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NICEM SUBMISSION

DHSSPS

Consultation on Draft Proposed Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland)

November 2015

Introduction

- 1.1 The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.² Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society. Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.
- 1.2 Human trafficking is one of the most serious crimes affecting BME individuals living in NI, even moreso when it the victims are children. This reality is borne out by the fact that EU requires the United Kingdom (UK) to provide child trafficking victims with a representative under Article 14(2) of Directive 2011/36/EU.
- 1.3 Therefore, it is of utmost importance that an effective and appropriately tailored system of independent guardians (IGs) is developed to allow child victims of trafficking for whom none are parentally responsible may be represented and supported. NICEM welcomes the opportunity to comment on the regulations that will underlie this system.

Q. Do you agree that, in order to be eligible for appointment as an IG, a person should have to be registered as a social worker in the principal part of the register maintained by the Northern Ireland Social Care Council?

- 2.1 Evaluations of the Scottish Guardianship Service (SGS) pilot illustrated how a lack of knowledge of the social work system led to tension between Guardians and social workers, with a key recommendation of the pilot's first annual evaluation being to increase training on issues of child welfare and protection.^{3 4}

¹ Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

² In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minority" has an inclusive meaning to unite all minority communities. It is a political term that refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status united together against racism.

³ Crawley, H. and Kohli, R.K.S., "'She Endures With Me': An Evaluation of the Scottish Guardianship Service Pilot' (2013), p.31

⁴ Crawley, H. and Kohli, R.K.S., 'First Annual Evaluation Report of the Work of the Scottish Guardianship Service Pilot' (2011), p.37

2.2 Furthermore, General Comment No. 6 of the UN Committee on the Rights of the Child highlights the need for Guardians assigned to unaccompanied children to have 'the necessary expertise in the field of childcare' in order to ensure that the child's interests are safeguarded and their needs met.

2.3 Consequently, NICEM agrees that those seeking appointment as Independent Guardians (IGs) should be registered as social workers; this approach fulfils adheres to international recommendations and draws on national best practice as regards the SGS.

Q. Do you agree that, in order to be eligible for appointment as an IG, a person should have a minimum of five years' post qualifying social work experience with children and families, including direct work with children, court related experience and inter-agency working?

3.1 NICEM agrees that applicants should have five years' social work experience with children and families, again due to the identification of the utility of social work training as part of the evaluation of the SGS in Scotland, as discussed above.

Q. Is there any other training which you consider should be specified as a requirement to be eligible for appointment as an IG? If so, please advise and give your reasons.

4.1 UN Alternative Care Guidelines state that guardians acting for unaccompanied children should have 'an understanding of any special and cultural needs of the children to be entrusted to them'.⁵

4.2 Having some training in terms of cultural diversity is particularly important in the context of safeguarding children who may be victims of trafficking, as they are likely to come from a variety of different backgrounds (in 2014, minors referred to the UK NRM came from 64 different countries).⁶

4.3 Consequently, it would be suitable for prospective IGs to have undergone diversity training at some point in their careers, so that they are sensitive to the particular needs that children of differing backgrounds may have, in terms of language and cultural/religious practices.

4.4 NICEM recommends that the finalised regulations require IGs to have undergone accredited Cultural Competence training, so that they are sensitive to the differential needs of BME children.

⁵ UN General Assembly, 'Guidelines for the Alternative Care of Children' (2010) A/RES/64/142, para.103

⁶ National Crime Agency, 'National Referral Mechanism Statistics – End of Year Summary 2014' (2015), pp.7-9

Q. Are there any other qualifications which you consider should be specified as a requirement to be eligible for appointment as an IG? If so, please advise and give your reasons.

5.1 Regarding the Department's decision to train IGs to register with the OISC following their employment, it is important to note the centrality of immigration to the NRM process.

5.2 The asylum and NRM processes are intimately linked, with decisions sometimes being made by the same official and information gathered in the same interview.⁷ As a consequence of this, decisions in both cases sometimes utilise the same text, or tests from one process are wrongfully cross-applied to the other process.⁸

5.3 Furthermore, the asylum and trafficking processes are complex and a lack of understanding amongst child victims can result in a failure on their part to make appropriate applications or identify themselves as having been trafficked.^{9 10}

5.4 Thus, it is of vital importance that IGs are fluent in immigration law and related processes, so that they may identify wrongful practices and assist unaccompanied children in navigating what is ultimately an incredibly complex system.

5.5 While it is accepted that it may be difficult to identify qualified social workers who are also OISC registered and that it would thus be appropriate to train IGs after their appointment, it is equally important to ensure that the importance of knowledge of immigration law and procedures is recognised and guaranteed within the regulations.

5.6 Consequently, while it is accepted that IGs should be trained to become OISC registered following their appointment, this requirement should be recognised within the regulations, so that this function of IGs is guaranteed.

⁷ Cherti, M. et al, 'The UK's Response to Human Trafficking: Fit for Purpose?' (2012), p.14

⁸ Stepnitz, A., 'A Lie More Disastrous Than the Truth: Asylum and the Identification of Trafficked Women in the UK' (2012) 1 Anti-trafficking Review 104, 111-112

⁹ Home Office, 'Review of the National Referral Mechanism for Victims of Human Trafficking' (2014), p.67

¹⁰ House of Commons Home Affairs Committee, 'The Trade in Human Beings: Human Trafficking in the UK, Sixth Report of Session 2008-09, Vol 2: Oral and Written Evidence' (2009), p.114

5.7 NICEM recommends that a Regulation 3a be added to the regulations, reading:

‘To retain the post of Independent Guardian, a person shall become a qualified person as defined in Section 84(2)(a) of the Immigration and Asylum Act 1999(3) who is regulated at level 2 in accordance with arrangements made for registration by the Office of the Immigration Services Commissioner under Section 85 of, and Schedule 6 to, that Act, within the time period prescribed within the job description’.

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