



HOUSES OF PARLIAMENT

Joint Committee on Draft Modern Slavery Bill

Oral evidence: [Draft Modern Slavery Bill](#), HC [1019], Tuesday
25 February 2014

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Members present: Baroness Butler-Sloss (Chairman), The Lord Bishop of Derby, Baroness Doocey, Baroness Hanham, Baroness Kennedy of Cradley, Lord McColl of Dulwich, Lord Warner, Fiona Bruce, Michael Connarty, Fiona Mactaggart, Mrs Caroline Spelman and Sir Andrew Stunell

Questions [489-546]

Witnesses: **Dr Dan Boucher**, Director of Parliamentary Affairs, CARE (Christian Action Research and Education), **Ilona Pinter**, Policy Adviser, Children's Society and the Refugee Children's Consortium, **Alison Worsley**, Deputy Director, Barnardo's, and **Mike Dottridge**, examined.

Q489 Chairman: You are all extremely welcome. Would those at the table who are giving evidence first mind giving their names and saying who they are representing, just for the record?

Alison Worsley: I am Alison Worsley. I am deputy director of strategy for Barnardo's, the children's charity.

Mike Dottridge: I am Mike Dottridge. I do not represent an organisation. In the late 1990s, I was director of London's Anti-Slavery International, an NGO. I work mostly outside the United Kingdom.

Q490 Chairman: Surely, you had quite an important job with UNICEF.

Mike Dottridge: No. I have been a consultant to UNICEF and have written its reference guide on protecting child victims of trafficking in Europe. I always deeply regretted that that seemed to receive no attention whatsoever at the level of child protection services and other relevant authorities around Europe. Before that, perhaps more relevantly, I was chair of a group at the United Nations in the Office of the High Commissioner for Human Rights that in 2002 drew up a set of

recommended principles and guidelines on human rights and human trafficking.

Q491 Chairman: It was the wrong bit of the United Nations, but I knew you were involved with UNICEF as well. Dan?

Dr Boucher: I am Dan Boucher. I am the director of parliamentary affairs for the charity CARE.

Q492 Chairman: And you quite frequently advise Ian McColl and me on how we should draft our amendments. Ilona?

Ilona Pinter: I am Ilona Pinter. I am the policy adviser at the Children's Society and the chair of the Refugee Children's Consortium. I am giving evidence on behalf of both.

Chairman: We have a formidable team in the four of you.

Q493 Baroness Doocey: Good morning. Could each of you tell us briefly why you believe that a separate child exploitation offence is required? Mike, would you like to start?

Mike Dottridge: I am happy to do so. I am a great admirer of article 4 of the European convention on human rights, but it was not composed with children in mind. Consequently, six years after it had been adopted in 1950, the British Government took a lead in proposing and getting a new supplementary convention on slavery adopted at the United Nations. That and a subsequent optional protocol to the convention on the rights of the child address very specifically the issue of children who have been given away—children who have been handed by their parents or guardian into the control of others in order to exploit them. It seems to me that that is a key issue that is not adequately covered by the phraseology of slavery, servitude or forced or compulsory labour. It could have been, had the jurisprudence under article 4 of the European convention been more substantial, but—as you probably know—there is very little jurisprudence, and next to nothing relating specifically to children.

I realise there is an option to go through a series of forms of exploitation that we have seen recently in the United Kingdom or have reasonable grounds for suspecting might occur in the next few years. The problem I perceive with that is that if, for example, a man brought a child from Romania to beg in Manchester and the child turned out to be that man's own daughter or son, it would not be a trafficking or slavery offence. It would be an abuse and should be prosecuted, but I worry that a great blurring occurs when, as I have seen elsewhere, charges such as exploitation of begging or exploitation of children who commit crimes are

framed. In everything I have seen around the world to do with prosecuting as well as investigating cases of slavery and slavery-like practices, there seems to be a tremendous potential to go wrong. I did not mention it, but one of the volumes that I have edited has looked at the unfortunate side effects of well-intentioned measures against human trafficking. I have some reservations about putting straight into law offences such as exploitation of begging, exploitation of, at worst, forms of child labour or various other concepts that exist in law.

Q494 Baroness Doocey: Does anyone want to add anything?

Ilona Pinter: From the Refugee Children's Consortium's perspective, we think it is important to make sure that the definition of child trafficking and exploitation is clear on the face of the Bill, to highlight both the unique types of exploitation that can be experienced by children and to make the point that, as under the Palermo protocols, consent does not need to be given for a child to be recognised as a victim of child trafficking.

Dr Boucher: In our view, the reason why trafficking is an issue of concern is because it is an exploitation of vulnerability. That vulnerability is significantly compounded when one is looking at children. Consequently, CARE would deem the absence of a child-specific provision anywhere in the Bill perhaps to be a mistake.

Looking at the issue of having an offence, we do not see the need for a new clause in relation to that. We think that the word "child" could be introduced in clause 3(6), where it refers to a young person, and a definition of "child" could be provided. It would be useful if in clause 1 there were an express reference to forced begging, because that is something children are often exploited for. We have sent to the Committee a list of recommended amendments to other clauses to give expression to more robust protection for children.

If the Bill did not make it clear that the penalty for slavery and trafficking offences is already life, there might be a case for having a separate child offence clause, with a higher, tougher sentence for offences relating to children. Given the fact that it is life in both cases, in all contexts, anyway, we struggle to see the benefit that would flow from that. Perhaps this is something we will come on to later, but we think that the child-specific provision in the Bill that would make a very real difference is the provision of a child trafficking guardian.

Q495 Baroness Doocey: Can I come back very quickly on that? You have mentioned begging, but what about a child who is brought in for domestic servitude, where they cannot prove that the child was trafficked? How would that be covered?

Dr Boucher: In the context of all the other provisions. The definition in clause 3(6) would make it clear that we are dealing with children here, not just young people; there would be supplementary guidance to go along with that. There would be a general tightening-up. We have submitted to the Committee recommendations about toughening the definitions of trafficking itself, because the general definitions do not meet the recommendations of the European convention on trafficking or the anti-trafficking directive. That is something GRETA highlighted in its report in 2012.

Alison Worsley: I would like to pick up your last point, in particular, but first I will reflect what Ilona has said. From Barnardo's perspective, the Bill is very absent in terms of talking about children. For us, there is something about recognising the unique vulnerabilities of children. Children are targeted by traffickers because of their age, and that is not apparent in the Bill as it stands. We have an opportunity here to change that, if we are going to be a world-class leader in tackling modern slavery.

To come back to your second question, I do not think that the offences as they are currently drafted cover all of the elements of the trafficking cycle, particularly where you have the exploitation without the movement. That is something we need to look at.

Q496 Baroness Doocey: Secondly, can you give the Committee examples of child abuse where the existing offences meant that criminals could not be prosecuted for child exploitation and trafficking offences and, perhaps, had to be prosecuted for a lesser offence? Is there anything that springs to mind?

Mike Dottridge: You have mentioned the one that I was going to mention, which is child domestic workers—that is to say, children who are not 17, but younger than 16, who may have been brought into the country deliberately or may have come under other circumstances, and who are living in a household other than that of their parents or guardian or in which their parents or guardian has only a minor role. They may be attending classes but, nevertheless, outside that time they are working essentially full time as a household drudge.

Ilona Pinter: We gave a couple of examples in our written evidence. Illegal adoption, baby trafficking and benefit fraud are quite common, but I agree with Mike that domestic servitude is a very difficult area.

Q497 Chairman: One suggestion that has been made is that we should have in the Bill a general offence that would then be subdivided into various aspects, and it would be an aggravated offence that it was done to a child. How would any of you think that might work?

Mike Dottridge: I will make the same sorts of points. I do not think it is sufficient to regard it as an aggravation. I was worried by a vague reference in the existing clause 3(6) to “young.”

Q498 Chairman: That is clearly wrong.

Mike Dottridge: As I have looked around the world, it is quite clear that—particularly for children below puberty, but in some cases for children who are much older—the issues of control and, therefore, what with adults would be referred to as force or coercion do not need to be present at all. It is sufficient to have jurisdiction or control over a child of nine, 10 or 11 to ensure that they do exactly as you say. I would argue further that, if my child aged 16 were taken to a rural part of Vietnam—I know Vietnam a little bit—that 16-year-old would have no options other than to do as they were told. That sort of offence needs to be outlined very specifically. As an aggravation, it would have to be gone into in great detail. I believe it would be better to phrase a specific offence.

Q499 Chairman: One possibility would be to have two counts in the indictment. Count 1 would be the fact of slavery. Count 2 would be that the person enslaved was a child. If you had a problem with proving age at, say, 17, you would get it on number 1.

Mike Dottridge: I see that, but I have been in enough trainings with front-line law enforcement, as well as prosecutors, to think that they would find that difficult to grasp. They would grasp it, after five or 10 years, but in the meantime we would go on losing a lot of cases.

Chairman: Oh dear—what an indictment of lawyers.

Q500 Mrs Spelman: I am not a lawyer. This is a really important point for us. It is easy politically to say, “You need a separate offence of child enslavement. We must, therefore, have it politically, because it is so important that we acknowledge publicly that enslaving a child is even worse than enslaving an adult”; there is a moral argument we are looking to reflect. However, what we have discovered when taking evidence, particularly when hearing from lawyers, is that cases can fail because they get caught up on two things. One is establishing the age of the person: the case fails and is lost because it cannot be definitively proved that this is a child. The second thing is that, when giving evidence, the child does not say—precisely because of the relationship—that they were trafficked or forced. That is one of the reasons why Lady Butler-Sloss, as a lawyer, is pressing you on this question. We agree on the morality; that is not the dispute. It is an even worse crime to enslave a child, but what will work in practice? It is no good for us as politicians to pass laws

because they look right—we have to pass laws that work. That is what we are asking you to say.

Mike Dottridge: You would not try to exclude benefits for children below the age of 16 simply because 16 and 17-year-olds are almost adults. I quite agree that there is an absolute difficulty—we will probably discuss it later—of determining whether a 16 or 17-year-old, or perhaps even a younger child, has had their will overborne by a trafficker or controller. There are complications, but they are not sufficient to say that a 13-year-old or a nine-year-old should therefore go by the board and we can put them in the same—

Fiona Mactaggart: I do not think we are suggesting that. We are suggesting that, unlike your daughter taken to Vietnam at 16, 16-year-olds who are brought into Britain cannot prove that they are 16. Cases of 14, 15 and 16-year-olds, that exist and of which we have heard accounts, have been lost because the children cannot prove their age, because they have come on false documents and so on, and because those false documents—

Q501 Chairman: And because the requirement, where there is doubt, to treat the person as a child is not being followed. That is one of the problems. There is no doubt that there should be a presumption of childhood, but the presumption is not being applied. That is the point that Fiona is making; it is really getting us at the moment. Dan, do you have a view on this? It is an absolutely crucial point.

Dr Boucher: Going back to what Caroline was saying, it would be tempting to introduce something symbolic, just to say that we had done something specific for children. What I was saying in my response was that we cannot see a child offence-specific clause that we think would be anything other than symbolic and that would really add value at this stage, but we are very open to be persuaded of the point. As I said, we have made recommendations for amendments to other clauses that we think would tighten up the legislation and make it more effective at helping children. None of that is to say that if someone comes up with a great idea we would oppose it. What we are saying is that we would not want to be in a situation where, perhaps, the Committee feels it has to have a child offence primarily for symbolic reasons and passes on the opportunity to do something for children that will make a real, practical difference. In our view, that would be the child trafficking guardian provision.

Q502 Chairman: What does Barnardo's think about this?

Alison Worsley: I would be very interested to explore the proposal that you have suggested, Lady Butler-Sloss. I am not a lawyer either, but we know from our experience that age assessment is a challenge

and that the guidance is not being followed in terms of reasonably believing that someone is significantly over the age of 18. I would not want a case to fail on the basis of age.

Q503 Chairman: That is what has worried us.

Alison Worsley: I say that with the caveat that I am not a lawyer, but what you have proposed deserves exploration.

Q504 Chairman: What is your view on this, Ilona?

Ilona Pinter: I do not know whether we will come on to age assessments in more detail later. Obviously it is a big issue, but it would be a mistake on that basis not to consider making it very clear in the legislation, for the reasons that we have discussed previously, that child trafficking is a specific offence. There are other safeguards that can be put in place to develop a more appropriate age assessment process. Some of that is already being done by the Government through the ADCS, which is currently working on a multi-agency approach, and through the presumption for under-18s, which, as Alison said, is not being followed because there is no statutory guidance at the moment for local authorities on how to conduct age assessments.

Q505 Michael Connarty: I meet CARE at the Council of Europe quite regularly. Have people read the evidence given to us by the barristers—which is in the public domain, I understand? This is not symbolic.

Dr Boucher: I am not—

Q506 Michael Connarty: It is a good question—have you read the evidence that was given to us by the legal people who came before us?

Dr Boucher: No.

Q507 Michael Connarty: It is not symbolic. It is worth reading it, because they certainly convinced me of the need for a separate offence, as something that was important for the protection of children. That is what this is all about. I have just come back from a week in Cambodia. I am sorry to say this, Mike, but I did not find UNICEF saying the things you are saying. It was saying completely the opposite—sex slavery of children on the Asian continent is massive.

Mike Dottridge: I absolutely agree.

Q508 Michael Connarty: My worry is that there are young people in the young offender institution in my constituency who were clearly brought here as trafficked people to be farmers in cannabis factories, but they are not treated as children. Clearly, they are treated as adults and as criminals, and they are now languishing in prison. There is something wrong with that in the system. If you do not have an offence of their being exploited as children, it means that they are treated as just another criminal element. We need somehow to give the lawyers a chance to prosecute properly.

Dr Boucher: Absolutely. I was not saying that having an offence would be symbolic; I was saying that, if the feeling was that we had to do something but it did not add value, we should avoid doing that, because we think there is something else that we could do for children that really would add value. If the lawyers have come forward and presented you with a new clause that really would add value, would make a difference and would crack this really key thing about proving age, that would be excellent.

Michael Connarty: I think you would find that argument if you read the evidence. What they are saying is that the Bill does not consolidate properly but tries to fiddle with what is there, which is not what we need if we are really going to have an effective anti-slavery Bill.

Q509 Fiona Mactaggart: Following on from the point that Mike has just made, when we visit young offender institutions and prisons, we find a number of child victims of trafficking who have been prosecuted for cannabis farming and illegal activities. Why is the CPS guidance not working? Are they still being jailed after the cases of L and others? What should this Bill do to stop children who have been coerced into criminal activity such as cannabis farming being prosecuted for it?

Ilona Pinter: The Children's Society and the Refugee Council recently published a report, "Still at Risk", that looked at the care arrangements for trafficked children. Some of the findings there were precisely this—that child victims of trafficking were being criminalised and detained, either in immigration detention facilities or in criminal custody, because at the point when they came to the notice of authorities and were discovered they were not always recognised as, first, being children, and, secondly, being victims of trafficking. Our view is that the guidance is not working. One of the recommendations that the Refugee Children's Consortium has made is that there should be a provision in the Bill around non-criminalisation and non-detention of children, to make that very clear.

It slightly comes back to the point around child trafficking being a separate definition, in that sometimes the issue of consent is not considered. For instance, in some of the cases, children were being

prosecuted for immigration offences to do with the documentation on which they were brought into the country, despite the fact that as victims of trafficking they obviously could not have given consent to that use. That would be an important safeguard to ensure the fullest protection of children.

Alison Worsley: Barnardo's is also seeing cases where children are being prosecuted for crimes they have committed while they are involved in exploitation. We would like to see something on the face of the Bill that says that that is not in the public interest.

Q510 Chairman: Why is the CPS not following its own guidelines? Do we have any idea? Has Barnardo's done any research into that?

Alison Worsley: We have not done any research into that specifically. It goes back to the wider culture of disbelief about trafficking and understanding of what the signs of trafficking are—the fact that, as Mrs Spelman said earlier, children in particular do not present as victims. There is not that classic consistency of story. I read the evidence that the barristers gave to you at one of your earlier sessions and what they said about juries. Even if it can be proved that the case against a person for an offence committed while they were under the exploitation of traffickers was dropped, the jury still takes that into consideration. That is worrying to me. Unless we put some strong levers into the legislation, we will not get over that culture of disbelief.

Dr Boucher: One of the things the Bill could do is set out a series of contexts where it is more likely statistically that the people concerned have been trafficked and require that in that instance, as a matter of law, before proceeding, checks are made to make sure that they have not been trafficked. That would not be putting the guidance on the face of the legislation and telling prosecutors that they cannot prosecute, which would raise the hackles of the CPS—although that may be something that one might want to talk about doing—but it would be an additional safeguard. For example, if you were dealing with someone who was 16 and had been found to be in a cannabis-farming context, making it a statutory obligation that before one proceeded that should be investigated to see whether or not they had been trafficked would probably help to reduce the number of people who are prosecuted wrongly.

Mike Dottridge: With respect, it comes down to your responsibilities as legislators to give priority to protection, even when framing offences. Looking at experience outside the United Kingdom, ensuring that offences are framed at the same time as thinking about protection of the children involved, and indeed prevention, is helpful. Consequently, if any young person was referred to children's services and the prime

referral was at local level, I would hope that the sort of flaws that were identified in last June's Court of Appeal judgment would not be so glaring. I am reminded that the criticisms in the judgment were aimed as much against the unspecified professions—that is to say, the lawyers involved—as against the prosecutors.

Q511 Fiona Mactaggart: Can I ask one question about something that probably would not be in the Bill itself but might protect children better? What proportion of children whom you have encountered who have been prosecuted came as unaccompanied minors when they first arrived, with nobody following through that unaccompanied minor status?

Ilona Pinter: Hopefully, we will get on to this in relation to the guardianship discussion, but it is a very serious issue. First, there are no data available on this, so it is very difficult to tell. We do not have those data available at the Children's Society. The Home Office does not currently collect or disaggregate data on the basis of whether somebody is a victim of trafficking or provide any way of showing the pathways for a child, but it is a really important point. The fact that a child is in this country on their own, does not speak the language, does not understand the culture and does not have anybody with legal parental responsibility looking out for them makes them incredibly vulnerable to exploitation. Even if they were not trafficked into the country for that purpose, they are very much at risk of being abused or exploited further down the line.

Q512 Fiona Mactaggart: What would your view be of the UK Border Agency taking biometric information for all unaccompanied children?

Ilona Pinter: I know that point was raised in the recent APPG report. Our view is that there would need to be proper safeguards in terms of how that information was collected and used. One of the biggest problems at the moment for children who are subject to immigration control is the way that their information is used by immigration officials. Some of the issues that we have raised in the RCC's evidence are around some of the problems with the NRM decision-making process and how information screening is inappropriately used within the substantive decision-making process. We would be cautious about that, but obviously data and information and how those are shared are key to make sure that the child's best interests are maintained throughout the process.

Chairman: That takes us neatly on to guardianship.

Q513 Lord McColl of Dulwich: As you know, Barnardo's, CARE and the Children's Society have all recommended a system of legal guardianship for migrant trafficked children. From your experience of working with these trafficked children, what practical difference do you think that would make to the quality of legal advice, accommodation and care of the children?

Ilona Pinter: As I have already mentioned, the Children's Society and the Refugee Children's Consortium are in favour of legal guardianship for all separated migrant children, including potential victims of trafficking. In terms of the practical differences, having somebody to co-ordinate and oversee the processes that children are involved in is really crucial, because at the moment this function is not there; it does not exist here, like it exists in other European countries. This means that children inevitably fall through the gaps in provision. As a consequence, we see children not being properly accommodated, in unsupervised accommodation without 24-hour care, and not being properly represented in their immigration proceedings. In the case of victims of trafficking, there is a real need for a child to be properly supported through criminal proceedings. We believe that it would support the aims of the current Bill around prosecutions if victims were better supported.

As I mentioned, there is also a prevention issue in relation to unaccompanied children, in that we see a lot of children who are incredibly vulnerable. The Scottish model took that approach and piloted guardianship for all unaccompanied children. For example, at the moment, we work in one local area where there are quite a number of unaccompanied Albanian children. It is unclear whether or not they are victims of trafficking. They have claimed asylum in most cases, but their age is being disputed by a local authority. In the meantime, they are being housed in unsupervised, independent accommodation, even though some of them are 14 or 15 years old. They do not have access to independent advocates, as a looked-after child would, because they are not recognised by the local authority as a looked-after child, so all the services that apply to those children are not being afforded to them.

Dr Boucher: This is the obvious area in which the Bill can really add value for children. At the moment, the principal challenge is that these incredibly vulnerable young people are passed from state agency to state agency. They do not have any commonality; they have to go from agency to agency, to meet different people, to retell their story again and again and to go through the trauma of that. The idea of a child trafficking guardian is a very simple, powerful idea that is backed by GRETA, the European directive, the European convention and the Northern Ireland children's commissioner; recently the US State

Department also backed it. All kinds of organisations in different countries are recognising the importance of this, because it is a common problem. As children move between agency to agency and have to tell their story again and again, they become very vulnerable to being re trafficked and lost. That was the nub of the problem that really brought us to this issue—the large number of children who were being lost. Between 2005 and 2010, 32% of rescued trafficked children were lost while in local authority care.

From our point of view, the idea of a child trafficking guardian does not duplicate a job that anyone is already doing. They are there to accompany the child in its engagement with all state agencies and are recognised by law. It is crucial to say that, so that when the child trafficking guardian turns up with a child those state agencies do not address them with the words, “Who are you?” and the statutory body is required to recognise them as a matter of law. They should be independent, certainly of any statutory body that has a role in providing services for children. One can make a good case that they should be completely independent of the state, although training that is regulated robustly by the state is absolutely crucial.

The Government have argued that section 26 advocates, independent reviewing officers and independent visitors, which are all provided for by the Children Act, together collectively provide a guardian-type function, but in our view they manifestly do not. Section 26 advocates, for example, are not appointed from the moment someone is identified as a child at risk of being trafficked. They are appointed only at the request of the child, which raises an interesting question if the child is very young. I cannot really imagine a four-year-old going in and saying, “Can I have a section 26 advocate, please?” IRAs or independent reviewing officers do not accompany trafficked children anywhere—they look at their care plan. They provide an important role, but a different role from that of a child trafficking guardian. Independent visitors are great; they can visit and encourage, but they cannot accompany. They are not recognised by statutory bodies to represent or advocate on behalf of the trafficked child.

Recently, the Government published their draft regulations and statutory guidance for local authorities on the care of unaccompanied asylum-seeking and trafficked children. They have tried to argue that that will do, but it does not address any of the fundamental problems. It requires, for example, that independent reviewing officers should now make express reference in the care plan to a trafficked child’s particular needs, but it does not deal with the fundamental problem that children are still being bounced from agency to agency, without that common person who could hold their hand.

Q514 Chairman: Could I ask you about the Government’s current proposals to do something that is short of being a guardian? What do you

think of that? I am thinking not about the Scottish model but about Theresa May's current proposals.

Dr Boucher: I guess it is better than nothing. In our view, it should fulfil the common definition of a guardian—that this person accompanies the child in all their engagements with statutory bodies, is recognised by statutory bodies, is there to advocate on behalf of the child, if the child requires them to do that, and has a measure of independence from service-providing statutory bodies. If these trials result, as one imagines they might, in the production of some good practice guidance—which in this age of austerity might sit on a website as a PDF, rather than be published as a glossy document to sit on the shelves of local authorities—I guess that would be better than nothing, but our point is that that would lead to a postcode lottery for trafficked children. Probably most local authorities would not do anything at all about it. There are some that would, which would be great and would be better than nothing, but our view is that this needs to be taken forward on a statutory basis, so all children, regardless of whether they have been trafficked to Cornwall, Bristol or Manchester, have access to the child trafficking guardian service. We see that as absolutely crucial and as a way in which this Bill can make a very practical, real difference to children's and young people's lives.

Q515 Lord McColl of Dulwich: How quickly should the guardian be allocated? There is always a time interval, isn't there?

Dr Boucher: You should not wait for the child to be processed by the NRM, because that takes some days. Children are most at risk of being re-trafficked in the early days. As soon as they are deemed to be at risk, potentially, they should be allocated a child trafficking guardian. If they then go through the NRM and the decision is made that they have not been trafficked, obviously one can relieve them of their child trafficking guardian, but one should not have to wait for that decision to be made. It may well be too late by that stage.

Mike Dottridge: Having had too much to do, perhaps, with Geneva and the UN, I see a much broader need than for just a child trafficking guardian. Indeed, as far as many unaccompanied children who have arrived in the United Kingdom are concerned, it is precisely the instant appointment of an independent guardian, where decisions could be made in the child's best interests, that would prevent the child from being trafficked or, possibly, returning to the control of traffickers, so there is a prevention focus.

I will not begin to repeat the list of 14 functions that we identified in the UNICEF reference guide for protecting child victims of trafficking eight years ago—I am happy to send that afterwards—but it seems to me from looking at virtually every judgment I have seen that the need

for an independent child guardian has been crying out. The best wishes of the child were not understood either by their own barrister or lawyer or by the statutory body, the police or whoever was dealing with their case. I recognise that there will be—and should be—a considerable expense. It is an absolutely necessary expense to incur in this day and age.

Alison Worsley: You will not be surprised to hear that the views of Barnardo's are very similar to those that have been expressed already by the panel. I want to come back to the point about the pilot scheme that Theresa May has announced. We have not seen the full detail of that yet, but one I think I would like to urge the Committee to consider is that that should not be a barrier to putting something about guardianship on the face of the Bill. We have a unique opportunity here. We would not want to see that disappear simply because there is a pilot scheme coming up shortly. You may want to think about whether there should be a commencement order that would delay guardianship proposals while the pilot scheme is carried out, but I would really urge you to put something on the face of the Bill around guardianship and independence, particularly from the local authority or other statutory agencies, so that there is not that conflict of interest.

This is the key element for us. You asked about the practical difference it would make. Barnardo's has three specialist projects. We support around 60 cases of children at any one time. We are fulfilling a lot of the roles that you might expect from an advocate, although not all of them. One of the real challenges is having the ability to challenge decisions, really to act in the best interests of the child and to have somebody listen. We have put an example in our written evidence for you about a young woman who was accommodated by a local authority. We knew that she was going missing regularly to a different part of the city. The local authority also knew that, yet it wanted to move her to a residential unit in that part of the city. She was moved there, and she went missing; she was pregnant by that point. Nobody has seen her since, but in that time she got a conclusive NRM decision—and she does not know. That is a real example of the difference it could make to a child.

Chairman: Can we leave the point about the Scottish scheme for the moment, so that Norman can ask his question? We can come back to that before you have finished giving evidence; you might like to think about the Scottish scheme. We have behind you the Scottish people, who are going to tell us about it, so your views on it will be very interesting for them as well as for us.

Q516 Lord Warner: Could I act as a sort of devil's advocate? We have heard a lot about guardianship, but there is the good old section 31 of the Children Act and care proceedings. Can you give us a reason why

we should not treat these children in the same way that we treat children in this country who are taken into care? Why are we setting up a separate, special system for these kids when we have a provision on the statute book for local authorities to act to take these children into care, through care proceedings?

Alison Worsley: There are a number of issues with section 31, not least about age assessments and the difficulties of local authorities in wanting to recognise that these are potentially vulnerable and trafficked children. There are issues anyway with the fact that section 31 does not apply to 17-year-olds or 16-year-olds who are married, so if we relied just on section 31 we would already be excluding a number of children from the provisions. I am sure the other panel members will have something to add.

Ilona Pinter: I agree. The instance that Dan mentioned would not be addressed and the gaps that currently exist would not be filled by the provisions of section 31, even if it were amended for 16 and 17-year-olds. Currently, there is nobody to support children through the immigration process in an effective way. The Scottish model demonstrates how the guardian is really vital in providing the information to inform decisions around children's best interests. There have been a number of reports recently about how decisions made for unaccompanied children are not always in their best interests in terms of the leave that they are given; often it is temporary leave for 30 months at a time. There is no formal process for determining what would be in a child's best interests. A guardian would be crucial within that process in terms of informing and advising it, as well as helping the child in the family tracing process and other areas. In our view, the care order would not resolve those issues.

Dr Boucher: A really crucial thing about child trafficking guardians that makes them successful is independence. If you look at other aspects of the whole trafficking scenario in Wales, where I live, it is interesting that charities have now been added to the list of first responders. Last year, there was a significant increase in the number of children and adults who have gone through the NRM as a consequence of being identified by charity first responders, because often trafficked children and individuals find it easier to engage with bodies that are independent of the state. For reasons that have already been explained, the local authority, under its responsibilities as a provider of care orders, would not carry out the key functions of a child trafficking guardian. Because it is not independent—it is right at the heart of the provision of statutory services for children—it would not be well placed to argue independently on behalf of the child, so we would argue that that is not the way forward.

Q517 Lord Warner: Can I pursue this a little more? I say this as an ex-director of social services, so let me get that bit out of the way. I am still struggling with this. Is it that the Children Act provision is legally defective to enable it to work for trafficked children, or is it that local authorities will not or decide not to use it? I am still struggling slightly with the idea that we should set up a separate system outside that which is in use in this country for children in need and children at risk.

Q518 Chairman: Could I answer it as a judge who tried these cases for about 25 years? I suppose I spent most of my time doing either adults who were vulnerable or section 31 cases. Quite simply, the standard of proof is so high that it would be very difficult to get them through at an early stage. The second point is that local authorities have 46,000 or 56,000 children in care and will not want to make an application for care. Nobody can make them do it; the Court of Appeal has held that you cannot force a local authority to apply for a care order, so we would have to change primary legislation on that. The major problem is that there is a very high standard under section 31, which raises a point about whether the threshold for children is actually too high. Speaking as a lawyer and a former judge, I think that is one of the problems. We could adjust section 31, but that would do quite a lot of damage to the Children Act. That is one of the problems.

Dr Boucher: Another aspect of the whole independence argument comes back to cost. Obviously, we are in a time of straitened finances. There is a sense of a win-win here, inasmuch as it helps for a child trafficking guardian function to be conducted by a person who has a measure of independence from the state. That also opens the door for developing a system of child trafficking guardians where the state oversees guardians' training and makes sure that they are properly trained—there is a cost associated with that—but where they can be volunteers, like magistrates. There are some interesting models from the United States—the court-appointed special advocates system, which has been hugely successful and is run entirely with volunteers. The state undertakes the not insignificant expense of making sure that they are properly trained, but—like magistrates—they do not claim a salary. That is an additional benefit of going for independence at this particular time.

Chairman: Joan wants to ask about section 20.

Q519 Baroness Hanham: I have spent a lot of time as a magistrate dealing with the Children Act. I am not sure whether the Children Act is getting in the way here, so I want to move us on to section 20 and the responsibility of local authorities to provide the accommodation and services for children. With section 20, that is

reduced. Do you think that local authorities are getting out of all this by using section 20 when they are presented with a child who may be trafficked? Is there any way for that to be strengthened?

Ilona Pinter: We have spent a long time working with local authorities where, previously, children in this situation would have been provided with some support under section 17 without being properly accommodated. We still hear of cases where that is happening, despite the development of case law and statutory guidance on that. In our evidence, we highlighted a serious case review of a child death in Manchester. It was a recent case review involving not a trafficked child but a child who had been abandoned in this country by his family and had not been properly taken into care, despite the fact that it was recognised and there was legally advice internally that he should be looked after under section 20. He ended up committing suicide in bed-and-breakfast accommodation. It is a very sad but very real example of how children are not getting the support that they need.

In that case, the child was not provided with a range of services that he was owed—appropriate accommodation, access to education and mental health support—to deal with the fact that he had been abandoned by his family and had no other support in this country and no one with legal parental responsibility looking out for him. That is one of the crucial points in relation to the guardianship proposal. We would advocate for a legal guardian because currently, when children are under section 20, there is nobody with that responsibility for them. There is a very practical problem in relation to trafficked children in terms of instructing solicitors, in that there is no one to help to do that on their behalf. In the case of trafficked children, obviously they may not be in a position to give instructions that would be in their best interests.

Q520 Chairman: We need to move on, but the lawyers on our team want to ask a practical question. If we were able to draft in the Bill that there should be a legal guardian with parental responsibility for the child, to share with any parent who might exist, would it be necessary to put in the rather elaborate guardianship requirements that Ian and I have put our names to, with—thanks to Dan—some splendid drafting? Could we just have parental responsibility, or do you think it is necessary to detail the sort of jobs that the legal guardian should do? Take an example under the Children Act, where there are legal guardians in all care applications. You do not say what the legal guardian should do; CAFCASS has its own instructions as to how to represent such a child. What do you think should happen about that?

Baroness Hanham: But they would not have parental responsibility anyway, would they? It is the attaching of parental responsibility, as well as the guardian.

Chairman: If you attached parental responsibility to a legal guardian in this Bill, would you need—other than perhaps in guidance—to put in anything about how the legal guardian with parental responsibility should behave?

Mike Dottridge: Somewhere, it needs to be quite explicit; otherwise there will be a reductionist tendency, particularly at a cost-cutting moment. I certainly do not know whether it should be in guidance or explicit in the Act, but some of the functions—particularly when it comes to ensuring that the child’s best interest is and goes on being a primary consideration at each decision stage—need to be explicit.

Chairman: That may be the answer. We probably have to move on.

Lord McColl of Dulwich: Yes. The Scots panel will be a bit late.

Chairman: I thought we would ask the team very briefly to tell us their view on the Scots system, before the Scots tell us how it is working. We have to keep moving.

Q521 The Lord Bishop of Derby: My question is addressed to Ilona first, although others may want to comment. It is about the NRM. You have alluded to this, but clearly sometimes children do not recognise themselves as victims because of the way they read the relationships they are in. You have produced this report saying it is vital that they should be treated as victims. Would you like to make the case for that and how you see it might work?

Ilona Pinter: The points that we were trying to make in relation to the NRM are about problems with the current decision-making process. In the report “Still at Risk”, it was highlighted that referring children to the NRM is not necessarily always seen to be in the child’s best interests, particularly where that relates to children from outside the EU. I know that sometimes we see British national children referred to the NRM because of the high acceptance rates, which can be very beneficial to the child in terms of prosecutions, but I would like to give you some statistics in relation to foreign national children.

Between April 2009 and June 2011, approximately 28% of non-British nationals were accepted as victims of trafficking compared with 88% of UK nationals, so there seems to be a disparity in how readily victims of trafficking from abroad are recognised as such. I know that the Anti-Trafficking Monitoring Group has done some recent research to

highlight some of the issues around credibility assessments. Our view is that we would be very cautious around a duty to refer to the—

Q522 The Lord Bishop of Derby: So you would not make it mandatory.

Ilona Pinter: We would be very cautious about that because of the problems with decision making and the lack of independence, particularly for victims from non-EU countries, between the decisions made about their immigration status and their right to remain in the UK, and their status as a trafficking victim.

Q523 The Lord Bishop of Derby: Won't running two different or parallel systems make it slightly more complex?

Ilona Pinter: At the moment, the NRM has a number of different functions. It is trying to gauge the scope of trafficking in the UK on the one hand, while at the same time providing victims of trafficking with leave to remain in the UK and support. Sometimes, those can be conflicting because of the pressures on the Home Office around reducing net migration targets. We see the real impact of that on children. One of the cases that we highlighted in the RCC's evidence is that of a child from Vietnam who had been trafficked for cannabis cultivation, where evidence from his screening interview was used to undermine his credibility. Those issues are very real.

The point that we were trying to make in relation to the NCA duty as it is currently is that the impact assessment for the duty says that victims can be referred to the NRM or the NCA anonymously and then, if they have given consent, additional information can be referred. In relation to child victims, since currently they do not need to give consent to be referred to the NRM, we felt that there needed to be specific consideration of how that duty would impact on children's rights. Children would not necessarily have a choice, so that is an issue. It brings us back to the point about guardianship. Again, if there were a guardian within this process, the process of referral would be a lot easier and those decisions around best interests could be made for the child.

Chairman: Andrew, would you like to carry on with that?

Q524 Sir Andrew Stunell: Yes. Do you think the NRM is or is not working effectively overall? If not, what needs to be fixed? If yes, what can we improve?

Ilona Pinter: The baseline data from UKHTC from the summer highlighted that 65% of potential victims of trafficking who were

identified—not just children but across the board—were not referred to the NRM, so there is a significant problem to do with awareness around the NRM and, in our view, the decision-making processes within that, as I have mentioned. Our feeling is that there are many within the sector who do not see its relevance, particularly for children, because if they are in the care system, get the support and get a good immigration lawyer who can put in a positive claim for them or enable them to get status—if they wish to remain here and that would be in their best interests—ultimately, their outcomes in the long run will be much better. From the NRM, victims potentially get residence; if they are accepted as victims, they will get a residence permit of a year and a day. For a child, we do not believe that that is a durable solution. It does not look to the best interests of the child in the long run.

The Government are currently doing a review of the NRM. It will be really important to take into account the particular issues that I have highlighted in relation to acceptance rates based on different nationality and immigration status. Ultimately, we feel that decisions about whether somebody is a victim of child trafficking need to be made by child trafficking experts and experts who understand children's development and child protection, and that those should be separate from immigration functions.

Q525 Sir Andrew Stunell: Okay. You have mentioned one particular technical point—that the year and a day limit may not be appropriate. Could you give us some views—not necessarily now—on what you think the alternative should be for children?

Ilona Pinter: We do not have a very defined answer to that, but certainly the issue needs to be reviewed. In our evidence, we have previously suggested that children should be given indefinite leave to remain—

Q526 Sir Andrew Stunell: Straight away?

Ilona Pinter: Yes, so that they can properly engage within the rehabilitation process and, when it is safe for them to return, make that decision. A lot of children do want to return to their countries of origin—it is not necessarily the case that they would want to stay here, and it would not necessarily be in their interest to remain here in the long run—but it would certainly take the pressure off children of being given a very temporary leave, which is currently the case. Most children, if they are not given refugee status, are given a form of temporary or discretionary leave for unaccompanied children on the basis that there are not adequate reception facilities in their country of origin, but it is given for 30 months at a time or until they are 17 and a half. That makes transition into adulthood incredibly difficult, means that children

are very fixated on that period and makes it very difficult for them to continue in education and to rehabilitate from the abuse that they have suffered, in an effective way.

Chairman: We have to move on to the last question.

Q527 Mrs Spelman: We have touched on age assessments. You have indicated that the presumption giving children the benefit of the doubt is not working. What would make it work better?

Ilona Pinter: We believe that there needs to be guidance. At the moment, there is no statutory guidance for local authorities around how age assessments are to be conducted, so social workers have to rely on case law that is being developed. A lot of social workers do not have any kind of training in conducting age assessments, which is a very difficult process. Everybody recognises that is a difficult process, but guidance would be really important as a start.

Our other view is that, because there is not currently any scientific method of determining a child's age and the margins of error of the current processes that have been developed are so great, that is not an effective approach. We have always advocated a multi-agency approach whereby social workers, as well as other advocates—education professionals and paediatricians—can contribute to that assessment. The Scottish model demonstrated some really positive outcomes from age assessments in terms of how the guardian can facilitate those.

There is also a cost saving to be included, because, if age assessments are done properly to begin with, it will have positive implications not just for the child, who will not have to go through a lengthy age assessment process—in some cases, children have to endure multiple age assessment processes, in addition to potential legal challenges that they have to be involved in—but for local authorities as well, in terms of reducing their legal costs. There is an incentive for making that process more effective to begin with.

Q528 Chairman: We are running considerably over time, but I would like not more than two sentences from each of you on your understanding of the Scottish system and whether you think it is something that we should be considering very carefully.

Alison Worsley: The final evaluation report on the Scottish system shows a lot of promise there and a lot of things that we can adopt for a scheme here. The key thing for me—which I urged you all to do earlier—is to make this statutory. Its statutory nature and independence are the most important issues from our perspective.

Q529 Chairman: The statutory nature and independence of guardianship?

Alison Worsley: Yes. Having that lever so that you can hold other agencies to account is the fundamental thing that we need to address.

Mike Dottridge: I will not add to that. That is exactly my view.

Dr Boucher: I agree. In annex A of our submission, we provide an amendment to the Bill to provide for a child trafficking guardian.

Q530 Chairman: Ilona, is there anything you want to add?

Ilona Pinter: I agree with the points that have been made. There should be a legal duty and it should be applied to all unaccompanied children.

Q531 Chairman: Do you think the Scottish system is a way forward or that we should just go for what Alison said, which is that there should be a statutory nature of guardianship and independence?

Ilona Pinter: We agree. It should be on a statutory footing, for precisely the reasons that Alison mentioned—so that there is a power to compel.

Chairman: We have kept you longer than we should have done. We are enormously grateful to all four of you. Thank you very much for coming.

Examination of Witnesses

Witnesses: **Catriona MacSween**, Aberlour, and **Graham O'Neill**, Scottish Refugee Council, examined.

Q532 Chairman: Thank you very much for coming, particularly as I assume you have come from Scotland. We are very grateful to you for coming to advise us on how the Scottish system is working; you will have noticed that you got no criticism. Would you be kind enough to give your names and to say who you are for the record?

Catriona MacSween: My name is Catriona MacSween. I am the service manager from the Scottish guardianship service, which is delivered by Aberlour, which is a children's charity in Scotland.

Graham O'Neill: My name is Graham O'Neill. I am a policy officer at the Scottish Refugee Council and which has been a partner with Aberlour.

Q533 Chairman: You work together, I suspect.
Graham O'Neill: Yes, we do.

Chairman: That is great.

Q534 Michael Connarty: I have the pleasure of welcoming you both to give us evidence. I have been following what happens in Scotland very closely. We would like to hear from you about what practical difference the guardianship scheme in Scotland has made to the care and welfare of the children involved—what you think has been achieved. That will give you a chance to talk to us about what you think is beneficial about the scheme. Has it helped to identify trafficked children who might not have been identified without a guardian? Is there any evidence on that? Would you like to talk us through what you think we should know about the scheme and how it is working?

Catriona MacSween: There are a number of practical benefits to having a guardian. Just to be clear, we work with unaccompanied asylum-seeking children as well as trafficked children. It is only children from outside the EU, so they are all subject to immigration control. I will probably refer to them—

Chairman: I wonder—

Michael Connarty: I would probably advise you—

Chairman: Michael, please—

Michael Connarty: You are like the rest of the Scots, so I would probably advise you to slow down.

Q535 Chairman: Michael, please—just a moment. I am having slight difficulty in hearing; I must be getting slightly deaf. Do you think you could keep your voice up?

Catriona MacSween: Okay. As I said, we work with children who are unaccompanied asylum-seeking children as well as trafficked children. They are all from outside the EU, so they are all subject to immigration control. We have developed a child-centred model based on personal testimonies of separated children about what they need and what they think is helpful to help them through the complex processes they find themselves in. The guardians provide a safety net for these children. They are a consistent person who is in this person's life pretty much from day one. They work with the children from the start, from integration to possible return, until a durable solution is found.

Based on what separated children have told us about, we developed 14 modules of work, which we work through with the children. It can be anything from understanding confidentiality, understanding the roles of people in their life, understanding what trafficking is—the concept of trafficking as well as the trafficking process—to credibility. It is a very structured piece of work. It is not just your luck if you happen to be with a social worker, for example, who gives you some of this information—the guardian will ensure that each child goes through each of these modules, so that they have the information to help them to navigate these complex systems.

They build trusting relationships with young people because we think that will help. There has been evidence that young people will disclose more information based on the relationship that is developed with their guardian. They work with young people in both formal and informal settings to develop that relationship. Guardians commit a lot more time than social workers probably have available, because we feel that the trusting relationship really is key to helping young people through this process.

We also attend key interviews with young people. We go along to Home Office interviews, sit in on age assessment interviews and go to legal appointments with young people. We are now embedded in the social work care planning meetings as well. It is not a passive role but very much an active role. We will be assertive, committed watchdogs—we make sure that we defend the rights of the child, that decisions are taken in their best interests and that young people's wishes and views are heard and involved in all the decisions that are made about them.

We also offer participation activities to young people. We offer groups that we run in the evenings and activities for young people. It is really important for young people to come along and meet other young people who have shared experiences, having been potentially trafficked or seeking asylum in the UK. That gives young people an opportunity to build some of their first friendships and reduce their isolation, and gives them time just to relax, have fun and do normal teenage things. We had an independent evaluation of guardianship, which found that the capacity of the young person to deal with issues in relation to his or her asylum or trafficking claim is often contingent on having a general sense of well-being and feeling socially embedded and connected, so this is a really important aspect of the guardian's role. We work across three key domains: asylum, trafficking, and well-being and social networks.

Graham O'Neill: Just to develop Catriona's point—

Michael Connarty: I suggest that you speak up. We Scots have very soft accents, not the estuary accent we are used to down here.

Graham O'Neill: Just to expand on Catriona's point about the importance of social connections, we know that Kathleen Marshall, the

ex-Commissioner for Children and Young People in Scotland, mentioned to the Joint Committee on Human Rights, when it was conducting its inquiry into the human rights of unaccompanied children and young people, the importance of the social connections dimension of the Scottish guardianship service to promote or restore some of the resilience for children and young people who are unaccompanied in the UK—to give them a sense of normalisation and stability through doing normal teenage things. Because that promoted their resilience, it enabled them to be more actively involved and maybe more prepared to disclose information in relation to some of the substantive processes they were going through, particularly asylum processes. Without going ahead to questions that will come forward later, we think that is a really important dimension around lessons to learn for designing a guardianship service in relation to trafficked children as well. The social connections dimension is a very important aspect to build into any guardianship model that you take forward.

Another aspect we found in terms of practical differences is that, as one would expect, over time—in years 2 and 3 of the pilot of the Scottish guardianship service—the guardian became the hub for various other services. That is intentional, of course—it is what one wants to see and is common ground. Irrespective of whether or not you are a legal guardian, it is important practically to have that person as the hub. They can then be the co-ordinator of various services, not least because they are the person who knows the child's or young person's needs and circumstances, because they have the trust of that child or young person. They can speak with most authority with social services, police, the UK Border Agency and now Home Office immigration and visas. It is a really important point that they are the hub for knitting services around the child or young person going forward.

We think it has made a number of positive practical differences for children and young people in the service. It is a very empowering programme. As Catriona mentioned, we have 14 educational modules and a detailed practice framework. It is very important to note that we deliberately got two very high-quality, respected, independent evaluators from the start. One of the lessons to take forward is to have high-quality, independent evaluation at the start of guardianship. A reflexive methodology was employed, so that we could learn lessons as we went forward—and we did learn lessons as we went forward.

We also found that that was a very effective way of having influence, when we reported the findings of the pilot. People knew who these evaluators were and respected them as independent academics in their own right. The two individuals were, among other things, the advisers to the inquiry by the Joint Committee on Human Rights into the human rights of unaccompanied children and young people. That is a very important step that we took early on. We think it bore fruit, especially

because of their influence with the Scottish Government in moving the pilot into a service.

Q536 Michael Connarty: Can I follow up with a couple of questions? I asked specifically whether it had helped to identify trafficked children. Has it had any influence on the process of people presenting themselves as being trafficked and admitting they are victims? Secondly, what about the effect on what we have been told about what happens in the local authority system in England, where lots of the young people go missing? What is the record in terms of those people remaining within the system? Is there a rate of loss—of people disappearing from the system?

Catriona MacSween: In answer to the first question, I would say that guardians have made a difference in identifying children who have been trafficked, particularly with local authorities outside Glasgow, where it is probably rarer for a young person to be found. Quite often, local authorities and social workers do not have the awareness or the experience of working with trafficked young people, and it has been the guardian who has identified indicators on a number of occasions. They have helped the social work department. The guardians in Scotland are not first responders, but we do help social workers to understand what is necessary to complete an NRM. Even in Glasgow, there have been occasions in evidence when, because a young person has not seen themselves as being a victim of trafficking, it has taken time for them to disclose information and the information has become available at a later date, when they have built trust with the guardian, who has been able to pass that information on to social workers. What was the second question?

Q537 Michael Connarty: It was about people falling out of the system—being involved with a guardian and disappearing.

Catriona MacSween: The statistics to date are that we have had 45 young people who have presented with indicators of trafficking. In about three and a half years, we have had four young people who have gone missing from care. They have all been Vietnamese and have all been based in local authorities outside Glasgow. Quite often, when young people are based outside Glasgow, in a local authority where there are no other separated children, they can feel quite isolated. Their contact with the guardian is probably not as frequent because they are outside Glasgow.

The fact that possibly local authorities have not put the right safety measures in place for that child is another reason why they may have gone missing from care. I suppose that the number is less than 10%. It is interesting that they have all been outside Glasgow's local authority. There is something to be said for having a community in Glasgow

where they can meet up with other young people and see that they are not alone and that other young people are going through a similar experience. The frequency of seeing their guardian is really important as well. Those are just my initial thoughts—it has not been evidenced—about why young people outside Glasgow are the ones who have gone missing.

Graham O'Neill: Just to add—

Chairman: We have to move on, as I am getting a little concerned about time. You may be able to make the point when answering Alicia's question.

Q538 Baroness Kennedy of Cradley: The Scottish guardian model is not underpinned by statute, so you have no legal status. What problems did this create, and how did you try to overcome them? Have you overcome them?

Graham O'Neill: We are getting there. We found that there were some occasional and early problems, which we expected, in terms of professional territorialism and understandable confusion about what the role of the guardian was, particularly in relation to social work and child protection. That is something that was foreseeable and that we did foresee. It needed to be worked through through clarity and communication with the professionals, to reassure them that the *raison d'être* of the guardian and independent advocate was the well-being of the child or young person—the same *raison d'être* as that of the social worker and all the other individuals involved in the case.

Putting it really frankly, there were some early problems around ensuring that the guardian always had a seat around the table. We needed to work that through, particularly with social services and the then UK Border Agency. We did that, particularly in year 2 of the pilot, when we developed a protocol to make it very clear that it was right in principle and very helpful in practice to everybody that the guardian was always around the table. To be very frank, there were some early issues, which we got over.

We have always recognised the importance of the legal status question. We very much respect the very strong and well-detailed calls, predominantly in England, in relation to that, and we built it into our independent evaluation. We found that about a third felt that legal status would be helpful, a third felt that it would not be and a third said that they did not know. That was during the evaluation, so people were still getting their head around what the role of the guardian was in relation to this particularly vulnerable group of unaccompanied children and young people. It was inconclusive at that point.

Everybody's bottom line in this is what are the best interests and best outcomes for the child or young person. As you would hope and expect, the Scottish guardianship service remains, and will continue to remain, ever watchful of the legal status question. If we see that there are particular issues, such as increases in the number of children and young people going missing from care in Scotland, of course we will get into discussions with the Scottish Government and others about those, to make sure that they keep a close eye on them.

One point that is worth mentioning is that we do not think that the situation in Scotland in terms of unaccompanied asylum-seeking children and, indeed, in terms of trafficked children is directly comparable to the situation in England—for five reasons. First, the numbers are far smaller in Scotland for both groups, recognising the overlap between them. There is also a significant geographical concentration of the young people, predominantly in Glasgow, which is partly a legacy of the implementation of the Immigration and Asylum Act and the dispersal programme from April 2000 onwards. That has enriched Glasgow and other parts of Scotland greatly in terms of ethnic and faith diversity, but it is not surprising that most of the expertise is in Glasgow, as Catriona said. That is a great model for other parts of Scotland going forward, particularly in terms of the trafficking issue, where we need more systematically to raise awareness of trafficking indicators across Scotland. Of course, the guardian or independent advocate is a very effective protection mechanism to make sure that awareness is raised. As Catriona mentioned, we have found that in relation to the identification of potential survivors of trafficking who have been in contact with the Scottish guardianship service.

The Glasgow model also comprises established relationships of trust and confidence with key agencies: the Scottish Refugee Council, which I have the privilege to work for; Aberlour Child Care Trust, which Catriona works for; the Legal Services Agency; and the Glasgow city council child protection committee. Importantly, the organisations know one another and have protocols to work with one another in relation to vulnerable children and vulnerable adults. All the stuff everybody here is familiar with is in place in Glasgow, which is a really effective protection measure in itself. Just to state the obvious point, there are some different policy frameworks in legislation in Scotland as well.

Recognising that the two parts are not directly comparable, we still found that independent advocacy from the Scottish guardianship service was really valued by the various professionals. Even when you have really effective multi-agency working, it was recognised in the independent pilot, particularly from year 2 and year 3, that there was real added value from the independent advocate. Even when other conditions are good, it is important to have an independent advocate and a guardian. That is the critical point to take forward if we are looking to design guardianship models in other parts of the UK.

Q539 Baroness Kennedy of Cradley: Thank you, Graham, that is helpful. Would you support the assigning of parental responsibility to the guardians in Scotland? If so, what difference do you think that would make to your work?

Graham O'Neill: In terms of the Scottish guardianship service, assigning parental responsibility, which is obviously about legal status, is bound up with the question of our being ever watchful of the need for that. We work very closely with the Scottish Government and others in relation to that. We are always on the watch for whether that is a step that we want to take.

As everybody knows, the Scottish guardianship service is in relation to unaccompanied children and young people in terms of asylum. Of course, that is a vulnerable group, but trafficked children are a more deeply vulnerable group, if anything, as we know that there is a history of exploitation there. Article 16 of the EU human trafficking directive is the latest manifestation of the principle, which is recognised in international law on human trafficking, of the particular vulnerability of trafficked children. Going forward, we will therefore be continuing discussions with the Scottish Government and others about how we ensure that all child trafficking survivors, not just those from outside the EEA, are benefiting from the guardianship approach. We have had a great precedent in Scotland in terms of the support we have had from the Scottish Government and will continue to work that through in relation to all survivors of trafficking—from the UK and, within that, from Scotland, and from throughout the EU and EEA.

Chairman: Can I ask for short questions and short replies? We are running out of time.

Q540 Sir Andrew Stunell: I understand that you have had 45 cases in three years. Could you tell me something about the case load of each guardian in respect of the children they are supervising?

Catriona MacSween: Each guardian has approximately 25 cases. They are a combination of some children who have been trafficked and some who are claiming asylum; pretty much every child who has been trafficked is also claiming asylum. Each child is at a different stage of the process. At the beginning, when they are new, there is a lot of activity because they are attending legal appointments and there is a lot going on. A lot of the educational modules that we deliver are at the start, when we are trying to build a trusting relationship. The case loads fluctuate sometimes. If a child has had a decision, even if it is only for temporary leave, there is not much happening in their case at that time. Because the cases fluctuate, the guardians can manage a significant case load at any one time.

Q541 Mrs Spelman: It strikes me that you cannot take parental responsibility for 25 children. That has suddenly altered my understanding of what this guardian is doing. It may be a bit early to answer this question, but what is the typical skill set of a guardian? What sort of attrition rate do you have? Of the 25, how many children fall off that case load—and what happens at 18?

Catriona MacSween: What was the first part of the question?

Q542 Mrs Spelman: What is the typical skill set? Do they stick with the same child up to the age of 18? What happens to the young person after the age of 18?

Catriona MacSween: The typical skill set required is that they have to straddle both child welfare and having an understanding of the trafficking, asylum and immigration processes. Each guardian, including myself, is a qualified level 2 adviser under the Office of the Immigration Services Commissioner. They all have experience of working with children, whether it is within a social work setting or within a youth work setting, so they have to have a skill set of understanding child development and understanding trauma and how that affects a child; I speak as someone who works with victims of torture. They have a really broad skill set and need to straddle both the children's sector and the asylum and trafficking sector. That is why the partnership between the two organisations works really well. One is a children's organisation and the other is a refugee organisation, so it has expertise in both areas. They have to be very good communicators with children. It is not just a matter of dumbing down the language you use; it is about identifying children's educational needs, development needs and cognitive abilities.

Chairman: Ian, can we have a quick question and a quick answer?

Q543 Lord McColl of Dulwich: How many guardians are there? What were they doing before they were guardians?

Catriona MacSween: Initially, during the pilot, there were four guardians. It was reduced to three guardians due to funding. We have two guardians who are on a relief basis; we have one based up in the highlands, whom we can use as and when required, and one based down in Dumfries and Galloway, if we get any children in that area.

At the moment, all the guardians who work within the service previously worked with the Scottish Refugee Council, but all have other experience. We had one who had worked for the Scottish Refugee Council but was also a qualified social worker. I act as a guardian for some young people as well. I have experience of both sectors, having

sat in the children's hearings system in Scotland and worked for the local authority, as well as for the Scottish Refugee Council. I have a balance of both.

Q544 Lord McColl of Dulwich: So how many guardians are there?

Catriona MacSween: There are three full-time guardians, and I act as a guardian for about 10 young people.

Q545 Chairman: Because we are running out of time, I will not ask you the last two questions. Could you write and tell us what you think are the main requirements of a guardian, together with what advice you would like to give to us? Would you mind putting that on paper?

Catriona MacSween: Certainly.

Graham O'Neill: That is fine.

Chairman: Could you just e-mail it to us? We are extremely grateful to you both for coming from Scotland. It has been very valuable to us to hear what the Scottish set-up is. What is so interesting in what you have been saying is the good relationship that you have achieved with all of the other professionals. One of the areas in this country that may be much more difficult is having a good relationship between an independent guardian and a local authority, which may or may not welcome them when they go in, but you have not had that problem in Scotland. If I may say so, it is impressive that the guardianship service is obviously so good. Thank you very much for coming.

Catriona MacSween: Thank you.

Graham O'Neill: Thank you.

Chairman: When you write to us, could you also tell us how long the guardian stays with a particular trafficked child or asylum-seeking child? I know you deal with asylum-seeking children as well. We would also be very grateful if you could tell us how you see them off at 18 and what you do for them.