



Committee for Health, Social Services and Public Safety

OFFICIAL REPORT (Hansard)

Human Trafficking and Exploitation (Criminal Justice
and Support for Victims) (Independent Guardian)
Regulations (Northern Ireland) 2016: DHSSPS

9 March 2016

NORTHERN IRELAND ASSEMBLY

Committee for Health, Social Services and Public Safety

Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2016: DHSSPS

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Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Mr Alex Easton (Deputy Chairperson)
Mrs Pam Cameron
Mrs Jo-Anne Dobson
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Daithí McKay
Mr Fearghal McKinney
Mr Gary Middleton

Witnesses:

Mr Paul McConville	Department of Health, Social Services and Public Safety
Ms Eilís McDaniel	Department of Health, Social Services and Public Safety
Mrs Carol Picton-Lynas	Department of Health, Social Services and Public Safety

The Chairperson (Ms Maeve McLaughlin): With us today from the Department are Eilís McDaniel, the director of family and children policy; Mr Paul McConville, a social services officer; and Mrs Carol Picton-Lynas, who is the deputy principal of the Adoption and Children Bill team. You are all very welcome. I invite you to make some opening remarks, and I will then open the meeting to questions or comments. Eilís, are you taking the lead?

Ms Eilís McDaniel (Department of Health, Social Services and Public Safety): Yes. Thank you very much, Chair, and good afternoon, members. We welcome the opportunity to provide the Committee with a briefing on the draft Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations 2016. Members have been provided with the SL1 notification and a copy of the summary report of responses to the consultation on the draft regulations, which details the overarching views of key stakeholders and the Department's subsequent response.

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 received Royal Assent on 13 January 2015. The objectives of the Act are to provide Northern Ireland with a more robust legal framework in relation to the prosecution of traffickers and those subjecting people in Northern Ireland to conditions of slavery; the provision of improved support for the victims of trafficking; and tackling the demand for trafficking. Tragically, victims of human trafficking are often children or young people, and they might not be aware that they are being exploited, or they might be frightened or confused about what the future holds for them. Consequently, section 21 of the Act, as amended by the Criminal Justice Act (Northern Ireland) 2015,

makes provision for an independent guardian to be appointed for child victims and potential victims of human trafficking; and for separated children where the person with parental responsibility for the child is not in regular contact or is outside the UK.

The Act defines a trafficked child as one about whom reference:

"has been, or is about to be, made to a competent authority for a determination ... as to whether there are reasonable grounds to believe that the child is a victim of trafficking in human beings".

Currently, that competent authority is the national referral mechanism. The Act defines a separated child as a child who has come to Northern Ireland and been separated from both parents or from their legal or customary caregivers and who may be at risk of harm because of that separation. That harm could include but is not limited to abuse, exploitation or neglect. The definition ensures that children from other countries who are in Northern Ireland — they may, for example, be on a school trip — in the company of adults other than their parent or caregiver and are at no risk of harm do not come within the scope of the legislation unnecessarily.

Section 21 of the Act places a duty on the Health and Social Care Board to make arrangements to enable an independent guardian to be appointed to assist, represent and support a child. The arrangements must be made with a charity that will provide for the appointment of a person as an independent guardian. Section 21(11), as amended by section 101(3) of the Justice Act (Northern Ireland) 2015, provides that charities already registered under the Charities Act (Northern Ireland) 2008, charities waiting to be called forward to register under that Act and charities registered in England, Wales or Scotland are eligible to be considered by the Health and Social Care Board to provide an independent guardian service in Northern Ireland. Section 21(5) of the Act requires the Department to make regulations for:

"the training and qualifications required for a person to be eligible for appointment as an independent guardian"

and

"the support to be provided for, and the supervision of, an independent guardian"

post appointment.

The statutory rule specifies that, in order to be eligible for appointment as an independent guardian, individuals must be qualified social workers with at least five years' post-qualification experience of working with children and families, including direct work with children, court-related experience and agency working. The statutory rule also provides that a charity that appoints a person to act as an independent guardian must provide or secure the provision of support to the independent guardian and make arrangements for the independent guardian to have access to formal supervision once per fortnight in the first six months of appointment and once per month thereafter.

The statutory rule defines support as including administrative support, advice and assistance, as well as training and development that will enable the independent guardian to meet post-registration training and learning requirements set by the Northern Ireland Social Care Council. Support also extends to enabling the independent guardian to achieve Office of the Immigration Services Commissioner level 2 registration.

The statutory rule also amends the Children's Homes Regulations (Northern Ireland) 2005 to add independent guardians to the list of people to whom facilities within the children's home must be provided to enable any child accommodated in the home to meet privately with the independent guardian.

Public consultation on the draft regulations ran from 10 September to 6 November 2015. A total of 18 responses were received, and a summary of those is provided in the SL1. The full consultation report has been shared with Committee members.

Taking on board comments received as part of the consultation process, the Department amended the draft regulations to increase the frequency of supervision to be provided to an independent guardian during the first six months of appointment. We also received some very useful suggestions about the additional knowledge, skills and experience that respondents considered necessary for an

independent guardian to effectively undertake the role and responsibilities; and about the training that should be undertaken by the independent guardian following appointment. While the primary legislation does not provide the Department with the necessary powers to include these in the regulations, the details have been shared with the Health and Social Care Board and will be considered for inclusion in the service specification that will issue as part of the procurement process.

Subject to Committee agreement, the intention is to make the regulations before the dissolution of the Assembly, and they will come into operation 21 days later. That will allow the Health and Social Care Board to complete the procurement exercise and appoint a charity, which will proceed to establish the service and appoint independent guardians. It is intended to have the service up and running by the end of 2016. I am very happy to take questions from members.

The Chairperson (Ms Maeve McLaughlin): Thank you, Eilís. You said that 18 responses were received: 56% of all respondents agreed that an independent guardian should have to be registered as a social worker, but 33% were of the view that that was quite prescriptive. The document that we have does not tell us which organisations had concerns.

Ms McDaniel: Do you want to know exactly who had concerns and who did not support the proposal? Carol, will you deal with that question, please?

Mrs Carol Picton-Lynas (Department of Health, Social Services and Public Safety): Yes. The view that the role should not be restricted to social workers but open to other professions was expressed by Care NI, Voice of Young People in Care (VOYPIC), the Northern Ireland Commissioner for Children and Young People (NICCY), the Children's Law Centre, End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) and the Law Centre NI.

The Chairperson (Ms Maeve McLaughlin): Did a percentage of people not know or not have a view?

Ms McDaniel: Undecided?

Mrs Picton-Lynas: Some were undecided, yes.

The Chairperson (Ms Maeve McLaughlin): Do you accept that the organisations just listed have a huge voice in relation to the legislation and the regulations?

Ms McDaniel: I accept that fully. We should explain why the decision was made that the independent guardian should be a qualified social worker. We looked at a number of things. We looked at the Scottish evaluation of its service, which identified that a social work qualification was desirable. We also looked at the report on child trafficking advocates in England, which concluded that further consideration was required of the certified training and qualifications of advocates. We also considered a European Union Agency for Fundamental Rights (FRA) paper, which considered that there was a necessity for expert knowledge and adequate training on a wide range of issues relating to welfare and child protection. Finally, the United Nations Convention on the Rights of the Child (UNCRC) general comment 6, which I think the Children's Commissioner referred to, recommends that a:

"guardian or adviser should have the necessary expertise in the field of child care, 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".

We considered, taking all of that into account, that what people were describing was very much the business of social workers. Social workers are required under the Children Order to safeguard children and to promote their welfare. They are also required to undertake investigations when they have concerns that a child may not be properly safeguarded or that their welfare is not being promoted. There are, then, powers relating to taking children into care. I am trying to say that we considered that what others have described as the role of an independent guardian is very much in the territory of what social workers do daily. Paul, do you want to add to that?

Mr Paul McConville (Department of Health, Social Services and Public Safety): Yes. Eilís referred to the European Union Agency for Fundamental Rights paper. One of its standards set by international and EU law pertaining to guardianship and representation of children is the necessity of expert knowledge and adequate training on a wide range of issues relating to welfare and child

protection specifically. Our starting point is that any child trafficked or potentially trafficked into the jurisdiction is a child at risk. Either they have already suffered abuse or continue to be at risk of abuse, so it is a child protection matter, and article 66 of the Children Order is immediately engaged by the trusts. It is their duty to investigate and cause inquiries to be made into what the risk is and what they need to do to secure the child's welfare.

The United Nations Convention on the Rights of the Child general comment 6 advises:

"The guardian or adviser should have the necessary expertise in the field of child care, 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".

Those are things that social workers in the health and social care trusts and other agencies, including voluntary agencies, attend to as part of their overall training, and the statutory duty to ensure that lies with the social workers in the trust.

One of our concerns is that the independent guardian will also have to engage in legal proceedings in respect of trafficked children. You have a qualified social worker. A guardian ad litem is appointed by the court and is also required to be a qualified social worker. So, to ensure the quality of the service and, if I may use the phrase, equality of respect and equality of arms and knowledge, we felt that the qualifications should be similar. One of the duties of the independent guardian is to ensure immediately that the child in question has independent legal representation, so there is no conflict in terms of the professional role. If anything, a wide safety net of professional knowledge, expertise and representation is being put in place for those children.

The Chairperson (Ms Maeve McLaughlin): I could come at it from another angle: why would organisations such as the Children's Law Centre, VOYPIC, Care NI and NICCY indicate that this is too prescriptive?

Mr McConville: I presume, Chair, that they want to widen the pool of personnel who could apply to be appointed as guardian and maybe the range of organisations that could apply to provide the service when the Health and Social Care Board goes to procurement, whether by tender or contract.

The Chairperson (Ms Maeve McLaughlin): You mentioned that, in Scotland, the social work qualification is identified as being desirable. Does that translate to independent guardians in Scotland having to be social workers?

Ms McDaniel: My understanding is that Scotland is in the process of putting its service on to a statutory basis. It will be interesting to see how that is reflected in legislation. Some respondents suggested that it is a function that might be vested in youth workers, for example, but I think that that would be difficult to do. We need to be able to specify the individuals in legislation. Yes, you probably could define some of the other professions by way of legislation. However, if you opened it to people like youth workers, for example, I think that it would be very difficult to deal with by way of legislation.

The Chairperson (Ms Maeve McLaughlin): As it stands in Scotland, it is not mandatory.

Ms McDaniel: Not at this stage. It will be interesting to see what happens when its service is placed on a statutory basis.

The Chairperson (Ms Maeve McLaughlin): My perception is that this is a hugely significant set of regulations. I certainly would not be comfortable with processing or progressing these regulations at this stage. Huge sections of society are reflected through the organisations that raised issues, and, to date, we have not heard their voice.

Ms McDaniel: The only other thing that I will add is that it will be a procured service. It will be procured for a period of years — probably about three years — after which there will be the opportunity to review the arrangements.

The Chairperson (Ms Maeve McLaughlin): Yes, but we have a responsibility to carry out a scrutiny role. We seek views on all sorts of regulations from a number of those organisations, and many others that you listed, but we have not afforded them the opportunity to come in front of the Committee to outline the rationale for their objections. This is about the role of the Committee. It does not sit right

with me that this has arrived at the eleventh hour, and we are being asked to proceed with what is in front of us without having had the opportunity to hear, without pre-empting the outcome, from the 33% of respondents who raised concerns, and they have a big stake in this.

Mrs Dobson: Thank you for your briefing. The Chair has, largely, outlined my views, but I want to touch on a couple of points again so that I am clear. There were two questions in the consultation about an independent guardian, and you outlined the groups that raised concerns, including Care NI, VOYPIC and the Children's Law Centre. I am concerned about your rationale that the independent guardian should be a qualified social worker with a minimum of five years' social work experience. Are you not concerned that you are potentially ruling out someone who may have 10 years' post-qualification experience working with children but is not necessarily a social worker? I think that your mind seems to be made up, Eilis, but, like the Chair, I am concerned that you could rule out someone with vast experience.

Ms McDaniel: We have gone with the consensus view. The majority of the people who were asked whether they agreed —

Mrs Dobson: That is the majority of 18 responses to a consultation.

Ms McDaniel: Eighteen responses, yes, but the majority were supportive of the independent guardian being a qualified social worker.

Mrs Dobson: Some high-profile organisations were, as the Chair said —

Ms McDaniel: I fully accept that, but we took the views of the health and social care trusts, which, I think, are entitled to a view. Likewise, the Health and Social Care Board is supportive of the independent guardian being a qualified social worker, and it is a significant player whose views need to be taken into account. We also looked at what was happening in other parts of the UK. I am trying to explain the rationale for the decision to continue to specify that the independent guardian is required to be a qualified social worker. I fully appreciate that you do not have the views of other players, such as the Children's Commissioner, and organisations, such as the Children's Law Centre. I fully accept that point.

The Chairperson (Ms Maeve McLaughlin): We do not have anybody's views. We have neither the views of those who said that it is the right thing to do nor the views of those who said that it is restrictive. That is the issue.

Mrs Dobson: Are you not concerned that you potentially rule out someone with expertise by stipulating that?

Ms McDaniel: Qualified social workers are probably the best equipped to do the job. I am not saying that others could not do it. One of my other concerns about delaying the making of the regulations is that we are already late with the delivery of the service. It should have been delivered from November of last year, and there are a number of reasons why that has not happened. If we do not make the regulations now, the service will be delayed further.

Mrs Dobson: Is the requirement to be a social worker with a minimum of five years' experience consistent with the approach in other areas? You referred to Scotland and England.

Ms McDaniel: It is a significant role, if that is your question. An independent guardian will be a significant person in the life of children, making and assisting them in making important decisions.

Mrs Dobson: What about the health service in other areas?

Ms McDaniel: Senior social workers. They are the equivalent of principal practitioners. Paul, I look to you to answer that question.

Mr McConville: Yes, particularly given the child protection functions of the role. The independent guardian is charged with overseeing and coordinating the efforts of all who are involved in the child's life. Key to child protection is understanding the statutory functions that are delegated to the health and social care trust. The guardian should have enough knowledge and experience to recognise

when a child's needs are being met and know not only how to elaborate their needs but how to challenge others. There is an important challenge function for the independent guardian in holding to account all other parties providing services to improve the child's outcomes.

I should maybe have reflected in a previous answer the concern expressed by one of the organisations that the requirement that the independent guardian be a social worker would reduce the independence of the role. However, that is not true, because there are social workers employed in voluntary and community organisations, such as the NSPCC, Barnardo's and Action for Children. They not only contribute services but advocate and lobby, and they fulfil the function of holding the system to account. The legal duty on the guardian to represent the best interests of the child is combined with the independence of the employing organisations, which will have their own policies and procedures. As Eilís said, their commitment is to work in a collaborative, cooperative way with the Health and Social Care Board through the tender or contract. I am sure that the board will write in its expectations for the oversight, performance management and monitoring of the contract and service delivery.

Mrs Dobson: You seem fairly convinced. Will you clarify that there is no requirement for that person to have any experience with trafficked children?

Mr McConville: No, currently there is not, because the number of trafficked children in Northern Ireland in comparison with the rest of the UK is small. That does not mean that we are any less concerned. In fact, the Health and Social Care Board has established a regional practice network, which involves other statutory and voluntary organisations, to lead on practice, so I do not have that concern.

Ms McCorley: Go raibh maith agat. I would like to ask about the financial implications. You talk about £100,000 in year 1, rising to £160,000 in year 2. I presume that there is a misprint when it says that there is a rise to £240,000 in year 2. Does that mean year 3?

Ms McDaniel: That should read year 3. Apologies for that.

Ms McCorley: Will you tell me how those figures are arrived at, please?

Ms McDaniel: Reference was made to the Scottish service, and the ratio of guardians to separated or trafficked children in Scotland is in the order of one to 12. The projection is that there will be between 10 and 12 children in each of those years who will require the services of a guardian, and the funding requirement has been calculated accordingly.

Ms McCorley: Currently, how many children would come under the service that the guardian will provide?

Ms McDaniel: It is estimated that, in year 1, there will be between 10 and 12 children who require the services of a guardian.

Ms McCorley: How many are there currently? There must be children coming to the attention of the authorities who may have been trafficked or are the kind of children who would be covered by this guardian.

Ms McDaniel: I will give you one example. In 2014, of 45 referrals to the national referral mechanism, eight related to children.

Ms McCorley: Were they trafficked?

Ms McDaniel: They were separated or potentially trafficked. This legislation covers not only trafficked children but separated children. The figure of 10 to 12 a year is based on what we know in Northern Ireland terms and on the Scottish service, which has allocated one guardian to 12 children. It is a combination of the two: the numbers that we are aware of in Northern Ireland, either separated or trafficked children, and how the Scottish service has operated.

Ms McCorley: You expect the figures to rise year on year.

Ms McDaniel: The year 1 children will not go away, so a guardian may be with those children for a period of years. The legislation enables a guardian to stay connected with a child until the age of 21, if that is what the child or young person wants and requires. In year 1, the guardian may be dealing with 10 to 12 children. In year 2, those 10 to 12 children will not have gone away, but there will also be a new cohort requiring the appointment of a second guardian. That is repeated in year 3, requiring the appointment of a third guardian.

Ms McCorley: In the first year, there will be one guardian.

Ms McDaniel: There will be one guardian initially, and the number will grow.

Mr McCarthy: Do you reckon that, if the role of independent guardian is restricted to professional social workers, they have the capacity to carry out all of that work despite their heavy work pressures? Have you any concerns that they may not be able to come up to doing the job that you are asking them to do?

Ms McDaniel: The guardians will be employed by a charity entirely separate from the health and social care system. They will be employed specifically to undertake that role. Assuming that our projections are right, which is an important point, there should not be any capacity issues. If they are wrong, clearly, more guardians will have to be appointed and employed by that charity to undertake the role.

Mr McCarthy: They will still be professional social workers.

Ms McDaniel: Absolutely, yes.

Mr McConville: That was part of the consideration of the five-year post-qualification experience and experience in childcare and child protection matters: to ensure that appointees have the necessary knowledge and training accumulated over at least that period, as well as an understanding of the nature of the work and the resilience needed to continue in that. Your question was on the possibility of the social workers appointed not coming up to the task, and that was why we put in the requirement for five years' post-qualification experience and the supervision requirements from the employing organisation.

Mr McCarthy: That is good, but the issue is the volume of work that they may be asked to do. Have they the capacity to do it and do it in the way that it should be done?

Ms McDaniel: Our projections are based on the Scottish service, which has operated since 2010. If those projections are correct, they should have sufficient capacity to deal with that number of children.

Mr McConville: If it is helpful, the Health and Social Care Board has said that, as part of its procurement, it intends to monitor and review the service in the first year to ensure that it meets expectations.

Mr McCarthy: OK, that is fine.

The Chairperson (Ms Maeve McLaughlin): Thank you. I have to say that I am not convinced, given the lack of detail in what we have in front of us today, that we can proceed at this stage. We have 56 people saying that it was the right way to proceed, but 33% said that it was quite restrictive. Eilís, I have listened to what you said about delaying the process, but we have had no role in bringing this to the last Committee meeting in the mandate. It will certainly be my recommendation that we bring this back for proper scrutiny to allow the voices of those who are in favour of the regulation, those who are not and those who are not sure, to be heard.

I recommend, members, that we bring it back post election. Are members in agreement?

Members indicated assent.