

## Justice Committee

### Human Trafficking and Exploitation (Scotland) Bill

#### Written submission from the Scottish Guardianship Service

##### Introduction

1. This response is based on evidence from the Scottish Guardianship Service, which is delivered in partnership between Scottish Refugee Council and Aberlour Childcare Trust. Its primary aim is to improve the lives of separated children, including those who may have been the victims of child trafficking, who arrive alone in Scotland.
2. As such, the response focuses solely on aspects of the Bill related to children and young people. Scottish Refugee Council has submitted an additional response in relation to aspects of the bill as they relate to adults.
3. This response provides details on the Scottish Guardianship Service and the impact of support it has given to trafficked and asylum-seeking children and young people from outside of EEA. It then gives specific recommendations in relation to the Bill.

##### About the organisations

4. Since 1985 Scottish Refugee Council has provided help and advice to those fleeing human rights abuses or other persecution in their homeland and seeking refuge in Scotland. This has included work with many survivors of trafficking with an international protection claim. Aberlour is the largest, solely Scottish children's charity, providing help to over 6,000 of Scotland's most vulnerable children, young people, and their families each year.

##### About the Scottish Guardianship Service

5. The Scottish Guardianship Service was developed to test a guardianship model for unaccompanied and separated children and young people including those that may be survivors of trafficked exploitation. The Scottish Guardianship Service is based on child-centred principles and guardianship as set out internationally by the UN Committee on the Rights of the Child: General Comment No.6 (2005), in the EU Human Trafficking Directive (2011), and in Fundamental Rights Agency guidance on guardianship (June 2014); as well as in Scotland in GIRFEC and most recently, within the Children and Young People (Scotland) Act 2014.

6. The Scottish Guardianship Service defines a Guardian as:

"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 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."

7. The Scottish Guardianship Service was piloted from September 2010 to March 2013. It was tested and evaluated successfully in She Endures with Me (2012). This led the Scottish Government to fund Scottish Refugee Council and Aberlour to deliver a core service from 2013/14 to 2015/16. The Home Office provide no funding despite the Scottish Guardianship Service working with children and young people from outside the EEA in Scotland and who seek international protection in the UK. The Scottish Government's commitment to the Scottish Guardianship Service reflects a welcome recognition that not only does the particular vulnerability of this group require specialist intervention but also that it is appropriate for this to be publicly funded too. The service has been recognised as pioneering in a UK context, informing provisions for asylum-seeking children and trafficked children in England and Wales, Northern Ireland and the Republic of Ireland.

8. Over the past 4 ½ years guardians have worked with approximately 180 children and young people, speaking over 30 languages, drawn from other 25 countries with the most prevalent being Vietnam, Afghanistan, Iran, Somalia, and Nigeria, and, pertinently for the Committee, including over 60 trafficking survivors across all exploitation types. The majority are aged 16 to 17 and there are age dispute processes in a significant number of cases. This can prove to be a particularly difficult process for the young person to undergo. Of those assisted by the Scottish Guardianship Service: ¾ are male, ¼ female, with ⅓ having indicators of trafficked exploitation. There are currently over 100 open cases and approximately 70 cases have been closed. There are currently three full-time and two relief guardians, a service manager, who is also a trained guardian.

9. Whereas referral rates have tended to be constant since the Scottish Guardianship Service started, they are now on the rise and, indeed, have recently spiked with over 20 children and young people being referred to the Scottish Guardianship Service in just 2015 alone. This may reflect not only gradually increasing awareness and confidence in the Scottish Guardianship Service but probably also the fact that there are now unprecedented levels of global forced displacement including in the numbers of unaccompanied children and young people claiming asylum, as reported in UNHCR's Global Trends in 2013 (June 2014). These trends unsurprisingly filter through to the UK and Scotland: with the most recent UK Government Asylum Statistics (November 2014) showing a sharp rise of 37% in the number of unaccompanied children and young people claiming asylum in the UK, for the year ending September 2014.

10. The work of guardians is with those children and young people from outside the EEA who are in Scotland, and who claim asylum or international protection. The Scottish Guardianship Service's experience is that, echoing both the EU Human Trafficking Directive (2011) and Fundamental Rights Agency guidance on guardianship (June 2014) this is a particularly vulnerable group. They are alone either as they are apart from their parents, care-giver, or other relatives ("unaccompanied child or young person") or whilst they may have relatives here, such are not their parents or care-giver ("separated child or young person").

11. Our experience is that young people the service supports are isolated, in a completely unfamiliar environment, often traumatised including through trafficked exploitation or abuse or neglect. It is this combination which renders them particularly vulnerable and in need of dedicated specialist support and advocacy. The depth of isolation for separated children and young people reflects not only that unfamiliarity with language, culture and the general ways of life in Scotland, but also the fact that this group are immediately confronted with processes, often complex and legal ones. These include the care system, the asylum system, the national referral mechanism, as well as in welfare processes.

12. This group of children and young people are confused about the processes that may determine their future nor do they feel they can actively participate in them. The Scottish Guardianship Service therefore assists young people to understand, navigate, and positively overcome barriers and ensure their rights are respected.

13. The Scottish Guardianship Service works with children and young people across three overlapping domains, namely asylum, welfare, and social networks. The experiences of youngsters in these domains were identified as mutually reinforcing: for example, having friends and healthy social networks promoted wellbeing which enabled better engagement in processes affecting them, notably the asylum process. Furthermore, the quality of engagement by and disclosures from children and young people flowing from the attention and trust and confidence in their relationship with the Guardian, were identified in the independent evaluation as, assisting in the quality of information and evidence gathered and this may, potentially, have increased the likelihood of their receiving refugee status. As of December 2014, in terms of known decisions, 69% were positive in international protection and 70% received positive conclusive grounds trafficking decisions. There are mutual benefits that decisions in asylum, welfare and trafficking may flow from better engagement by and clear and accurate information from the child or young person, not least to prevent inappropriate returns to persecution or (re-)trafficking, as well as to obviate the risk of costly appeals on refused asylum. The independent evaluation of the Scottish Guardianship Service identified:

"The capacity of a young person to deal with issues in relation to his or her asylum claim was often contingent on their general sense of well-being and on feeling socially embedded and connected."

14. The independent evaluation also found at its best the guardians became the hub for service providers working together with the effect that the overall level of provision was improved. In so doing the guardians supported organisations and institutions to meet their statutory duties to safeguard and promote the welfare of children and young people, in terms of both process and outcomes, as intended under GIRFEC and the Scottish Government's commitment towards harmonising domestic legislation, policies, services, strategies, and practices with the UN Convention on the Rights of the Child. However, at its worst guardians were not brought into the lives of the unaccompanied or separated child at all or sufficiently early or in a manner that enables effective advocacy on behalf of the unaccompanied or separated child or young person, thereby rendering the positive impact of the guardian null and void.

15. This is unhelpful for a number of reasons. First, it means particularly vulnerable children and young people do not benefit from professional and independent advocates when they most need it. For example, the Scottish Guardianship Service has experiences of a minority of young people being subject inappropriately - given trafficking indicators being present and sometimes trafficking grounds confirmed - to criminal procedure right up to the point of conviction and imprisonment. Second, the failure to involve the guardian impedes the quality of evidence gathering precisely as one downgrade or even shuts out the voice of the independent person often closest to the child or young person and hence best placed to facilitate the disclosures that flow the trust they have in their guardian. Third, failing to involve the guardian constitutes an inefficient use of the finite public funds that Scottish Ministers have put behind children and young people in the form of the guardians.

### **Recommendations to the Committee**

16. We recommend serious consideration is given first to define a child in the Bill as any person under 18 and second to include a presumption to consider as a child, persons of an uncertain age, where there are reasons to believe they may be under 18. This would better reflect international child-rights and anti-trafficking legal instruments.

17. We recommend that clause 8 in the Bill is refined and enhanced to make clear the specific provisions that child trafficking survivors are entitled to in Scotland, be that arising in this Bill or by amendment to existing children's legislation, such as Children and Young People (Scotland) Act 2014.

18. We recommend that statutory recognition is made in the Bill to the right to an independent guardian for all unaccompanied or separated children or young people in Scotland, in light of the distinctive vulnerability of this group. When considering this, we suggest regard is given to the provision for independent guardians at section 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 which requires both the independence and the consistent involvement of the guardian, including in terms of access to information and decision making processes. We do not believe that a guardian should be invested with parental responsibility. Furthermore we recommend regard is had to [Working Group on Legal Representation for Vulnerable Children including Separated Children \(2013\)](#)

19. Strengthen the welcome provision in the Bill whereby the Lord Advocate places himself under a duty to make and publish statutory guidelines that, in particular, specify factors to be taken into account and steps to be taken in terms of decisions whether to prosecute trafficking survivors for offences directly attributable to their trafficked predicament or related compulsion. Prosecuting survivors of trafficking and servitude for acts they, by definition, had no control over risks miscarriages of justice and may undermine the integrity of the principle of criminal responsibility and its presuppositions of agency and intent on the part of the accused. Therefore, the guidelines should be strengthened through clear monitoring and review timelines on the face of the Bill alongside consideration on whether to

introduce a statutory defence as an important additional safeguard and in line with in equivalent proposals elsewhere in the UK.

Graham O'Neill  
Policy Officer  
Scottish Refugee Council