assessment\\_Practice\\_Guidance\\_GCC-SRC\\_June\\_2012\\_FIRST\\_EDITION.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0000/4415/Age_Assessment_Practice_Guidance_GCC-SRC_June_2012_FIRST_EDITION.pdf)

<sup>12</sup> [http://www.scottishrefugeecouncil.org.uk/assets/0000/4416/Age\\_Assessment\\_info\\_guide\\_June\\_2012.pdf](http://www.scottishrefugeecouncil.org.uk/assets/0000/4416/Age_Assessment_info_guide_June_2012.pdf)