INTERDISCIPLINARY ALLIANCE FOR CHILDREN

PO BOX 283
EAST MOLESEY
KT8 0WH

Tel: 020 8224 7071
Email: admin@alc.org.uk

Damian Green MP
Minister of State for Immigration
House of Commons
LONDON
SW1A 0AA

22nd June 2011

By email

Dear Minister

Re: The trafficking of children

The Interdisciplinary Alliance for Children (IAC) is a sector-wide coalition of expert organizations and individuals working for and with children across the whole of the family justice system. This includes children outside the family proceedings jurisdiction, whose welfare and protection is the primary responsibility of government departments and agencies such as the United Kingdom Border Agency and the UK Human Trafficking Centre as well as local authority children's social services.

We have enjoyed a constructive and positive dialogue with your Ministerial colleagues Tim Loughton and Sarah Teather on the current progress of David Norgrove's Family Justice Review as well as on other important issues for children in judicial proceedings. We would welcome the opportunity to extend this dialogue with your own Ministry and departments.

One issue which is of particular concern is the provision of statutory guardianship arrangements for children who find themselves in processes and proceedings where the best interests of the child need to be considered. We have put forward detailed proposals to the Minister for Education and to the Family Justice Review about the guardianship role in children's proceedings and hope that any successor to the present CAFCASS model will reflect our suggestions and will be an inclusive model that makes provision for guardianship arrangements wherever the best interests of the child require it. That is of course a matter primarily for others but it touches and concerns the circumstances of children within your own Ministerial responsibilities.

In a debate on the Trafficking of Human Beings in the House on 9th May recently, to the question, "*Is it the Minister's view that the combination of an IRO and an advocate amounts to a guardian?*" Hansard records (9 May 2011: Column 976) that you replied, "*That is exactly my view, and having another guardian would be confusing and potentially bureaucratic.*"

The IAC disagrees and is concerned that such a combination does not meet the particular needs of these children nor does it accord with the minimum international legal standards for trafficked and also separated, asylum-seeking children. Indeed such can be the complexity of this area of law that many children present histories of having been trafficked and also persecution and serious harm in their countries of origin and may also qualify for protection as asylum-seeking children. They are looked after and their claims processed under different and overlapping legal frameworks. As such there is already confusion and bureaucracy in determining what is the appropriate legal process and the most suitable child welfare arrangements and who funds these.

We share your concern to prevent further confusion and bureaucracy. On the contrary we consider that the appointment of a specific legal guardian for each child would offer greater clarity of purpose, position and legal authority on behalf of the child and will assist decision-makers to address the best interests of the child in a way that present arrangements or combinations of statutory functions do not.

We do not doubt the advice you have received that some local authorities are putting in place *"the kind of systems that are effective in enabling them to fulfil their statutory duty to protect children…"* but this is not the case across all local authorities and it does not equate to the kind of legal guardianship required by the Trafficking Directive nor indeed by the Reception Directive, the provisions of which will apply also to trafficked children who are also asylum seeking children.

The Trafficking Directive Article 14 (2) states that:-
"Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child."
The Reception Directive Article 19(1) states that:-
"Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.

(The emphasis in bold has been added in both extracts)

Whilst we would accept that on a strict interpretation of both these provisions, it is open to member states to provide these safeguards for children through a range of measures that may not be a formally appointed " *ad litem*" type children's guardian, there are necessary minimum legal requirements in both these directives which in our view and indeed those of the UN Committee on the Rights of the Child would not be met by the combination of an Independent Reviewing Officer (IRO) and an advocate as these are currently provided by law.

The UN Committee has advised in its General Comment No. 6 on The Treatment of Separated Children Outside Their Country of Origin, which includes express provisions in relation to trafficked children, states at paragraph 33 that:-

"…The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship…"

Neither an Independent Reviewing Officer nor a children's advocate possess the requisite legal capacity to represent a child, nor indeed does the child's social worker where the child is being looked after under Children Act 1989 s.20 arrangements – i.e. the default position for most unaccompanied children provided with local authority support, including trafficked children. S.20 arrangements do not vest any parental responsibilities in the local authority, unlike s.31 Children Act 1989 care proceedings.
The oft repeated argument against providing guardianship for these children is that the local authority already acts as an effective "corporate parent".

This idea of corporate parenting is without any meaning in law but more importantly it does not reflect the reality of often low levels of support and standardized accommodation. It is sadly the case that many of these children lack any meaningful parent figure in their lives through social services. Whilst some younger children may be provided with a supportive foster family, many older children, of 16 and over are

accommodated in residential or semi-independent units with only a key worker occasionally for day to day support.

This is not parenting of any kind, even of the so called corporate variety. The lack of care plans and reviews, conflicts over age, identity and credibility are the routine experience of many separated children. The pressures on all local authorities to drive down the level of support caused by public spending restrictions and the reduction in re-imbursement funds for local authorities for supporting separated children in part comes from a reduced UKBA budget in terms of lower weekly rates per child which do not cover the true costs of meeting their needs. All these pressures militate against a local authority being able to act genuinely and independently in the best interests of the child and to provide anything approaching parenting or guardianship.

The functions of an Independent Reviewing Officer have never been fully independent and the establishment of that role in the Review of Children's Cases (Amendment) (England) Regulations 2004 created it essentially as an internal monitoring and reviewing mechanism. Whilst the IRO also has the power to refer cases directly to the CAFCASS legal office where a human rights violation is identified we are not aware of a single case involving a trafficked or asylum seeking child in local authority care ever having been referred to CAFCASS under these provisions. Important as the IRO functions may be, they are very limited and never envisaged as a guardianship role by those drafting the 2002 Act provisions and the 2004 regulations, nor should they be.

The DfES guidance itself states that, *"an IRO must as a minimum requirement be independent of the line management of the cases they are reviewing…"*

For as long as this remains an internal social services function there will always be a potential conflict of interest with the child which falls short of the CRC Committee's own clear guidance on independent guardianship.

The role of an advocate as established by s. 119 of the Adoption and Children Act 2002 is also very narrowly focussed and lacks the authority and expertise necessary to represent the best interests of the child across other statutory agencies and jurisdictions where decisions are being made about the child. Although advocacy can be of great help to a child in expressing her wishes and feelings and making sure that these views are made known and taken into account in the delivery of services, the advocacy function was established to enable children to have better access to complaints and care planning processes, not to assume the legal responsibility of a guardian nor to advise as an expert on their best interests.

Neither the IRO nor the advocate, jointly or severally, can provide the necessary independent, expert, advisory role to assist decision-makers to identify and address the best interests of the trafficked and asylum-seeking child across a wide range of agencies and legal responsibilities.

A dedicated legal guardian appointed specifically to represent the child's best interests will in our view provide much greater clarity and consistency and less bureaucracy in enabling all agencies to meet their responsibilities to the child, be these under Children Act 1989 duties, the safeguarding duties under s.11 Children Act 2004 and s.55 Borders Immigration and Citizenship Act 2009, EU treaties and directives and the UK's international treaty obligations.

We would strongly recommend that guardianship provisions for trafficked and asylum seeking children should form an integral part of a new, broader family justice framework.

Yours sincerely,

Julia Higgins

Julia Higgins
On behalf of the Interdisciplinary Alliance for Children,