

### *About Scottish Guardianship Service*

1. The Scottish Guardianship Service<sup>1</sup> (the SGS) is delivered in partnership by the Scottish Refugee Council and Aberlour Child Care Trust. Scottish Refugee Council is Scotland's leading refugee charity, which since 1985 has provided help and advice to those that have fled human rights abuses or other persecution in their homeland and seek refuge in Scotland. Aberlour is the largest, solely Scottish children's charity, providing help to over 6,000 of Scotland's most vulnerable children, young people, and their families each year. The SGS blends expertise in asylum and refugee communities of the Scottish Refugee Council with Aberlour's practice working with vulnerable children and young people to create an advocacy service tailored to this group of youngsters.

2. The SGS was developed to test a model of Guardianship for separated children. It was piloted from September 2010 to March 2013 and evaluated successfully<sup>2</sup>. The Scottish Government announced, in February 2013, that it would fund Scottish Refugee Council and Aberlour to deliver a core Guardianship service from April 2013<sup>3</sup> for three years after the successful completion of this pilot and consideration of its final independent evaluation. The SGS assists some of the most vulnerable group of separated children namely unaccompanied children and young people<sup>4</sup> that are seeking asylum and / or those from outside of the EEA that at risk of and / or have experienced trafficked exploitation. It is important to note that SGS is a child-centred model able to deal with all separated children with, accordingly, its demonstrable flexibility to work also with separated children from outside *and* inside the EEA at risk of or who have experienced trafficked exploitation.

3. The rationale for the SGS was that separated children are often unable to understand the language, culture or the way of life in Scotland. As well as being in the care system, they are also immediately subjected to immigration control and nearly always to the mechanisms of the asylum process. Very simply, this is a particularly vulnerable group, standing in need - like survivors of child trafficking - of dedicated, independent advocacy and support. The testimonies of this highly vulnerable group of children and the experience of the SGS in the pilot confirmed they did not well understand the processes that will determine their future nor felt they can actively participate in them. The SGS has therefore stepped in to help this group far more effectively understand, navigate, and positively overcome barriers and ensure their rights are respected and not undermined by asylum, welfare, and other processes, including in criminal justice settings.

4. The SGS benefited from inception from high-quality and independent evaluation. The two evaluators - Professor Heaven Crawley and Professor Ravi KS Kohli - also advised the Joint Committee on Human Rights (the JCHR) in its pioneering Inquiry into the "Human Rights of Unaccompanied Migrant Children and Young People in the UK published in June 2013"<sup>5</sup>. This process of evaluation was rigorous and reflexive, enabling practice-based learning, and refinement of the service as it developed. For example, this model helped identify the early need for (i) greater clarity in the role of Guardians; an issue resolved through the development of a joint inter-agency protocol with social workers and the old UK Border Agency in Scotland<sup>6</sup>, as well as (ii) permitting the collection and analysis of independent primary evidence about the SGS from the children and young people served by it, evidence that greatly enhanced the traction of the final evaluation report.

5. As indicated, the pilot phase of the SGS confirmed the particular vulnerability and corresponding needs of unaccompanied children and young people seeking asylum in the UK. Since the pilot started in September 2010 and through to the SGS now as a core Guardianship service, Guardians have worked with 136 children and young people, from 22 nationalities, speaking 28 languages. Nearly  $\frac{3}{4}$  of the youngsters are male as well as from Afghanistan, China, Iran, Nigeria, Somalia, and Vietnam, with  $\frac{1}{2}$  having indicators of trafficked exploitation. There are presently 74 open cases, 62

<sup>1</sup> <http://www.scottishrefugeecouncil.org.uk/guardianship>.

<sup>2</sup> "She Endures with Me" at <http://www.scottishrefugeecouncil.org.uk/guardianship>.

<sup>3</sup> "Scottish Government Funding" at <http://www.scottishrefugeecouncil.org.uk/guardianship>.

<sup>4</sup> An Unaccompanied Asylum Seeking Child (UASC), predominantly a Home Office term, is a young person, deemed to be under 18 years of age who is claiming asylum. Trafficked children may or may not claim asylum depending on their individual case and the SGS as a matter of policy prefers the term separated child as it encompasses both groups of vulnerable young people and is used throughout this document. However, the SGS at present is confined to assisting UASC.

<sup>5</sup> <http://www.publications.parliament.uk/pa/it201314/jtselect/jtrights/9/9.pdf>.

<sup>6</sup> [file:///C:/Users/Owner/Downloads/SGC%20Practice%20Manual%20merged%20final%20v%20\(1\).pdf](file:///C:/Users/Owner/Downloads/SGC%20Practice%20Manual%20merged%20final%20v%20(1).pdf), especially appendix 1.

closed, with international protection decisions known in 91 cases, breaking down as: 68% (refugee status), 4% (humanitarian protection), 14% (discretionary leave), and 14% (refused). Of the 30 cases referred to the SGS in 2013/14, 37% have received refugee status, 60% are awaiting a decision, with 3% of decisions unknown.

6. The Guardians in the SGS work with children and young people across three overlapping domains, namely asylum, welfare, and social networks. The experiences of youngsters in these domains were identified as mutually reinforcing: for example, having friends and healthy social networks promoted wellbeing which enabled better engagement in processes affecting them, notably asylum. Furthermore, the quality of engagement by and disclosures from children and young people flowing from the attention and trust and confidence in their relationship with the Guardian, were identified in the independent evaluation as, potentially, increasing the likelihood of their receiving refugee status. There are clear mutual benefits that decisions in asylum, welfare and other areas are based on better engagement by and clear and accurate information from the child or young person, not least to prevent inappropriate returns to persecution or (re-)trafficking, as well as to obviate the risk of costly appeals on refused asylum. The independent evaluation of the SGS identified:

"The capacity of a young person to deal with issues in relation to his or her asylum claim was often contingent on their general sense of well-being and on feeling socially embedded and connected."<sup>7</sup>

7. As mentioned, the SGS is now funded from 2013/14 to 2016/17 by The Scottish Government to provide core guardianship to unaccompanied children and young people seeking asylum. The service continues to adopt a reflexive methodology focused on practice-based learning to ensure emerging needs are identified and responses tailored. Notable areas of developing practice that, ideally, are reflected in future SGS' practice frameworks include human trafficking and the piloting and embedding of a Best Interests Determination process. Such a process was recommended by the JCHR in its Report into unaccompanied migrant children and young people and, positively, the UK Government has - as the Committee will appreciate - recently committed to "consider the case for establishing" such a process in respect of asylum and immigration<sup>8</sup>. The SGS will continue its discussions with potential funders and The Scottish Government on developing such a process.

8. The SGS's ongoing effort to secure the piloting of a Best Interests Determination process in respect of unaccompanied children and young people seeking asylum, reflects our practical experience that the Home Office's s.55(1)(a) duty that it must have regard, in asylum and related processes and decisions, to safeguard and promote the welfare of children may not be sufficient to ensure, genuinely and systematically, that *the* primary consideration in decisions affecting a child or young person is their safety and welfare, particularly in terms of considering their claim for asylum. The SGS agree with the need for systematic purposive interpretation of this Home Office duty as adumbrated by Lord Kerr in the Supreme Court in *ZH Tanzania v Secretary of State for the Home Department*<sup>9</sup> that a child's best interest "is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them ... the primacy of this consideration needs to be made clear in emphatic terms." We consider that a Best Interests Determination process will assist to consistently uphold this primacy.

#### *Written information requested by the Committee*

9. Before furnishing the Committee with the information requested, we reiterate our thanks for the opportunity to meet and provide oral evidence, on 25<sup>th</sup> February 2014. Hopefully, this evidence started to give the Committee the requisite information and insights into the SGS and, with this written submission, helpfully inform your forthcoming report and recommendations to the UK Government as to how its Draft Modern Slavery Bill may be enhanced, particularly in respect of ensuring the particularly vulnerable group of trafficked children and young people - and services in asylum and welfare domains - may benefit from independent advocates, with or without legal powers. We think there is now the clear legal driver for guardianship for separated child survivors

<sup>7</sup> pp.85-87, "She Endures with Me" at <http://www.scottishrefugeecouncil.org.uk/guardianship>.

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/279104/UnaccompaniedMigrantMinors.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279104/UnaccompaniedMigrantMinors.pdf), especially section on "recommendation 3" on p.4.

<sup>9</sup> <http://www.judiciary.gov.uk/media/judgments/2011/zh-tanzania-secretary-of-state-for-home-department-judgment>.

to be in any comprehensive anti-trafficking / slavery legislation in the UK, in the shape of Article 16 EU Human Trafficking Directive<sup>10</sup>. The SGS would, of course, be delighted to answer any other further questions you may have arising from either its oral or this written evidence.

*What are the key requirements for an effective Guardianship role?*

10. Any Guardianship role needs to be rooted in human rights and child-centred principles and practice. The SGS model is based on international human rights instruments, notably some of the Guiding Principles in the UN's Convention on the Rights of the Child (the CRC). As the Committee will appreciate the Guiding Principles are the preconditions for any or all of the CRC's other substantive rights to be realised. Key Guiding Principles which apply equally as well as in distinctive ways to separated or unaccompanied children are: (i) the definition of child e.g. all those under 18; (ii) non-discrimination in the enjoyment of the CRC; (iii) the best interests of children must be *the* primary concern in making decisions that affect them; (iv) that separated and unaccompanied children are vulnerable to various risks that affect their life, survival and development, such as trafficking or vulnerability to forced criminal acts; and (v) the particular need to pay regard to the need to enable and act upon the expressed views of unaccompanied or separated children.

11. Underpinning this child-rights framework is the SGS' utilisation of and successful independent implementation of the ten core standards of Guardianship as set out by Defence for Children through its coordination of an eight-country project, in Belgium, Denmark, Germany, Ireland, Italy, the Netherlands, Slovenia and Sweden. These core standards focused on the requisite competences, skillset, and knowledge to be an effective guardian. Underlying the core standards is an objective to harmonize the protection separated children and young people receive from their guardian. Furthermore, the standards are intended to encourage States and countries to develop or adjust their guardianship systems to fully reflect the CRC as well as related standards in human rights instruments and standards, including those, such as mentioned earlier, contained in Article 16 of the EU Human Trafficking Directive that correctly recognises the imperative of Guardianship provision for the "particularly vulnerable" group of trafficked children and young people.

12. As mentioned, the SGS has a Service Practice Framework<sup>11</sup>, last updated in April 2013, but which is very much a living document. This provides a clear structure for the Guardians in their professional competence and development and, most importantly, in structuring their work in a person-centred manner with the separated child. Therefore, it details information on the competencies, skillset, and knowledge required to fulfil this unique role. The framework has dedicated sections starting with (i) guardianship; the role of the guardian; and the SGS Practice Model; through to (ii) modules covering advocacy, casework, and structured approaches to frame the Guardian's work so the separated child has the requisite information and understanding to effectively participate in the processes and decisions affecting them; onto (iii) more specialist knowledge-based modules on key subjects including asylum, welfare, and human trafficking. The framework also details the job description, person specification, and knowledge framework applicable to being a guardian in the SGS, and these hopefully be appreciated as sketching a comprehensive and accessible picture of key requirements of guardianship<sup>12</sup>, drawing on the SGS.

13. Ultimately, a Guardian is to act, and ensure agencies act, in the best interests of a separated child or young person. They do this through mixing empowerment of and advocacy for a separated child not only to promote their effective participation in the processes and decisions affecting them but also to engender some stability and normality and, ideally, wellbeing into separated child lives that have been riven by loss and dislocation of family life, persecution, or human trafficking. Whereas there is a myriad of competencies, skills, and knowledge required to fulfil the distinctive responsibilities of a guardian to a separated child involved in asylum process and / or with exploitation histories, some are pivotal to effective guardianship. These are (i) the professional ability to build the requisite trust and confidence of this particularly vulnerable group as only that enables the qualitative child-guardian relationship which enables better engagement in processes and decisions and disclosure of vital information, and move the child closer to stability and

<sup>10</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>, especially Article 16 and paragraph 23 in Preamble.

<sup>11</sup> [file:///C:/Users/Owner/Downloads/SGC%20Practice%20Manual%20merged%20final%20v%20\(1\).pdf](file:///C:/Users/Owner/Downloads/SGC%20Practice%20Manual%20merged%20final%20v%20(1).pdf).

<sup>12</sup> [file:///C:/Users/Owner/Downloads/SGC%20Practice%20Manual%20merged%20final%20v%20\(1\).pdf](file:///C:/Users/Owner/Downloads/SGC%20Practice%20Manual%20merged%20final%20v%20(1).pdf), especially appendices 2, 3, and 4.

wellbeing; (ii) experience in child-centred practice, especially in being able to consistently empathise and communicate with the child so they genuinely understand and can develop positions on what has and is happening; and (iii) possessing the blend of professional coordination skill and technical knowledge of asylum etc., so the guardian becomes the "best interests hub" for the separated child that each agency can join-up their work around.

*What advice would you give us if we wished to develop a Guardianship scheme?*

14. We have sought to pepper the oral and this written evidence with points that we learnt were important as we refined the service e.g. for instance the importance of inter-agency clarity on the responsibilities of a guardian and where the boundaries should lie, an issue that as mentioned we resolved through the inter-agency protocol the SGS developed with the old UKBA and Glasgow City Council Social Work Department. Our main advice relate to the conceptual thinking and developmental processes that should inform a guardianship scheme before it starts, including:

- Identify good - and poor - practices to inform the scoping of any scheme,
- Involve key agencies e.g. social work, child protection, police etc., from the developmental stage to gain their professional expertise but also to develop ownership around the concept of guardianship and, in so doing, develop clarity on what the guardian can / cannot do;
- Consider how to involve those with experience of being a separated child including of course with histories of trafficked exploitation;
- Develop a distinctive, professional, and unique role of a guardian, comprising competencies, skillset, and knowledge;
- Build in independent evaluation, reflexive methodologies, and primary evidence from separated children into any pilot guardianship scheme(s);
- Ensure there is a service practice framework in place to inject professionalism, structure, and consistency into scheme(s); and
- Underscore all of the above by ensuring there are adequate and secure resources in place; the Committee requested financial information on the pilot and core services phases of the SGS and these are: £350,000 per annum for the pilot which ran from September 2010 to March 2013 and £200,000 per annum for the core service from 2013/14 to 2016/17.

*How long do Guardians work with young people?*

15. The remit is to work with a separated child until a durable solution is found whether this is integration or return to their country of origin. As long as a young person is referred to the service before they are age 18 the Guardian can continue to work with them for as long is necessary to achieve a durable solution.

16. The service continues to work with young people long term and there are cases where young people have been supported by a Guardian for over 3 years. This can be due to a number of factors but predominately this is a result of a young person's immigration status being unresolved and long decision times taken by the Home Office in relation to young people's active reviews of their cases when they reach 17 ½.

17. The Guardians can manage a caseload of approximately 25 young people due to the nature of the work where there can be high activity when someone is newly arrived but this will slow down as a young person's case progresses and they become more settled in their community. This means that the cases will all be at various stages of the process and the fluctuation allows for several cases to be managed at one time.

**Scottish Guardianship Service, 28<sup>th</sup> March 2014**