

Independent Guardian Service

Commissioned by the Northern Ireland Health and Social Care Board

**Consultation Response to the Home Office
New Plan for Immigration**

May 2021

Since April 2018, Barnardo's NI has been commissioned by the Northern Ireland Health and Social Care Board to deliver the Independent Guardian Service. In this time, we have provided Guardians for 121 young people in Northern Ireland who are unaccompanied or separated from a legal guardian and who are at risk of human trafficking.

The role of an Independent Guardian is defined in Article 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. Independent Guardians are required to undertake their role "*in the best interests of the child*" and so have a responsibility to listen to, and represent, the voices of children with regard to all aspects of their lives. It is in this role that the Independent Guardian Service provides this response to the 'New Plan for Immigration'. The view of the service is also reflected in the overall Barnardo's response that has been submitted to the consultation.

The role of Independent Guardians is to ensure that the welfare and asylum rights of children are upheld, and to hold those responsible for meeting children's needs accountable for their responsibilities. The Guardians guide and support children through the complex asylum process, ensuring they have a legal representative with extensive experience in immigration and asylum work, including expertise in trafficking. To date, 23% of young people supported by the Independent Guardians have been referred within the National Referral Mechanism (NRM), with applicants receiving both initial and conclusive positive grounds within this process. A key element of the Guardian's role is to ensure that the child's voice, wishes, and feelings are heard and represented with all professionals involved in their case and to advocate for the best interests of the child.

The Independent Guardian Service is deeply concerned about the Home Office's 'New Plan for Immigration' and our key concerns are outlined below:

- 1.1. The Independent Guardian Service is concerned that these proposals may not be in the best interests of children. The United Nations Convention on the Rights of the Child, Article 3 states that "In all actions concerning children ... the best interests of the child shall be a primary consideration". We are concerned that without amendment, these proposals risk placing vulnerable children and families at greater risk of exploitation and harm and could have a detrimental impact on community cohesion.
- 1.2. The Independent Guardian Service would like to focus more specifically on the children who arrive into the UK (NI), who are separated or unaccompanied and potentially as a result of human trafficking. These children have experienced complex trauma due to the situations that they have encountered and lived through before their arrival in the UK. The vast majority of children who arrive into NI as outlined above want and need to claim asylum and/or have a National Referral Mechanism (NRM) application made on their behalf by agencies including PSNI, Social Services and the Home Office. These processes exist to ensure the safety and best interests of the children and young people concerned.
- 1.3. The 'New Plan for Immigration' does not reference specifically children who arrive into the UK alone, how particularly vulnerable they are on arrival and how this vulnerability continues when navigating the systems, processes and professional encounters at the Home Office.
- 1.4. The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 provides that all separated/unaccompanied and/or trafficked/potentially trafficked children should be deemed in need of an Independent Guardian upon arrival to NI. Article 21 (8) of the above Act is clear that:

Any person or body providing services or taking administrative decisions in relation to a child for whom an independent guardian has been appointed under this section must recognise, and pay due regard to, the functions of the guardian and must (to the extent otherwise permitted by law) provide the guardian with access to such information relating to the child as will enable the guardian to carry out his or her functions effectively.

- 1.5. The absence of specific reference in the New Plan to children, their needs and vulnerabilities, that they may have been trafficked, or

arrived without an adult with parental responsibility does not recognise or align with the role of the Independent Guardians under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

- 1.6. The proposed plans risk creating a two-tier system of refugee status and promotes the concept of 'good' refugees and 'bad' refugees. Refugee status, under the Geneva Convention is declaratory: a refugee is a refugee, whether a government recognises it or not, and the means of entry has no bearing on same. The Independent Guardian Service is concerned that the New Plan does not acknowledge there is a statutory defence available to asylum seeking children, who may be in breach of certain criminal offences relating to irregular entry.
- 1.7. Furthermore, the Independent Guardian service is concerned that implementation of the New Plan could have a detrimental impact on the public perception of immigration. The children and young people we support already report that anti-immigration sentiments, and associated racist behaviours, affect them daily within local communities¹.
- 1.8. The Independent Guardian Service is extremely concerned by the proposals contained within the New Plan in relation to age assessment. The sole focus on ensuring adults are not regarded as children within the plans, risks penalising children within the system. It is our opinion this increases the likelihood that children will present as adults in order to avoid the age assessment process.
- 1.9. Whilst the proposals in the New Plan indicate that there are scientific measures for age assessment in use across Europe, the Independent Guardian Service is aware that these are contentious processes being challenged by Guardians within those jurisdictions. The Independent Guardian Service is not aware of a single, agreed, scientific process for assessing age accurately, as outlined in UK case law:

"The determination of an applicant's age is rendered difficult by the absence of any reliable anthropometric test: for someone who is close to the age of 18, there is no reliable medical or

¹ <https://www.belfasttelegraph.co.uk/news/northern-ireland/home-of-syrian-family-attacked-in-newry-hate-crime-40327450.html>

other scientific test to determine whether he or she is over or under 18.”²

Recommendations

- 1.10. The Independent Guardian Service recommends the Home Office recognises the provisions in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. This provides for the protection of vulnerable, unaccompanied, separated children at risk of Human Trafficking. It considers their best interests with regards to welfare and asylum rights and needs.
- 1.11. Any Home Office Plan for Immigration should respect and reflect the Geneva Convention (1951) in relation to refugee rights and recognising that children may seek safety by travelling via irregular routes. It should also uphold the UN Convention on the Rights of the Child, ensuring that the best interests of the child are central to any decision-making processes by statutory agencies.

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² R (B) v London Borough of Merton
<http://www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html>