



HOUSE OF LORDS

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The EU Sub-Committee on Home Affairs

Inquiry on

UNACCOMPANIED MINORS IN THE EU

Evidence Session No. 1

Heard in Public

Questions 1 - 17

WEDNESDAY 16 MARCH 2016

10.30 am

Witnesses: Alison Harvey, Kathryn Cronin and Baljeet Sandhu

Members present

Baroness Prashar (Chairman)
Lord Condon
Lord Cormack
Baroness Janke
Lord Jay of Ewelme
Baroness Massey of Darwen
Lord Morris of Handsworth
Baroness Pinnock
Lord Ribeiro
Lord Soley
Lord Wasserman

Examination of Witnesses

Alison Harvey, Legal Director, Immigration Law Practitioners' Association, **Kathryn Cronin**, Barrister and Joint Head of Chambers, Garden Court Chambers, and **Baljeet Sandhu**, Solicitor, Islington Law Centre and Director of the Migrant & Refugee Children's Legal Unit (MiCLU)

Q1 The Chairman: A very good morning to all three of you. Thank you very much for your time this morning. The rules of engagement are that this particular session will be webcast live, and eventually it will go on to the parliamentary website. You will be sent a transcript of the evidence, and you wish to make any corrections or give us any supplementary evidence, please feel free to do so. Would you begin by introducing yourselves, saying a little about what you do and making any introductory comments you wish to?

Kathryn Cronin: My name is Kathryn Cronin. I am a barrister and I am joint head of Garden Court Chambers. I have been in practice since 1980 and I have had a varied practice as an academic and a counsel assisting the Australian Joint Standing Committee on Migration for a number of years. I was also deputy president of the Australian Law Reform Commission. I have been involved in policy as well as representation.

As a barrister my work is largely with children, in particular with unaccompanied or separated children, both in the immigration jurisdiction and those who are servicing in the family jurisdiction. Of the particular topics that I think are really important in this inquiry, certainly family reunification is a key matter that arises in many of our cases. The situation of the 17-plus young people is also very significant and a matter of great concern to us. The third matter is just to have a better sense of how to consider and apply the best-interest principle, because too often it is a mantra that has little value in decision-making. We see in practice

that there is a lot to be said for having a rather more concrete guidebook on what matters ought to be taken into account if a best-interest assessment is to be made.

The Chairman: Thank you very much indeed.

Alison Harvey: I am Alison Harvey. I am the legal director of the Immigration Law Practitioners' Association, which is a membership organisation for lawyers practising in this field, such as Kathryn and Baljeet. Our focus is on raising standards, training and dissemination of information but also working for just and equitable immigration, asylum and nationality law. This brings me here a lot; at the moment I am working on the present Immigration Bill.

Regarding concerns, we have European standards for unaccompanied children. It is quite daunting to look at how, in a sophisticated system of international and child protection standards, we currently have such colossal failure for these children in Europe. They are in situations of physical unsafety and they are denied international protection. Their basic needs are not being met. To grasp the scale of the failure is the beginning of seeing where we can identify possible safe and legal routes and real opportunities to advance claims and provide protection that might make a difference.

Baljeet Sandhu: My name is Baljeet Sandhu. I am the director of the Migrant & Refugee Children's Legal Unit, based at the Islington Law Centre. We specialise in the representation of children and young people and have done so for many years.

By way of an opening comment, I have a background in youth work and have worked with lots of young people across the UK, not just migrant and refugee children. This group of children is the most vulnerable group that I and my team have ever worked with. In most cases, by the time they have got to us they have suffered some form of psychological or physical injury or harm. Their development has often been impaired and their needs neglected. This has serious implications for professionals seeking to support and represent them. They often have significant mistrust for adults because of their treatment not only prior to their departure from their country of origin but en route to the UK. Additionally, the reasons for separation from families can be very varied and complex, and we support them through very complex legal processes not only as lawyers but as individuals. There are lots of fantastic support agencies that are trying their best; it can be incredibly difficult and incredibly distressing for them.

Q2 The Chairman: Thank you very much indeed for the very helpful introductory comments. What are the key legal challenges faced by unaccompanied minors in the UK? Do these challenges differ depending on the age, gender or nationality of the minors concerned?

Alison Harvey: The first challenge is to get here in the first place, ie the lack of safe and legal routes. There is a tremendous problem with not having guardians. The UK will say our social work system is such as to implement the European obligations on providing a guardian. However, many of these children have no one in the UK who has parental responsibility for them. You see that from little things—no one can consent to them going on school trips—down to really big decisions. They have no one to guide them through an immensely complex legal procedure.

The lack of legal aid for immigration cases hurts them. It is there for asylum but it is not there to advance cases on their private life or for family reunion. Age dispute is a huge problem with children who are not identified as children and who therefore are not getting any protection at all, or because their age is doubted everything about their case is thrown into doubt.

You mentioned specific factors. The over-16s often get an incredibly rough deal. These are children who have been through so much and whose development is affected by that, but they get a minimum of support. They are very often not in foster placements but in semi-sheltered accommodation. We are not treating them like children.

On the question of nationality, it varies. I would highlight human trafficking in Vietnamese children as an immense problem.

On the question of gender, there are fewer girls, and sometimes boys get the rougher end of the deal as they are seen as resilient and considered dubious in some way. There are fewer girls, and that probably means less recognition of their specific needs.

Kathryn Cronin: On the question of challenges, when you are representing these children the key factor to remember is their journeys to the UK and what those entail. They move only so long as money is being paid on their behalf to move them. When you represent these children, you find that they have really varied experiences with travel. Baljeet and I wrote a report for the Law Centres Network that came out in December last year. We looked very intensively at 60 cases, documenting so many of them. You could see that some of the children had very long journeys, most of them harrowing. The ones who came by air generally had adverse experiences after arrival, because so many of them are trafficked. People will only pay for an air ticket if they can exploit them after entry, in many instances. The others are travelling very much hard class, and we are significantly overlooking those experiences in the journey. They incapacitate many children to engage with processes straightaway. If we wanted to reform the way we run our system, we would encourage the Home Office and social workers to make a proper assessment of the implications of that journey straightaway. They must establish the

consequences for the child's capacity to deal with the sort of processing that they are going to undertake.

The second challenge is just to get decent lawyers. We looked at lawyering in this, and increasingly, because of legal aid cuts, more and more inexperienced lawyers are taking on these more and more complex cases. Consequently, there is a very variable quality in the standard of lawyering. One of the things that we want to do as a result of this project, and our funders have reserved some money for it, is to start training up law centres. They are a good series of entities to provide competent assistance if they can be properly trained.

There is a real problem with legal aid and the limitations on it, and in particular with the division whereby human rights work is put out of scope. We found that impacted on lawyers such that they felt that they could not get medical reports on the child because that would be considered to be moving to a human rights claim instead of an asylum claim. Therefore, there was no proper understanding of how the child's maturation and their general vulnerability impacted on whether or not they were at risk on return. The legal aid limitations are a real problem.

The third problem that our study highlighted was, as Alison has said, the absolute importance of having someone like a guardian to assist the child to negotiate the system. Children here are processed in a way that is strikingly different from adults. They interact with so many strange adults very quickly, such as social workers, lawyers and medical assessors. There is an extraordinary range of adults all asking similar sorts of questions. We found that in Scotland, where these children had guardians, their cases were better prepared, their experiences of the process were significantly better and they had a better outcome. From our analysis of the data, that was incontrovertible. For us, those are key matters.

I agree with Alison that there are differences between children of different nationalities. Also, more sympathy is accorded to young girls than to young boys. There is a presumption certainly that 16 or 17 year-old boys, provided that they appear to be in good health, are more than capable of being self-sufficient and self-protective on return.

Baljeet Sandhu: I will just follow on from that. The difference between unaccompanied children and adult asylum seekers is that the children are placed in parallel legal systems, unlike adults. They are not only in the asylum process but in the UK care system. There are various assessments happening constantly in parallel, which is not happening with adults. The children are facing repetitive questioning and sadly, in our experience, sometimes quite punitive processes, because they are constantly being queried and questioned about their very

identity by all these rotating professionals around them. That really does have some implications.

The only other point I would add is that there is an assumption that asylum lawyers and Home Office decision-makers will know and will have been trained to work with children. Unfortunately, that is not the case. We are the custodians of protection assessments. At best, we may have had a couple of hours of training on legal provisions around children, and there are many. The issue is understanding the relational aspects of working with children, their developmental needs and whether you are causing harm by your questioning. We are simply not trained to do that, but without a guardian we are placed in that position.

The Chairman: Apart from all the legal complexities, what about practical issues with language, such as interpretation? Is that a big issue?

Baljeet Sandhu: Absolutely. First, not only is it difficult to communicate with the young person, but we are doing it through another adult. That can often make it very difficult for a young person to engage and adds an additional barrier. We have also found, particularly at the Home Office stage, that there is a lack of interpreters and of quality of interpreting. Unfortunately, interpreters are not trained to work with children. In some situations where we have represented children, the interpreters were from a particular country, and, sadly, even though they spoke the same language—for example, a Pashto interpreter from Pakistan—the children feared them because they were discriminated against or attacked when they were refugees in Pakistan. In such a case, we would have preferred an Afghan Pashto interpreter, but there are resource-driven problems with that.

The Chairman: As you say, they do not have guardians. Who supports them in understanding the detention process and the whole legal process? Do they have buddies or some support? Who provides that support?

Kathryn Cronin: It is very fragmented. There is a social worker, but nowadays social workers are under considerable pressure, so there is not really the capacity for dealing directly and closely with a child. The Children's Society used to provide support workers, and they were very good. Sometimes these things can be done and you do not necessarily need a highly trained person as a guardian. You need somebody who has sufficient nous to be able to negotiate systems, and who will essentially befriend the child, attend all functions with them, and allow them to have a person they can ask questions of so that they understand the roles of the parties in different procedures.

The Chairman: I have one more question before I ask Lord Cormack to come in. Some evidence that we have had shows that there is almost a culture of disbelief around these children. Have you experienced that?

Kathryn Cronin: Very much so. It is particularly true of Afghani boys. I would say that is probably the largest case load in which one experiences this. It is partly a lack of skill in the preparation of their cases. They come across as very bland and unchanging tales, so you do get scepticism coming into the decision-making process both from the Home Office and in the tribunal, as they hear the same story over again and they tend to disbelieve it. If you spend time with the children and show that their cases are quite individual, you will have a better chance of closing that credibility gap. However, it requires time, and time in terms of legal aid funding means that you may have to allocate a tad more money.

Alison Harvey: Age disputes are highly relevant, because they cast a cloud from the beginning. If you are believed to be lying about the very fact of being a child, that colours people's approach to you across the board. We struggle, because the protections that we put in place for children mean that that becomes a desired status. That is then policed, so in a way those protections function to mean that people are not believed to be children. It is a perverse effect.

Q3 Lord Cormack: You indicate that there is a very real difference between Scotland and the rest of the UK. Is that because of the inherent difference in Scottish and English law, or is it because of provisions that the Scottish Parliament has made?

Kathryn Cronin: It is because of the provisions. I do not know whether it was the Scottish Parliament or how it was made, but they have made provisions for guardians for these children. We found that made an enormous difference to the children's capacity to engage with all the processes, because they were assisted to understand what they were all about. The guardians also worked with the lawyers to help them to get evidence; the child came to confide in them. A lot of these children are teenagers and are quite reluctant to talk about emotional distress that they might be experiencing. When they have this person who is seen as their close friend, they relax rather more and become able to confide. All those quite nuanced facets of processing are catered for by the guardian and make a significant difference to the way their cases are prepared.

Lord Cormack: Are England, Northern Ireland and Wales all different in that?

Kathryn Cronin: Yes, according to our survey. There have been pilots of guardians in other parts that we did not deal with, but there have been reports on that. In this survey of children, only the Scottish group had the guardians.

Baljeet Sandhu: Legal aid across the board remains in Scotland. That is where we found the information-gathering, the talking to foster families and everyone coming together. There is not the carving up of human rights that there is in England and Wales.

Q4 Baroness Pinnock: Interestingly, earlier this week I was at the All-Party Parliamentary Group for Children.

Alison Harvey: Yes.

Baroness Pinnock: Oh—were you there?

Alison Harvey: Yes, I was.

Baroness Pinnock: It was about unaccompanied minors, and the report from Barnardo's was fascinating. They had done a pilot scheme on advocates, which, from what you are saying, is the equivalent of guardians.

Alison Harvey: Yes, it is the nearest we have.

Baroness Pinnock: What was disappointing was his report of the response from government about the use of guardians. Perhaps you would like to say a bit more about that.

Alison Harvey: The guardians were provided by Barnardo's in this pilot, which came about following a government defeat in a vote on the Modern Slavery Bill. The evaluation was done by the University of Bedfordshire; it was an independent evaluation. This related to guardians specifically for trafficked children and the overwhelming majority of, although not all, children under immigration control. The concern of the academic who led the study was that he felt his evaluation was overwhelmingly positive—that the guardians had made a positive difference. Peers who had been in a meeting with officials expressed surprise and dismay that that was not what the officials had relayed to them about the study. Officials had conveyed the idea that it was much more borderline and much less clear whether the guardians had made a difference. I am sure Baroness Pinnock will agree there was a sense of consternation in the room that perhaps the findings had not been presented in the way that those who had written the study would have expected. They felt that the evidence was very clear that this had made a significant difference.

Lord Soley: The legal system is required to put the interests of the child above everything else, and I get the impression that this does not happen, and it happens even less with refugee children. Do you think the guardian system or a named person would go a long way towards resolving that, or is there some other way in which you could ensure the legal process puts the interest of the child first?

Kathryn Cronin: You have to be close to the child to properly understand and interpret their best interests. The problem of our system is that currently children are moved between vast

numbers of well-meaning people, none of whom get particularly close to the child, so there is that question of intimacy. We speak of holding the child's hand, which is what you need to do. To that extent, a guardian-type system is indispensable, because somehow you have to get the trust of the child so that you can elicit their stories and understand the protection needs that they might have.

We have spoken so far of this cohort of children arriving here unaccompanied generally as 10 years old and up. However, the other group of children who are unaccompanied are those who are brought in here very young and who are trafficked, generally as maids in households. They have lived all their younger and adolescent years in the UK, and some of them have gone to school. Therefore, they do not have the same interpreting problems, but they do have the same credibility problems, because frequently their traffickers are believed over the children. They also emerge late in most cases, and so they are going to be the group that is most affected by these changes to the leaving care provisions.

Q5 Baroness Janke: I am interested in volunteers. I imagine that in Scotland, because they have an inquisitorial legal system, the guardians are more part of the legal system. In England, on the other hand, we have a whole range of voluntary groups—I imagine there are quite a lot less of them in Scotland—who would like to be involved and offer help and support. Regarding making a recommendation, how can we bring on board and channel some of that good will? I know people who have volunteered to foster children and have not found their way into the system or have been refused. If it is so multifaceted in England, does there need to be more of a recommendation as to how we can bring in volunteers to act as guardians or advocates?

Alison Harvey: I do not think the suggestion that the Scottish system is inquisitorial holds good for immigration.

Baroness Janke: They have the Children's Panel, though, do they not?

Alison Harvey: They have the Children's Panel, but that is separate. The immigration tribunals function in the same way as in the rest of the UK.

Baroness Janke: That is, through the legal system.

Alison Harvey: It is in other parts of the legal system where the children's hearing system in Scotland operates differently. However, it does not operate like that in immigration.

As Kathryn said, the functions of guardians can be carried out by a range of persons. If there were the provision for the guardian, including the legal powers, in England and Wales, there would be voluntary organisations looking to fulfil that role, as Barnardo's has done.

The Chairman: We have covered some of the areas, but are there any questions you would like to pursue?

Q6 Baroness Massey of Darwen: Yes, you have covered, almost in passing sometimes, a whole range of issues that we want to know about. I would like to probe a little. Am I right in thinking that in Scotland the children's services are quite different in that each local authority has a duty to collaborate between services, like the police, safeguarding services and social services? I think that is a new thing in Scotland.

Kathryn Cronin: That is also the case under the Children Act 2004. It may well be more in the plan than in practice. Right across the UK, there is supposed to be co-operative and collegiate working all focused on the child. However, it is variable.

Baroness Massey of Darwen: In Scotland, there is quite a firm duty on this, but that is not my real question. I want to probe the issue of the different ages of these children, because presumably, or not, a six year-old has different needs from a 17 year-old. Perhaps the 17 year-old needs more of an advocate, and I am trying to distinguish between an advocate and a guardian. I know they are used interchangeably sometimes, but to me an advocate is somebody who can go into court with you possibly and have some sort of knowledge of the systems that will affect you as a child. A six year-old will be quite different from that, it seems to me. How do the current systems differ for a six and a 17 year-old, and what about accompanied asylum-seeking children? Are they different? Do the parents act as the guardian or advocate, or is there a guardian or advocate attached to the parents as well as the child? If I might just add a small third question, do you think that any small changes could be made to the system that could make a difference, rather than a massive reconstruction? Are there small changes that we could recommend that would help things?

Alison Harvey: There are lots of questions there. Regarding the age of the child, the most classic thing for us as lawyers with the younger child is that, without a guardian, who is to give you instructions? You patently obviously have a client who is unable to give you instructions, but there is no one else in sight. The official solicitor acts in the higher courts but does not act before the Home Office or in the tribunal. Therefore, you are there listening to your six year-old client who says, "That is daddy". The Home Office's case is that that is the trafficker, and the Home Office may well be right.

Baroness Massey of Darwen: How do they get a guardian? Is it from social services?

Alison Harvey: Social services would have to play that role. That is the first problem, whereas the older child may be in a position to take their own view, and if your older child client is saying no, it is very difficult not to take those instructions.

Kathryn Cronin: There are complexities at all levels. In some sense, the younger children are the easier ones, because in evaluating their risk there are very strong presumptions about looking to objective material rather than what the child knows. A six year-old is not going to be able to tell you much at all about their reasons for flight. However, you can look at objective country evidence, so those cases are relatively straightforward. I do not think I have ever heard of a young child being refused asylum if they have made a claim for asylum. That is partially because we have a case authority that says that being a child is being a member of a particular social group, and it has to be recognised at the date of decision that it would be unsafe for them to be returned as a six year-old. Those cases, as far as immigration and asylum cases are concerned, are straightforward.

The real complexity comes with teenagers, partially because of their own inhibitions about disclosing what has happened to them. We know from our own case experience that the sexual abuse of both girls and boys in transit to this country is really quite high. Yet you rarely get those disclosures. You get hints of it, and it is very difficult to explore. At every level there is a need for an empathic, contentious and committed guardian-type person. I do not think that is made any easier from the time they are aged 17.

Baljeet has so much more experience in this than I do, but the ethical rules for lawyers are not particularly well adapted to dealing with these unaccompanied children. We commented on this in the report. We are so geared to act on instructions, yet frequently you find in immigration cases that children are first of all incapacitated with mental-health problems, which means that you cannot take instructions from them. Secondly, they may be really reluctant to give you instructions. You know there is a problem, but they are not telling you. Thirdly, you get debt-bondaged children who simply will not give you information because they feel that their family is at risk, and trafficked children may still be under the control of traffickers.

In the United States, they have devised ethical rules for immigration lawyers that say that a lawyer should be able to advance all legally appropriate outcomes for a child. You might not have instructions from your child to say, "I am a victim of trafficking", or your child might not give you any information that leads to that conclusion, yet they may have all the relevant surrounding circumstances. For example, they might have been found in a cannabis factory or be Vietnamese, with it all pointing to them being trafficked. Under the American model, you can say to the immigration judge, "I am presenting you with evidence that allows you to find that this is a victim of trafficking". That really ought to be part of the initiative for children: lawyers should not be given the capacity to entirely manufacture the instructions from

children, but they should certainly, in cases where it is needed, be able to advocate for a legal outcome that is consistent with the evidence in the case.

Baljeet Sandhu: I will just briefly add some comments about the practical steps and what currently exists. For children in the care system, we have the family courts. Where we have worked closely with social services that are very keen to create a stable environment for the child, we have been able to secure interim care orders in order to provide the protection mechanisms within the family court system, but that is very rare. A lot of social workers and local authorities simply will not use that mechanism, and it is there to be used.

Baroness Pinnock: Is there a reason why?

Alison Harvey: It is very costly to bring care proceedings, and now that there is no legal aid, this falls on the local authority. The court fees alone are huge.

Baroness Massey of Darwen: I just have one more question. Do you have any sense of how many of these migrant children are trafficked, how many are under the age of 10 and how many are over the age of 10? Is there any evidence on this?

Alison Harvey: The Home Office could give you the detailed evidence on age, but the majority are over 10 rather than under. We do not have the details on trafficking, because very often a trafficked child will not have been identified anyway. Therefore, the child visible in the system is already only a small part of the problem.

Baljeet Sandhu: It is clear now that, with the work we were doing around the lobbying on the Immigration Bill, local authorities are obliged to keep statistics on the number of asylum-seeking children in their care but not on those who have not claimed asylum. Therefore, we may have numbers we are not aware of.

Q7 Lord Ribeiro: You are very involved with the Immigration Bill. I have seen the briefs, et cetera, that you have sent through, and obviously it is an area that concerns you greatly. I want to ask a question about age out and the fact that the recommendation in the Bill is that this should be tightened for those over 18. First, what are your views on it? Secondly, what criteria should be used for supporting the extension from 18 to 25? Is it academic achievement, attainment, recognition that this person would benefit from further support to get them through, or is it concerns about their safety and care if they are not supported?

Alison Harvey: The Immigration Bill has a concept of young adult migrants. That is what you turn into on your 18th birthday: you cease to be a child and you become a young adult migrant. That flies in the face of everything our Government have done to recognise care leavers, and there has been a huge emphasis with the present Government on leaving care and support for leaving care. Children under immigration control have benefited from that

alongside other children. Essentially a deal has been done. Because the intention is to be able to transfer children from local authority to local authority, one of the concerns was that that is terribly expensive because of all these leaving-care obligations. This led to getting out the red pen and taking away the leaving-care obligations for certain groups: those who do not have a pending asylum claim and those who do not have a pending initial application—they may have a pending subsequent application—or who do not have leave. The Government say that those are the young people whose long-term future is not in the UK. We should dispute that because they have a pending second application; there is a reason why they are not on the plane. A large number of them will end up staying, so the underlying rationale is not clear. Additionally, you have pottered along as a child with a form of leave, and 18 is when everything hits you: the prospect of removal and the prospects of decisions. If we do not support children to make those decisions, including those children whose future may not lie in the UK, they will disappear and go underground.

Lord Ribeiro: In the UK we have established 18 as the level, by virtue of the fact that that is the age at which you can vote and is the age of independence to a large extent. In the UK, there is an expectation that you are an adult at 18.

Alison Harvey: That is not the case for those leaving public care. We have recognised that children in the public care system lack the support of an adult and need special support. The current Government have done a great deal to increase that support, with personal advisers and pathway planning, in order to emphasise that the important thing is that the care system does not just spit you out but supports you to make the transition to adulthood.

Lord Ribeiro: In the British context of the care system, what age limit is that extended to?

Alison Harvey: You get care up to 21, and if you are in full-time education and not leading a life where you do not need support, that can extend all the way to 25. It might tail off; the support you need will vary.

Lord Ribeiro: This is the point I am making, as I said earlier on, about the criteria for the extension to 25. Are we talking about a blanket extension?

Alison Harvey: It is an extension in our leaving care system for all children, but it is based on their being in full-time education.

Kathryn Cronin: It is also based on them progressing in full-time education, so you cannot just sign up and not attend.

Alison Harvey: You would not get the same level of support when you leave care at 18 as at 25, but there would continue to be the potential to support a child to 25 where they needed it. That would probably decrease as they got older.

Baljeet Sandhu: One of the provisions that these young people may be ousted from is the staying-put arrangements. So many Ministers and Peers have fought to establish that young people remain in foster families, and there has been incredible support to achieve this. I was at an event with the British Association of Social Workers, and many social workers were just surprised with this very notion that we were ousting a whole category of young people away from the embrace of childcare provisions. Additionally, we had a young person who spoke at an All-Party Parliamentary Group, and he was sadly diagnosed with an illness while with a foster family and trying to go to college. That support was crucial for the young person and the foster family. Some young people have been in the care of foster families since the age of 12. This is their family; they still may not have any connection or may not have found their biological families, so that ripping away of children from families is also a fear.

Kathryn Cronin: There are two facets to it. Some of these children will have a future in the UK, and it seems crazy to suddenly withdraw support from them at a critical time when they are going to be living in the UK. In a sense, you are depriving them of the opportunity to continue with education and, as Baljeet said, continue with foster families. A lot of the children we represent at 17 are still with a foster family.

Regarding the children whose future is not in the UK, we have a returns programme that aims to encourage people to go back on the basis of giving them some assistance on return. In a recent trafficking case, the tribunal has observed that the returns programme is largely inadequate for many people who are returned. One problem has always struck me, particularly if you take the example of Afghani boys. In the last nine years, I think the government stats show that over 2,000 of them have been returned. We educate them out of a capacity to reintegrate on return. We give them English language, which puts them at risk, if anything, rather than able to be properly reintegrated. A lot of them would do well if we gave them a practical skill that enabled them to have a basis for getting employment on return. Some of the research that has been done on those young boys shows that they really are at a loss on return. Very often they do not have the capacity to find their families, so they are lost in Kabul. The pathway plans that are done for those 17-plus children are focused really on securing both a way for them to be able to be protectively managed back to their homes and a way for them to be supported and remain in the UK. It is the loss of both that guidance and the capacity at 18 to direct a child into something meaningful that might help them on return.

Lord Ribeiro: You made a comment early on that there were bland statements from the Afghanis, which to me sounds as if they are almost coached in how to present themselves when they come to this country. Is that what you meant by that statement?

Kathryn Cronin: One is always alert to the fact that, by the time these children get here, they have been through a journey where they have been given very poor advice, very often by agents and so forth, on the way. Partly the blandness comes because lawyers tend to focus on a particular facet of a person's case. Because we are looking at risk on return, the only thing that the lawyers tend to ask the children about is why they fled. Very often children do not know very much about that.

Lord Ribeiro: At 16 or 17 I would have thought that you would know.

Kathryn Cronin: That is not necessarily the case. Doing our work is a real acculturation, and the striking thing for me is that you definitely see 17 year-olds who have very little understanding of what their parents are doing, both politically and sometimes even occupationally. You see it in Africa; you see it in places like Afghanistan as well—and particularly in countries like Afghanistan where, if you are involved in politics, it is going to be somewhat secretive. It is not surprising that they do not have a detailed knowledge of it. We are trying, when training lawyers, to ensure that they get a much broader understanding of the child's case.

Baljeet Sandhu: Some of the young people do know, particularly those who underwent forced conscription as child soldiers, and are aware. There is that culture of disbelief that all the stories sound the same. There is the need to understand that, where there are horrific human rights abuses or genocide, we know that sometimes the stories will be the same, because groups of individuals will be targeted and children are often used as weapons of war. Stories can be similar, but that culture of disbelief, even when the stories are similar, does exist and permeate.

Q8 Lord Condon: Good morning. I wonder if I could ask Kathryn Cronin initially to expand on her introductory comments about family reunification as one of the three big issues that she mentioned. How problematic is it that we do not participate in the family reunification directive in the UK? On the other side of that coin, would it be genuinely helpful if we did in the context of the general climate in the UK?

Kathryn Cronin: It is absolutely essential for us to revisit our decision on the reunification directive. Looking back in history, I know that this Committee has been advocating for us to opt in for some time, and the reasons advanced for not opting in have, to my knowledge, not yet included the question of child reunification, so they have been to do with sham marriages and subsidiary protection reunification.

However, there is a case that is about to be published from the Upper Tribunal that will probably serve as a guidance case on refugee family reunion. I was one of the counsel in that case, and

that involved a 17 year-old who was seeking to bring in his mother and younger brother. He was from Eritrea, and they had also been displaced; they had left about the same time and they were in a refugee camp in Sudan.

Regarding the Home Office case against refugee child reunion, up until about 2008 we at least had a policy that said that in compelling circumstances we could allow for refugee family reunion, but that has been removed. Now you have nothing. You have Immigration Rules that either by design or explicitly exclude children from being able to sponsor in a parent or a sibling. You have a policy that refers to a child refugee as an ineligible sponsor in terms of refugee family reunion. They refer to their parent or their sibling as an ineligible applicant. The policy is absolutely emphatic that there is no capacity in it for refugee family reunion. The Home Office case on Article 8 grounds, which is the only ground left for these children, is that in all cases the public interest is against granting refugee family reunion to any child refugee, on the basis that to grant it even in one case is to encourage families to send their children as anchor children so as to ground a claim for the family ultimately to come to that UK.

Now, it seems to me, apart from being solely without any evidence, that that is a really misconceived approach. First of all, these are refugee children and not children on discretionary leave, so they have been found not to be anchor children; they are here with a genuine fear of persecution. The other point is that of course every country in the EU, apart from the UK and Denmark, has a legislative arrangement, either through the directive or, in the case of Ireland, which has opted out, the Refugee Act 1996, which gives a right to child refugees to sponsor their parents. We are alone with Denmark in not having that provision. There is nothing in any of those countries to say over the last 10 years or more there has been a spike in children's numbers or an inappropriate sending of anchor children. The Home Office case is without any real factual substance.

As it stands, in the sort of cases that I have, you do not get a lot of children applying for refugee family reunion, because most of them have lost contact with their families. In the case I mentioned, you have this boy who was doing extraordinarily well at his studies but has begun failing because he is so worried about his mother and brother. His mother and brother are in a very dangerous refugee camp. None of the evidence on that was challenged.

Lord Condon: In which country?

Kathryn Cronin: They are in northern Sudan. In one case I had a 17 year-old boy who again was doing very well at school and through a missionary group came to know of his sisters. They were all orphans, so it was only going to be his sisters who could be brought here. He

had become separated from them in the DRC. He heard of their existence in a missionary camp through a church group. He left his studies and started working in a factory in order to show the Home Office that he could support and accommodate them. The Home Office challenged that case right through the system. It took us nearly a year for it to be finally successful, but in the course of that year the girls went missing.

Lord Condon: Were they challenging the act of family reunification or the authenticity of the girls?

Kathryn Cronin: They were challenging family reunion per se, and that is my experience in most of these cases. There is no challenge to the fact that they are related.

Lord Condon: They were not suggesting that it was a sham transaction.

Kathryn Cronin: There is no suggestion that it is a sham relationship. The issue is: you do not have a right, we do not have a policy, and to succeed on Article 8 grounds is to undermine, in a general sense, the protection of children. In the documentation that ILPA has prepared for this Committee, they have spent a lot of time dealing with the other facet of refugee family reunion. This involves using the Dublin directive in order to try to reconcile children who are separated within Europe with family members here. We say that both those facets of family reunion are extraordinarily important.

Alison Harvey: On the Government's argument that says other children will be sent as anchor children, the "best interests of the child" principle is supposed to ensure that in these cases you deal first with what is best for the child in front of you—not for the generality of children and not for those whom you are going to deter or inspire but the best thing for this child. The government policy, on its face, does not respect that.

Baljeet Sandhu: The children have been recognised as refugees, and it makes a mockery of our Home Office decision-making and our judicial decision-making if we believe that has not been properly assessed and granted.

The Chairman: Do you think it would make any difference if Britain were to opt in?

Kathryn Cronin: It would make a big difference.

Alison Harvey: It would give us the guarantees that we need. We could do everything without opting in. The directive would offer the right to be reunited with your parents or grandparents or, if they are dead or gone, with other unspecified family members. We could do all that under our own Immigration Rules. The directive gives other guarantees which would be useful. It says that the reunification would be effective within nine months, which sounds like for ever until you get one of these cases in the UK and you see children die while you are

waiting to get the family across. If you are bringing in siblings, time and again you will end up bringing in fewer than you started with.

Q9 Lord Morris of Handsworth: You have given us a very broad sweep of experience about how the existing provisions do not meet the needs of the problems and issues. You have also highlighted areas where it is much better, for example Scotland. If you were given a clean sheet of paper and the necessary resource, as basics not luxury, how would you set about changing the situation, in light of the experience that you have shared with us, to give security and connectivity in terms of families and bringing the children into a new world but not so distinct from the Scottish experience?

Kathryn Cronin: I am not sure. Baljeet might know.

Baljeet Sandhu: The starting point would be that it is a child protection system rather than an enforcement system for adults. If we start with that, there would be massive differences not only for the children but for the professionals and our whole system. Therefore, that is the starting point, and it would allow children the opportunity to have their voice heard and have agency with the trusted and protective mechanisms that we have in our other child protection mechanisms. Additionally, it also allows the various professionals that we have discussed to be able to have a real multidisciplinary approach. For anything relating to children in the UK, we have a particular focus on ensuring that we have a multidisciplinary approach, so that all professionals are involved and we try to ascertain the best interests of the child. If we look at it through the lens of a child protection system, we will be able to manage that.

Lord Morris of Handsworth: A problem, which has been put in other discussions, is that they do not remain children for ever and they grow up into adults. This brings new situations. I am not sure whether your experience has addressed any of these sorts of problems.

Kathryn Cronin: It seems to me that one of the things you have to focus on is what it means to give primary consideration to the best interest of children. That just becomes a meaningless mantra in so many cases; it just does not make any real difference. It could and should serve as a really helpful guide to the sorts of processes that you would design and put in place. For example, you have to know what you are assessing when you first assess a child. You should be assessing obvious things like their ID and nationality, but also things like their upbringing, vulnerability and protection needs. That should be the first assessment that you do. In our view, you should also assess the journey and its implications: the circumstances and what happened to the child en route. You should be looking to their family and context. Many children come in and are still in contact with their family, and then lose contact after they arrive. You should also assess their capacities to engage with process, and you should assess

the sort of support that they may need. That is just a very simple list of what ought to go into that first assessment. If you took that list and followed it through rigorously and conscientiously, you would have a proper fit for how you were going to support and assist that child both through their minority and the various processes they are dealing with.

Lord Morris of Handsworth: I just have one brief question. At the end of the hearing and all the evidence, the Committee is charged with writing a report. What would you say we need to indicate very strongly to bring about the necessary change?

Kathryn Cronin: One thing would be to give some concrete markers for best interest, because it desperately needs it. Family reunification is also very important, as is the idea of a guardian-like person—whatever you do when you make that initial assessment. You may have some children who do not need a lot of support. However, you are going to get quite a number who need quite meaningful support, and somebody ought to be assigned who is going to hold their hand through the process.

Q10 The Chairman: The OECD report talked about the impact of the current refugee crisis. In your view, what has been the impact of the refugee crisis on unaccompanied minors and the response of the UK Government? Has it been effective? I would like a very brief comment on that.

Alison Harvey: Children are stuck throughout Europe as a result of this crisis, with their basic needs not being met. We fairly conspicuously have not stepped up to the mark in the UK—the Committee has commented on that in its reports on migrant smuggling—and the EU action plan and identified the ways in which we have failed to do so. I would highlight the fact that we cling to the ghost of the Dublin regulation, although it is a system that moves people without moving resources—that is the root of many problems—and pushes people back to those countries coping with the most refugees. At the same time, we talk of strengthening the push back, but we do not talk about strengthening the “take charge”, which for children is particularly strong: take charge and be proactive. We had to go to court with the cases from Calais to say that you cannot hide behind the failings of the French system—and failings there are—and just sit there and say, “No one has asked us to take these children such that they are our responsibility in law”. That is something we have to rise to.

Partly through the pressure from the House of Lords on the Immigration Bill, we have begun to realise that it is not enough just to look at the children outside the European Union and that what is going on in the European Union has a profound effect, particularly where those children have family members in the UK who would be willing to bring them in. Being unaccompanied is not a static state; it changes. There are separated children in Greece and

France; there are British citizen children in Calais. This is crazy stuff, and we need very desperately to step up to the mark to protect them.

The crisis is also having a huge effect on children here, because of the horror stories they are hearing about things which may affect family members and the fear of what return might look like. It is having devastating psychological effects on family members who are caught up in it and on people who face return, which is compounded by elements of hostility and mitigated by people who want to provide support. That support is important in and of itself for countering the feeling that you are unwanted and that at the first opportunity we will shove you back.

Baljeet Sandhu: There is this whole issue about taking charge, and the current climate is about mass displacement. The fact is that we do not even have legal aid available for some young people who may have family members in Germany or Sweden who they proactively want to join. We just do not have that here. That is also an impact. Finally, on resources, there is an increase in numbers; we had approximately 3,000 last year as opposed to 1,000 or 900 a year previously. Young people need access to education and support, and there are some strains now, particularly in Kent.

Q11 Lord Soley: May I ask you to turn your minds to the European Union level of legislation and policy? You say that it is very important. How relevant is it, and what is important about it, or does it not have that much impact on your work? Where is it particularly useful, or could we do more to improve it? I have centred this on European Union legislation and policies in this area.

Kathryn Cronin: In our practice it is absolutely central. It is a shame that we have not opted into the recast directives on the asylum acquis.

Lord Soley: What part of it is absolutely central?

Kathryn Cronin: We use all the directives all the time. You are always having regard to the terms of those directives and the principles that are set out in the recitals and so forth. We obviously deal a lot with trafficked children, so the Council of Europe Convention on Action against Trafficking in Human Beings is enormously important, but a good deal of the guidance and some of the research that comes out of Europe is all part and parcel of the legal framework in which you are setting out your stall for particular cases. It is very important.

Lord Soley: Do you use the European Charter of Fundamental Rights at all?

Kathryn Cronin: We do. We use it whenever we have a case with a European context, and that is particularly important for children. The principles are there, and some require being

translated into real benefit, but none the less the principles themselves are an important starting point.

Lord Soley: Is it right to say that the European Union level of policy and legislation is more important to you than the UK's?

Kathryn Cronin: In these areas of dealing with children and in matters of asylum, it is a great deal more important. The rules are fairly spare. The rules have also brought in at least the 83 qualification directive. We have taken on board those directives and put them into our immigration laws, but you are always dealing with both areas of law. In straight immigration you are also looking at free movement provisions; a number of cases have a free movement component to them, but certainly for asylum it is the case authorities. In both Strasbourg and Luxembourg you have your directives and the various guidance documents and so forth.

Lord Soley: You are saying that this is the same for unaccompanied minors. Is anything missing there that could be added?

Kathryn Cronin: To make best interests concrete would be a great advantage. The sensibility about unaccompanied minors originated in Europe. It was not something that we were alerted to. So often these issues have an origin in Europe. They then became more developed through their policy organisations and feed into the way in which our courts and decision-makers begin to evaluate cases. We would be very sad to lose the component of European law, I must say.

Q12 Lord Cormack: You have given us some very powerful and compelling evidence, for which I am sure we are all extremely grateful. You have by implication answered what I was going to ask you about the best interests of the children. You gave a very convincing list to my colleague Lord Morris when you expressed the hope that we would stress the importance of guardianship, et cetera, in our report. I hope we will. I would like to know on what basis you are advancing these extremely compelling views. How many cases do you deal with between you in the course of the year? Who brings those cases to you and what mechanism do you have, individually or collectively, to assess the validity of the cases you are involved with?

Alison Harvey: I have an easy answer, because I do not have any directly. I am not practising now. We are a membership organisation of 1,000 individuals and organisations, some of which are huge and some of which are tiny, practising in immigration, asylum and nationality law. The overall cohort dealt with by members is a very substantial proportion of children's cases in the UK.

Lord Cormack: What sorts of numbers?

Alison Harvey: Roughly 3,000 children came in this year. Children's cases last quite a few years.

Kathryn Cronin: For many years, it was about 1,500.

Alison Harvey: Yes, but that is per year, and they do not go off the books within a year. They are in the thousands.

Kathryn Cronin: I am in a chambers that has a significant number of immigration barristers. In particular, middle-ranking and junior members do a great deal of asylum work. We have an immigration team and I mentor a lot of our juniors. I am always hearing about children's cases, but that is my specialty. I like to say that I deal with children on the move in various jurisdictions. I advise the family courts on regular occasions about children who they may be placing abroad or children who are here and are the children of overstayers and they are trying to see and understand their immigration status. I deal with them in both jurisdictions and, if you look at my work, I have been back at the Bar since 2001. In Australia, I did a major report for the Australian Law Reform Commission on children in the legal process. Here, since 2000, I would have represented hundreds and hundreds of children, so I have a very good understanding of the way in which these cases present and the sorts of issues. Over time you get to understand that the most important skill is to elicit the story from children. That is not something that you necessarily have straightaway. Now, as I have got older, I think children feel more comfortable with me.

Lord Cormack: That is the granny effect.

Kathryn Cronin: It is the granny card. It is easier for me now than it might have been earlier. I am not naive about children and I am certainly aware that they come with a fair amount of corruption in terms of well-meaning and sometimes mischievous advice that has been given to them en route as to how to present their stories. At the end of the day, if you spend enough time with them, you get to the genuine tale.

Lord Cormack: Can I just press on that? That was a very comprehensive and excellent answer, but as you know there is a great deal of concern in this country about young people, many of whom would fall into the category of children, who have gone to Syria and have been involved in the commission of some pretty horrific acts, some of whom have been determined to come back. Are you satisfied that the procedure we have is rigorous enough to identify a majority of those who might be coming here, although children—16 to 18 year-olds in particular—with nefarious intent? Are you really satisfied that we have that one reasonably well-nailed?

Baljeet Sandhu: Not one unaccompanied asylum-seeking child has ever been connected to let alone involved with that. That is our starting point in any of those discussions, and it is a live fear. However, we have a very strong enforcement process and systems. In that respect, the Home Office also has particular teams that deal with enforcement and a criminal casework directorate. My opinion would be that there are strong mechanisms for enforcement if concerns are raised.

Lord Cormack: Are they effective?

Baljeet Sandhu: I believe so.

Kathryn Cronin: The most effective thing you can do is to get competent people in there supporting them. Part of the problem of the conversion to radical ideologies derives from disaffection. When we talk about having your hand held, it is a process that tries to limit the capacity for you to feel disaffected, lost, alienated and misunderstood, and as if there is some social hostility to you. If you build into your system a capacity for people to have a mentor, you can identify those sorts of problems early and deal with them. The moment you start pulling funding out of a system and you make it a bare and spare system with very little support, you obviously increase the risk of those children being missed.

Lord Cormack: You miss the children becoming disaffected and turned and all that.

Kathryn Cronin: Exactly.

Alison Harvey: If you are talking about children who came in having been child soldiers, our tendency to disbelieve children militates against identification. All too often the account is just dismissed, and Baljeet is right: it is more likely to be other parts of the Home Office that pick it up than the immigration system. We have seen that in trafficking cases, where on Monday the police are interviewing the child about being trafficked and on Tuesday the Home Office are telling her they do not believe a word that she says.

Having worked with people in countries such as Uganda who have worked with child soldiers, the most colossal failing of any child protection is that a child ends up as a child soldier. It is our collective responsibility when that happens to children, and it is our collective responsibility to get behind them. You see states funding these demobilisation programmes but not prepared to resettle these children out. It is these children who most desperately need to get out of the environment they are in.

Lord Soley: This will, I hope, require almost a one-word answer, but maybe not quite. Does it already apply that, if we have a child's best interest legal concept, it is extended to other public bodies such as the Home Office?

Kathryn Cronin: It already extends to the Home Office.

Lord Soley: Is that all the way through?

Kathryn Cronin: All the way through. Section 55 of the 2009 Act is very clear on that.

Q13 Baroness Janke: My question is about co-operation between national bodies and individuals responsible for responding to the needs of unaccompanied minors. Do you feel that there is sufficient co-operation with them or working in partnership? If not, how do you feel that could be improved?

Alison Harvey: There are some excellent examples of partnership working. Adrian Matthews at the Office of the Children's Commissioner is their refugee adviser, and both Baljeet and I sit on his advisory board and advise the commission. The Children's Commissioner has come in and done very careful research when things are rocking around and has managed to identify where the failings are. We should all like to see better working between the Department for Education more generally and the Home Office. We do not want to see these children left to the Home Office. Our children legislation extends to all children within the jurisdiction; they are the primary responsibility of that department. There are cross-governmental things that could be better.

Co-operation with NGOs varies from local authority to local authority, and the best have very strong partnerships. One difficulty is that when local authority resources are very squeezed, the opportunity to record and share good practice decreases, and we are constantly in danger of losing expertise or failing to transfer it.

Kathryn Cronin: One of the things that could really be improved within the education system is better training of teachers to recognise trafficking victims. So many of these young people who are trafficked and who have been in domestic servitude for many years are in school. I could not count the number of cases where they have presented with a number of the hallmarks of a trafficking victim; they do not get any of their homework done because they are going home to look after three or four children. They suffer from anorexia. You find them with deep emotional problems, and some of them engage in sex with boys to get money. There are a lot of presentation indicators, yet they are not picked up in the schools. If there was training in schools to make teachers alert to the sort of presentation of some of these trafficked children, co-operation would make a big difference. If you could pull them out at 12 instead of 17, you would spare them five years of misery.

Baljeet Sandhu: Regarding child and adolescent mental health services, I have spoken to NGOs in Kent, and there are hundreds of children there who have a one-day service, which is likely to close at the end of this month. There is no access to services, despite massive research, carried out by some very influential academics in the UK, showing that if a young

person has come from a conflict zone they are likely to have suffered some form of trauma. There is also research showing that children who have suffered separation and loss from loved ones have at least some emotional disturbance, yet there is no access to services for mental health support. It is lacking hugely. Rehabilitation and recovery, and trying to support young people who may have been child soldiers to rehabilitate and recover, is just not available.

Baroness Janke: I mentioned earlier the various voluntary agencies in my city, Bristol. There is Refugee Action and various other organisations.

Kathryn Cronin: There is a good law centre.

Baroness Janke: Yes, Bristol Law Centre—I am familiar with that. There is a feeling of not being listened to and a lack of somewhere to go nationally. We are dealing with problems with food packs—sticking plasters, if you like. Is there a recommendation that we could perhaps make to help these voluntary organisations? Without them, these people are in a dreadful position, but no one at national level appears to be listening to them.

Kathryn Cronin: In so many of our cases, we have the NSPCC, Barnardo's, the Children's Society and a number of organisations that have supported children through litigation processes. They come to every hearing and call up the solicitors; they do amazing work. I am an enormous fan of them. I am not sure, but whatever recommendation you make to advocate for them to be given more scope and assistance to carry out that work would be very valuable. It is interesting that in this text one of the little things we cite is that one of the guardians in Scotland mentioned an exchange she had overheard. One of the young women they were supporting had come into their office with a friend of hers, and she heard her say to her friend, "This is great. I can just go to the kitchen and open the cupboard and make my own tea". It is such a revealing comment by a child. This is a comment made by a child who really does not have a home. The idea that in the guardian's office they have a place where they feel like any teenager in a house, where you could go into your mum's kitchen and pull out a cup and make yourself a cup of tea, is a very small thing but indicative of an organisation that gives that child a sense of belonging somewhere, and it is invaluable.

Baroness Janke: I was trying to pursue the question earlier about the guardians and so on. I think what you are saying is that, if these volunteers and organisations are to be well used, there needs to be perhaps some legal requirement to provide guardians or advocates, and that would be the most effective way to bring in volunteers on a much more consistent and objective basis.

Alison Harvey: Having a guardian allows you to co-ordinate the activities of the volunteers. It is also a requirement of all the EU directives, the originals as well as the recasts, so you can

build your recommendation very strongly on that. We have a working group in the south-west that meets in Bristol. Guardians and individuals can make a difference and engage through NGOs. Additionally, we find that it is effective to meet the Home Office on a regional level, so they come over from Cardiff to those meetings and there is probably the potential to build regional forums. Therefore, an obligation to do that might assist.

Baljeet Sandhu: We are talking about individuals, and even befrienders and volunteers, because we have a lot of social capital and we should be making the most of that. There are ethical issues around working with and supporting young people and the standard setting that needs to be there within a system.

In terms of volunteers and the British public, I have to say that I have been incredibly humbled. We have seen agencies in France that cannot believe the support that is coming from the heart of the British public. Without the tireless efforts of Citizens UK, for example, which is nationwide organisation, our work in our centre would not have been possible.

Baroness Janke: I have to say that there are lots of individuals who are taking refugees and asylum seekers into their own homes in my city. It is important that that comes across as well.

Q14 Lord Jay of Ewelme: We have focused so far in the discussion very much on the situation in the UK, for understandable reasons. Alison Harvey mentioned at the very beginning that there was a collective failure throughout Europe in looking after children. How far is there a need for closer, cross-border co-operation among EU countries in order to improve the lot of children? What would that consist of? Do you think that the EU itself, perhaps the Commission or individual member states, should be doing more to encourage people to work more closely together across borders?

Alison Harvey: To be fair to the Commission, it has done its best. The Commission proposes and member states dispose. The relocation scheme was a Commission proposal to which it eventually got assent. Six hundred people have been transferred, which is pathetic. The EU-Turkey agreement seems to most lawyers simply unlawful. The mass expulsion of persons is prohibited by Protocol 4, Article 4, to which the UK may not be a party but other European member states certainly are. They are sending people back who are in need of international protection.

The European Union and some of the action plan measures are, as Baljeet said, not designed to deal with a system of mass movement. They are little and fiddly, and I think we need to go back to the UN Committee on the Rights of the Child's General Comment No. 6, which was not designed for European states; it was designed globally to say, "These are the minimum for children in need of protection". It starts with keeping borders open, putting identification in

place, getting them registered and then providing physical safety. We have lost sight of the basics on a European level. Someone needs to be cracking the whip and saying, “Stop fussing around with individual status determination and take some sweeping steps like the convention for the recognition of refugees in Africa”. This has the concept of mandate refugee: “We will treat you as a child in need of international protection until we have sorted you out of that, rather than continuing to expect, with this level of movement, to sort you in”.

Lord Jay of Ewelme: You say that someone should be doing this. Who do you mean?

Alison Harvey: Primarily the member states in co-operation. We have seen the European Asylum Support Office essentially mobilising member states, but not always in a good way. It has not always mobilised them in a protective way, but it does have an emergency response capacity and a practical capacity. Its 2015 report is not out yet, so all you can do is look at its 2014 report, and you do think, “Is that it?” That would be the obvious place to start: to mobilise, through that office, teams in different countries with the expertise. However, with a bit of a sense of urgency, a bit less paper and a bit more putting your wellies on, we might begin to see some action. We still have this individualised system and we are missing what any system of refugee protection recognises as the basics: identify, register, provide basic sustenance, and then start fussing.

Lord Jay of Ewelme: If we were having this sort of conversation or meeting in France, Germany, Poland or elsewhere in the EU, would your counterparts be saying the same sorts of things that you are saying? Among the academic and NGO community, is there a general agreement?

Alison Harvey: There is the European Legal Network on Asylum—I am one of the UK representatives—and they are saying very similar things in Italy and Greece.

Kathryn Cronin: There is a model that is not a bad one to think about: the Council of Europe Convention on Action against Trafficking in Human Beings. It is an international instrument and a very effective piece of legislation. First, it identifies the priorities that the entire package is directed to. It sets up a monitoring agency, GRETA, but it also puts the onus on state parties to identify trafficking victims.

One of the problems with children is that the estimates vary enormously, but a much mentioned estimate is that about 10,000 children are missing in Europe. I anticipate that it will probably be a lot more. We know that no one is searching them out and no one is focused on identification. That is really a state function. It can be done by the agencies of the state, but it has to be done. I am not saying it is an easy task, because so long as these children are under the control of traffickers within their journeys they are not easily accessible and they are being

deliberately withheld from agencies and authorities. Some work is being done in Europe to try to understand how to pull children out of the clutches of the agents and try to get them to have a dialogue about where and how they should seek protection.

The onus of identification could be put into an EU measure. That would mean that once you have identified the child, as with the trafficking convention, you then have an obligation of protection and perhaps an assessment of their standing and status in the country. You would have a similar obligation with respect to unaccompanied children.

Alison Harvey: Regarding the figure of 10,000 children, there has been a lot of focus on that. Some are undoubtedly trafficked, and it is very comfortable for us to think that we have lost 10,000 children because evil and organised people are hiding them from us. No. We have lost 10,000 children because our child protection systems are full of holes and because there is no trust and no incentive to engage. A lot of those children are probably hooked up with other families who dare not reveal that they are not their biological child, because they fear they will be split up. There is organised criminality, but there is also a very high level of simply having been unable to keep tabs on children who no one is hiding from us.

Baljeet Sandhu: That figure came from Europol, an agency dealing with criminality. The fact is that as EU member states we just do not have the basics of registration or identification.

Q15 Lord Wasserman: You mentioned the European Asylum Support Office and your views about that. What about the European Union Agency for Fundamental Rights? Has that done anything worth having?

Alison Harvey: The Agency for Fundamental Rights has done some very good things, one of which is to work with the European Asylum Support Office and keep it on track. They are jointly working on a best-interest tool kit.

Lord Wasserman: Checks and balances.

Alison Harvey: They are working jointly. It has set important standards, and it has also tried to do some of the difficult stuff. It went in to look at fundamental rights and compliance at FRONTEX and the operations on the high seas. It said, "This is not good enough". The Agency for Fundamental Rights has been a very clear voice. However, its calls will only really take effect if we pick them up at a national level or if other European agencies pick them up. It is to be encouraged in working closely with the European Asylum Support Office, but we could all be doing more to amplify its recommendations.

Q16 Lord Wasserman: I am glad you mentioned FRONTEX, because I wanted to ask a question about our own institutions. What about the police? No one has mentioned the police all morning. How do you feel the police are dealing with this issue? Are they aware of it? Do

they need more training? You mentioned the training of teachers, but are the police and the police and crime commissioners aware of the nature of the problem as you have explained it this morning?

Kathryn Cronin: In our survey the police were often the very first agents who children came in contact with, so they very often see the children as they get out of the lorries or whatever. It seemed to us from the data that we were looking at that they fairly quickly put the child into the care of the social services. They do not really play a big part.

The police who we deal with a lot in our cases are the anti-trafficking units, which we have enormous respect for because they are truly focused on the trafficking victims. They have given very valuable evidence in many cases of individual trafficking victims. That part of the police force is really helpful. You might have police at the ports who are at least alert to unaccompanied children, but when these children pop up in different or disparate areas, you do see a lack of police training. We certainly see it with domestic violence and trafficked children, because the police often take the side of the employer rather than the children. It is variable, but certainly there are units within the police that are working well.

Alison Harvey: One of the problems is increasingly that immigration officers have police powers of search, arrest and entry. The children do not get to the police force, and the immigration officers do not have the familiarity with the general child protection system and what response they can expect and require from it that a police officer has. We are very frequently disadvantaged by immigration officers being there instead of police officers.

Baljeet Sandhu: I would just echo that. In terms of acquiring best evidence from children and victims and child witnesses, there is a lot to learn from that enforcement approach. In very difficult trafficking cases, we have worked very closely with and benefited from the expertise of the police in order to achieve that best evidence. However, in the case of unaccompanied children generally, we often find that immigration officers with police powers are wading in. We have had police officers saying, “That is not in line with our child protection officer and safeguarding training”. There is a disconnect with the manner in which the police are allowed to be involved, if they are at all.

Lord Wasserman: I am encouraged, because I was half expecting you to say that they are part of the problem. You mentioned immigration officers in the Home Office, and throughout this discussion this morning the Home Office has had a bad rap. It has been, “The Home Office this”, and, “The Home Office that”. Having spent my life in the Home Office, I have a feel for it. Is it Home Office ministerial decisions that are causing the problem, or is it Home Office officials who are unsympathetic and who interpret these policy decisions in an

unsympathetic and rather hard-hearted way? Which is it? You talk about the Home Office problem and it is often a ministerial decision, which is a parliamentary decision and not a Home Office departmental issue.

Kathryn Cronin: One of the big problems that we see with the Home Office is that discretion is removed at almost all levels except the very senior level. You see it in particular in the conduct of cases. Presenting officers, who are very experienced officers whose life work is appearing before these tribunals to put the Home Office case, are not allowed to concede issues in the case. They cannot concede the case itself. You have a really flawed system in the sense that discretion is being routinely removed from many of the ranks within the Home Office that are perfectly competent to exercise sensible discretion. That would be one thing.

The other thing that I can see over time with the Home Office is that there is almost a militarisation in the way they present themselves. I had to do some training in the Home Office, and I went to one of their centres where people who are here on temporary admission sign on. The officers are dressed, with the vests and the truncheons at the side, in a uniform that looks militaristic, and they call it the Border Force and these sorts of terms. This has all made a difference to the conduct of individual officers. It has moved from being an entity in which you were civil servants to an entity in which you have this notion of enforcement pervading the system. That is not to say that you do not get good persons working in the Home Office, and certainly a lot of the presenting officers we deal with are really very competent and skilled, and reasonable in the way they seek to conduct their duties. However, the pressure is on them to fight every fight—and fight every fight as far as you can go, regardless of the merits or the outcome.

When I was in Australia I had a lot to do with the Canadian immigration service there, because I was looking at comparative control modelling. They had a system of advising their officers: “When you look at a case, if you decide that you are probably going to have to say yes, say it quickly. Do not spend an enormous amount of money putting off the day”. Money is wasted and very vulnerable people are put through stress, pain and suffering. Some of the cases that are fought cause you to shake your head in disbelief that this is still being taken right as far as the argument can be realistically put, when at the end of the day someone is definitely going to say yes with this family.

Baljeet Sandhu: I would echo that for the initial Home Office decision-makers who deal with the cases of unaccompanied children who have arrived. The fact is that they are often prohibited in the way the mechanisms around them and the structures work from the top,

where there are concerns around their ability to consider the best interests of the child, and how they do that and implement it in practice.

Alison Harvey: You asked whether this is about Ministers and say that, after all, that is a Parliamentary decision. I fear it is not. Immigration legislation is largely very high-level implementing legislation, but it is also of great complexity, and having struggled through the current Bill, Parliament struggles to understand it. Most of my briefings do not give a view or context; they simply explain what a certain provision does, and I do not think that Ministers always understand the complexity. They understand their briefs and are on top of those, but the brief has to explain such a complex issue. On a few things in the current Bill, people have turned around and said, “It is all very well you saying that, but that is totally beside the point”, because the briefings to Ministers are less accurate than one would wish. I do not think they give Ministers the ability to understand what they are putting to the House, which they ought properly to have to fulfil their role.

Lord Wasserman: On the point you raised about their being called the Border Force and their being dressed up, that is all a political decision to show how tough we are. That is nothing to do with the officials. That is a view—and people like that, by the way. The general view seems to be that we are being rather tough. As you say, no one takes the effect on vulnerable children into account. When the tourists arrive and see these people, they think it is good that they are rather tough now and keeping people out. That is pure politics.

Kathryn Cronin: It is. There is an awful lot in immigration law generally that is about sending messages or presentation or however you characterise it. However, at the end of the day you have to have regard to the consequences of how these things are going to work in practice. I am not sure that those consequences are necessarily seen. So many initiatives of change are counterproductive—for example, the numbers of blocks in the appeal system that just start a queue in another direction, and all these things. When I was counsel assisting the Australian Joint Standing Committee on Migration, parliamentarians would bring numerous initiatives to that committee and say, “Let us put a bond on family”, et cetera. You would have a discussion and say, “Well, look. These are the effects of that. What do you do in this particular case?” When you are working in the system, you can easily see how these initiatives are going to play out, but I think the people who are designing the rules and implementing and designing the policies do not see the effects.

Q17 The Chairman: Thank you. You have given us a lot of your time. There is one last question. You do not have to answer it now; you can write to me about it. We have had evidence, and there are differing views from legal practitioners, on the value of the EU Action

Plan on Unaccompanied Minors 2010-14. Do you think we should have another EU plan on unaccompanied minors? If so, what should the priorities be? Secondly, I was very struck by your comment, Kathryn, that the ethical rules are not well grounded when dealing with these sorts of issues. Please think about this, because ILPA is very concerned about legal practitioners. Is this something you have raised with the Law Society?

Alison Harvey: We might have different views on that matter.

The Chairman: Again, I was just very struck by that, and I would like to have some views on what you think: whether the work is being done and what needs to happen and so on. That would be very helpful. It has been an outstanding session. Thank you very much indeed for your time. We have taken a lot longer than I expected, and, as I said at the outset, if there are any things that you wish to raise or clarify, please feel free to write to us. If I may say so, once we have looked at your evidence, if there are any further questions we want to pursue, maybe we can also write to you. It remains for me to say, on behalf of the Committee, thank you very much indeed. It has been an excellent session.