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## NSPCC written evidence to the Joint Committee on Human Rights inquiry into the human rights of unaccompanied migrant children and young people in the UK

October 2012

### Summary

- Separated children should be treated as children first and migrants second.
- All agencies and professionals dealing with separated children need to ensure that the statutory responsibilities under child welfare legislation are applied to all children in the UK, irrespective of their immigration status.
- Separated children need to receive more advice, support and advocacy in order to be protected and safeguarded.
- Professionals should receive specialised training to enable them to address the needs of this vulnerable group of children.
- Trafficked children are still being detained in adult prisons. This should be considered as a risk of 'significant harm' and the subsequent age assessment should be given the same priority as an investigation under section 47 of the Children Act 1989
- We are concerned that some child victims of trafficking are wrongly being criminalised for their actions whilst under the control of traffickers. There is much guidance - e.g. from ACPO and CPS - on this issue and steps must be taken to ensure that it is followed by professionals. Relevant guidance needs to be fully implemented.

### Introduction

The NSPCC is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end child cruelty in the UK by seeking to influence legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, campaigning, lobbying and public education.

The NSPCC Child Trafficking Advice Centre (CTAC) was launched in September 2007. Since then, CTAC has provided a UK-wide service to professionals offering social work and police advice to inform and support professionals in their work with children where there is a concern for a child being trafficked into the UK.

The service offers a telephone duty line, awareness raising presentations, individual case consultation, attends strategic trafficking meetings, child protection strategy and professional meetings together with preparing court reports on behalf of trafficked children and young people. CTAC has a Young People's Advisory Group which enable those with first-hand experience of being trafficked to assist in developing the team and other professionals' understanding of child trafficking.

Since September 2007, we have had 781 referrals from professionals across the UK with concerns about children in relation to trafficking. 762 of these children were separated migrant children of 3 months to 18 years of age who were brought into the UK. The children were trafficked from Africa, Asia, South American and European countries into the UK to be exploited for sexual exploitation, domestic servitude, criminal activities, such as cannabis cultivation and street crime, informal fostering arrangements for benefit fraud and forced marriage.

This response was written based on the expertise and experience of CTAC.

#### **A note on terminology**

*We acknowledge that the Committee is using the term 'unaccompanied migrant children' to encompass both unaccompanied and separated children. However we consider that the term 'unaccompanied' unhelpfully narrows professional's awareness as to which children may be at risk of harm, given that those who may be 'accompanied' may still be at risk. Therefore in this response we use the term 'separated children', which is more widely used by professionals who have responsibility for children's welfare. Separated children are children under 18 years of age who are outside their country of origin and separated from their parents or primary care givers.*

#### **1. Is the treatment of unaccompanied migrant children and young people in the UK consistent with the UK's obligations under the UN Convention on the Rights of the Child (UNCRC)?**

As an international treaty devoted solely to the protection of children's rights and ratified by the vast majority of states in the world, we consider that the UNCRC is well placed to provide a comprehensive framework to uphold and strengthen the rights of separated children. However it is important to note that the UNCRC has not been fully incorporated into domestic UK law, which has been criticised by the UN Committee on the Rights of the Child.<sup>1</sup> On the other hand we would draw attention to the fact that UK child welfare legislation<sup>2</sup> provides a strong domestic legal framework for fulfilling various requirements of the UNCRC, if they were applied in practice to all children

<sup>1</sup> Committee on the Rights of the Child, Forty-ninth session, Concluding observations UK and Northern Ireland (CRC/C/GBR/CO/4) 20 October 2008, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>, paras 6 & 7.

<sup>2</sup> The Children Acts 1989 and 2004 (England and Wales), the Children (Northern Ireland) Order 1995 and the Children (Scotland) Act 1995.

However, we are concerned that separated children are treated as migrants first and as children second. In spite of the responsibility placed on local authorities and agencies for the welfare of all children under the Children Acts, in practice these duties are not always upheld. We therefore consider that any assessment of the UK's fulfilment of its obligations under the UNCRC needs to take into account the domestic legal framework and the lack of implementation of key statutory responsibilities towards separated children.

In relation to the UNCRC specifically, it enshrines a number of rights which are relevant to the situation and treatment of unaccompanied migrant children. For example:

- *Article 2 – Principle of non-discrimination;*
- *Article 3 – Best interests of the child being primary consideration;*
- *Article 12 - Right to express views, respect for the views of the child, and right to be heard;*
- *Article 19 - The right to protection from all forms of violence, injury, abuse, neglect or exploitation;*
- *Article 20 - The right to special protection for children temporarily or permanently deprived of his or her family environment;*
- *Article 34 - The right to protection against all forms of sexual exploitation and abuse;*
- *Article 35 - The duty of state parties to take all appropriate measures to prevent the abduction of, the sale or traffic of children.*
- *Article 37- No child shall be tortured or suffer other cruel treatment or punishment. A child should be arrested only as a last resort and for the shortest possible time. Children must not be put in a prison with adults and they must be able to keep in contact with their family.<sup>3</sup>*

We consider that there are a number of issues that the UK Government needs to address in order to fully meet its obligations with respect to the UNCRC. In particular we highlight in this response various issues in relation to the implementation of the principles of non-discrimination and the best interests of the child and the right to special protection for children deprived of their family environment. For example:

- Many separated children are detained in secure training centres, youth offending institutions and adult prisons. The harmful effects on children of being detained in adult prisons are well known;
- Often, the processes leading to age assessment procedures are not child focused. Separated children are not always given the 'benefit of the doubt' and consequently deprived of access to appropriate financial, accommodation, social, welfare, educational and health support;
- The asylum system is complex and not organised in a child friendly meaning that the child's best interests seem not to be the primary consideration in all cases and separated children are not given the special protection they are entitled to under the UNCRC;
- The criminalisation of separated children who have been trafficked is clearly not in their best interests or, in many cases, the public interest;

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<sup>3</sup> Convention of the Rights of the Child, adopted 20 November 1989, 1577 UNTS 3, available at <http://www2.ohchr.org/english/law/crc.htm>

- The right of separated children to have their views heard and taken into account is not always upheld.

**The UNCRC should be fully incorporated into domestic UK law in order to give full effect to its provisions and strengthen the rights of all children in the UK.**

**The Government, local authorities and agencies need to ensure that the statutory responsibilities towards the welfare of all children are met, irrespective of their immigration status.**

**2. To what extent is the statutory duty in section 55 of the Borders, Citizenship and Immigration Act 2009, and its accompanying guidance, proving effective in ensuring that in practice public bodies have regard to the need to safeguard and promote the welfare of children?**

The NSPCC welcomed the extension of the statutory duty to give regard to safeguarding and promoting the welfare of children to UKBA as this represented a serious gap in the protection of children in the UK. However, it is important to recognise that imposing a statutory duty does not necessarily lead to change on the ground. It is our experience that this duty is only applied in the loosest sense and we have yet to see the cultural shift in the values and approach of the organisation which is necessary. Separated children are still treated as migrants first and children second, and are not always given a response based on their welfare and best interests. This is demonstrated by the UKBA's approach to age assessment and the culture of disbelief that surrounds the treatment of separated children. For example; when considering the National Referral Mechanism<sup>4</sup> claim of an orphaned street child who had been brought to the UK and made to work in restaurants UKBA dismissed the claim of trafficking partly on the grounds that the child was paid with food and lodgings. Furthermore it appeared UKBA felt that burns on the child's arms were not of concern as the child stated that they were sustained whilst washing up in the kitchen as opposed to being directly inflicted on him by his traffickers. This should have led to a child protection medical as part of a child protection investigation. We acknowledge that this is a single example, but we consider that it may be indicative of a wider issue within the organisation.

**UKBA needs to make a concerted effort to embed the duty to safeguard and promote the welfare of all children firmly throughout the organisation, through guidance, training and monitoring.**

**3. Should one department in Government have overall responsibility for unaccompanied migrant children and young people in order to ensure that their rights are best promoted and protected? If so, which one?**

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<sup>4</sup> The National Referral Mechanism (NRM) is a victim identification and support process which is designed to make it easier for all the different agencies that could be involved in a trafficking case - e.g. police, UKBA, local authorities and NGOs - to co-operate; to share information about potential victims and facilitate their access to advice, accommodation and support. See <http://www.soca.gov.uk/about-soca/about-the-ukhct/national-referral-mechanism>

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It is important to recognise the statutory responsibility of local authorities towards separated children, and the fact that they have a key service delivery role in safeguarding them. Responsibility therefore goes much wider than central government. That said, central coordination is key and in our experience services are currently not sufficiently joined up. Given the lead role of local authority Children's Services, and the need to ensure that separated children are given a welfare-based response, we consider that the Department for Education should have overall responsibility for separated children. Separated children should be treated as children first and foremost, and DfE is better placed to ensure this happens.

#### **4. Are Government departments and their agencies satisfactorily 'joined-up' in how they protect and support unaccompanied migrant children and young people?**

The NSPCC considers that Government departments, agencies and local authorities are not sufficiently coordinated in their treatment of separated children. A key reason for establishing CTAC was our awareness that various public authorities (as well as a wider constituency of voluntary organisations) did not know who to contact and which other agencies to work with when they became aware that a child may have been trafficked. A core aim of CTAC is to help to ensure a common child protection response from different agencies.

Lack of awareness of the various roles and responsibilities of the various agencies amongst professionals results in a less effective response to the issues that many separated children are facing. For example in our experience many mainstream social workers dealing with cases of forced marriage are unaware of the existence of the Forced Marriage Unit which has built a lot of experience and can provide specific information on the cultural, social and emotional issues around forced marriage. This should be addressed through training and better communication

The NSPCC considers that at a local level LSCBs have a key role to play in ensuring that the services within the community they serve work together to ensure that separated children are protected.

At a national level, and in light of the proposed changes to the inter-agency guidance *Working Together to Safeguard Children*<sup>5</sup>, the Government should clarify the status and availability of broader practice guidance on dealing with separated and trafficked children. The DfE's *Safeguarding Children who may have been Trafficked 2011*<sup>6</sup>, is, in our view, an excellent document that is comprehensive, user friendly guidance. Working Together 2010 refers to this document, but the most recent consultation version of Working Together does not.<sup>7</sup> We consider that Government must be clear that this guidance will still be made available and how it should be used and updated. There also needs to be an acknowledgement that where *Working Together* lacks detail on dealing with separated children local areas are likely to seek to fill the gap with their own practice guidance, setting out local policies and procedures to

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5 HM Government (2010) *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*, available at <https://www.education.gov.uk/publications/eOrderingDownload/00305-2010DOM-EN-v3.pdf>

6 HM Government (2011) *Safeguarding Children who may have been Trafficked*, available at <https://www.education.gov.uk/publications/eOrderingDownload/DFE-00084-2011.pdf>

7 DfE (2012) *Working Together to Safeguard Children (2012 Consultation Draft)*,

See [http://www.workingtogetheronline.co.uk/consultation/wt\\_2012.html](http://www.workingtogetheronline.co.uk/consultation/wt_2012.html)

respond to particular issues. This would be concerning if it leads to inconsistent practice across the country.

**As the main agency co-ordinating local work to safeguard children, LSCBs must be able to help identify child protection concerns for migrant children within their area and develop multi-agency approaches to provide services for separated children. DfE should undertake an assessment of LSCB arrangements to meet the needs of separated children a year after the new Working Together arrangements are implemented.**

**Government should clarify the status of practice guidance related to separated children following the revision of *Working Together*.**

**It is important for government departments to create partnerships with the voluntary sector and community groups which work with migrant children.**

**5. Will the proposed reforms to the Office of the Children's Commissioner for England benefit unaccompanied migrant children and young people or is there more that could be done to ensure that the institutional machinery protects this particular vulnerable group?**

It is the NSPCC's view that the Office of the Children's Commissioner for England (OCCE) recognises separated migrant and trafficked children as some of the most marginalised in society. We note the OCCE's good work in bringing such issues to the attention of the press and wider public, for example when the OCCE revealed that separated children arriving in Dover were being 'bounced back' to France by UKBA.

CTAC believe the OCCE is well placed to promote and protect the rights of this vulnerable group and welcome the proposed new powers to carry out assessments of the impact of new policies and legislation on children's rights.

**6. Is there sufficient awareness and relevant training on children's rights and the UNCRC for those in government, central and local, and other bodies, public or otherwise, who deal with separated migrant children and young people?**

It is the NSPCC's experience that there is a lack of awareness of the domestic statutory responsibilities on agencies to safeguard and promote the welfare of separated children, let alone awareness of the international legal framework. **Awareness raising and training to address this should ensure that all professionals working with children are aware of child welfare legislation and that it applies to all children in the UK.**

In addition to broad awareness-raising, it is important to recognise the specialist knowledge that is required when dealing with separated children. However, the disbanding of specialised asylum teams in some local authorities may impact negatively on the effective use of professionals with the knowledge and expertise to deal with separated children. With the move towards generic social work teams, **there needs to be greater emphasis on specialised**

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training to enable professionals to be better able to deal with this vulnerable group of children.

**7. Are unaccompanied children able to access the legal advice and representation necessary to ensure that they are able to have their voice heard in any judicial and administrative proceedings affecting them, and that their rights are upheld, in accordance with international standards? Should there be a system of guardians for unaccompanied and separated migrant children to ensure that their interests are represented?**

The vulnerability of separated children mean that effective legal advice and representation is absolutely crucial to ensure that their rights are upheld. Separated children tend to face language barriers, suffer from the experience of trauma and lack a wider support system. They may be unaware of responsibility the state has towards their welfare. However, in our experience, separated children encounter many barriers to accessing legal advice and representation. This is likely to be compounded following changes to the legal aid system, which is expected to reduce the availability of specialist immigration lawyers.

This case study highlights some of the difficulties faced by separated children when navigating the asylum system:

*“First of all when I went to Home Office at that time I didn’t understand anything, it didn’t know if it is a good thing, I just understand that I have to go there. And then they were talking about the lady who was interviewing me said are you seeking asylum. So I said I don’t know to say yes what does that mean, if I say no am I going to be in trouble. So there were explaining but not properly, she said to me are you are seeking asylum. I wasn’t happy as I didn’t understand. And then the other thing as well they put me in the hostel and refused my age and sent me letters to say I have to go back. I didn’t have lawyer so didn’t understand anything. I just felt like I have to go through this after when I came out of prison, the solicitor explained it to me.”*

Sara, aged 19, victim of trafficking for sexual exploitation

We consider that guardianship for separated children would help ensure that their interests are fully represented. However, this should bear in mind the mainstream systems that already exist so that separated migrant children are not side-tracked but integrated into existing systems that apply to all children who have suffered abuse. Where separated children are at risk of significant harm they should be dealt with under section 47 of the Children Act 1989 and where necessary taken into care under Section 31 of the Children Act 1989. For these proceedings they are entitled to a Children’s Guardian through CAFCASS.

However, separated children are not always informed about what it means to be ‘looked after’ and what responsibilities this gives to the local authority. Without this information, they are unable to fight for their rights or attain a more appropriate package of care for their

circumstances. Children have told us that although they have reviews during the time they are looked after, they often feel disempowered to participate effectively and get their voice to be heard.

We believe that the concept of 'guardianship' for separated migrant children should be well defined, with legal responsibilities; these children have to negotiate their way through emotional difficulties and various legal systems including immigration, social welfare and criminal justice. A guardian should be someone who can guide them through these systems. **The form and role of guardians should also be developed in consultation with children and young people to ensure it reflects their needs and views.**

#### **8. Are all unaccompanied migrant children made aware of the existence of a system for appealing against immigration and asylum decisions, and is this appeal system satisfactory?**

No, the experience of separated children is that they are either not informed or are informed in language and in a manner that they find very difficult to understand.

In the NSPCC's experience separated children find it difficult to understand the asylum system and the processes it entails. Separated children have told us that they find the system complex and not organised in a child friendly manner. For example, letters from UKBA to children are written in language which is not age-appropriate and is too difficult for them to understand. Documents and information aimed specifically at children whose first language may not be English therefore need to be made widely available. Furthermore, advocacy and advice from solicitors, voluntary refugee and legal agencies play a very important role in ensuring that children are aware of the asylum process and what appeals are. Social workers are also instrumental in ensuring that deadlines for appeal applications are made.

The threshold which has to be met for a child to be considered for further leave to remain after their discretionary leave to remain has expired is difficult to achieve for most separated children considering the limited support they have from agencies. This is particularly difficult for older children who are seen as 'independent'. Many children tend to get on with their life and settle down only for them to find they have to prepare for further legal proceedings. Although some of the better prepared children will have evidence to prove that they have been making a life in the UK, such as letters from university, foster carers and others, a lot of the time this is seen as an inadequate illustration of their settlement.

#### **9. Is there sufficient support and advice for unaccompanied migrant children as they approach eighteen years of age and beyond into adulthood?**

The NSPCC is concerned that there is insufficient support and advice for separated children in the transition to adulthood. Local authorities have a responsibility to give children leaving care assistance and advice to promote their welfare. This includes keeping in touch with the child, appointing a personal adviser for the child and providing them with an agreed and achievable pathway plan based on an assessment of their needs. However, leaving care support has been affected by funding cuts.

Care leavers have told us that they have pathway plans which are reviewed every six months and some access to a personal advisor but feel largely on their own and isolated. These plans must anticipate practical as well as psychosocial problems and provide children with viable solutions and support when the problems arise.

We have also dealt with cases where children who are granted discretionary leave to remain are inadequately informed that this only gives them some respite till the age of 17 and a half. These children find the removal of entitlements when they reach 17 and a half very stressful, for example some payments stop once a child becomes an adult, as demonstrated in the quote below.

In the NSPCC's experience the efforts made by government agencies to support children who may want to return to their countries is insufficient. Not enough is done to locate a child's parents or guardian in their country of origin to ensure that there are adequate reception arrangements for children. Moreover, there is a keenness to return children whose asylum claims have been refused without taking appropriate consideration of their welfare on return.

Our CTAC Young People's Participation Group of young people expressed how useful an independent advocate would be for them so that they had someone to contact who can ensure that they are accessing services they are entitled to during the transition into adulthood. The advocate would need to have specialised knowledge on immigration processes as well as social welfare entitlements to be an effective champion of their rights and entitlements. The advocate will also serve as a befriender who helps children link with appropriate community services depending on their needs. Although the Children (Leaving Care) Act 2000 ensures that a personal adviser is made available for children, they need someone who is actually able to assist them through the system.

*"When you are under 18, the support you get is different... While in foster care they give you extra money to help you – Six hundred pounds... When you are over 18, some people get only a key worker... Since I moved from my hostel to now, I got a new social worker... I have had no visit for six months, only pathway plan... It's very tough" – Robert, aged 18, Care Leaver*

*"I was okay with living by myself but didn't think about the responsibility that comes with it especially if you have no education or anything to support you or prepare you for that level; it was a higher level in dealing with things by myself." Fola, aged 18, Care Leaver*

*"The only thing they are teaching me about is cooking as if that was the only thing you need for being independent. The education part no one was paying attention to that." – Sarah, 18, Care leaver.*

The care leaver above had spent a long time in domestic servitude cooking, cleaning and looking after 3 children while the woman who trafficked her went to work. Cooking classes, in this case, were probably the least of her needs.

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- Any support for children should be based on a holistic assessment of a child's needs. Pathway plans should be child-focused and done in consultation with children.
  - The provision of independent accommodation should be based on the capacity of children, taking account of their separation from parents/carers but also separation from a familiar culture. There are significant risks for separated children in independent accommodation, particularly if they have been trafficked. In addition, their experience of authority may be different and the legal system may be very different.

#### 10. Has the Government conducted an assessment of the number of young victims of trafficking in youth or adult custody, and of the steps being taken to safeguard them?

We are not aware of the Government having carried out an assessment of the number of young victims of trafficking in youth or adult custody. However, CTAC has been actively involved in a number of cases where victims of child trafficking have been detained in secure training centres, youth offending institutions and adult prisons. Whilst we do not hold data on the full five year period current data demonstrates that we have worked on at least 17 custody cases in 2012 alone.

These cases tend to fall under three broad categories;

- Girls detained in adult custody placements on immigration offences
- Boy from Vietnam detained in youth custody placements for cannabis cultivation offences
- Children from Eastern Europe detained in youth custody placements for what we informally refer to as 'street crime' (pickpocketing, shoplifting etc)

#### Adult custody

Whilst it is recognised that all forms of detention can impact upon a child's wellbeing and development, feedback from our young people's participation group tells us that being detained in adult prison can be a particularly damaging and frightening experience. Despite Government recognition that girls under the age of 18 should not knowingly be placed in adult prisons a small number of separated migrant girls continue to pass through the adult prisons system.

When these children end up in adult prisons it is invariably as a result of being mistaken as adults who have entered the country illegally. Delays in completing age assessments by social services, given the lack of statutory timescales or nationally agreed guidelines, mean that the child continues to be exposed to the damaging effects of adult custody.

The NSPCC considers that when it comes to a Local Authority's attention that there may be a child within their jurisdiction who is detained in adult prison it should be considered that the form of detention in itself represents a risk of 'significant harm' and that the subsequent Merton-compliant age assessment should be given the same priority as a s.47 Children Act 1989

investigation. This will prevent unnecessary delays in ensuring children are moved to age-appropriate accommodation.

### Youth custody

The issues facing trafficked children detained in youth custody placements are very different to those described above. Children detained in youth custody placements are already accepted as minors and have been charged or convicted of offences which they have often been coerced or forced to commit whilst under the control of their traffickers

Since September 2007 CTAC have received 147 referrals regarding children who were suspected of being trafficked for criminal activity. 15 of these were received between February 2012 – April 2012 and a further 25 were received between May 2012 – July 2012.<sup>8</sup>

Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings<sup>9</sup> stipulates that:

*“Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”*

ACPO and CPS<sup>10</sup> guidance has been developed accordingly, however the NSPCC is concerned that whilst there are examples of good practice this guidance is not being routinely implemented on the ground. The Police and CPS should ensure that professionals are fully aware of the relevant guidance and statutory responsibilities. In the NSPCC’s experience, knowledge of the NRM amongst the police is inconsistent. Furthermore, the CPS do not explore trafficking claims in the absence of a referral from the police. This leads to traumatised and vulnerable children being prosecuted and convicted, sometimes without the benefit of a pre-sentence report, when they should be receiving support and protection. Not only are trafficked children wrongly criminalised for their actions whilst under the control of traffickers, they are also not given the multi-agency support and protection they are entitled to under the Children Acts whilst in youth custody.

However, the NSPCC would like to highlight that in our experience those working in youth custody settings are amongst the most skilled practitioners in identifying possible victims of trafficking. Many have called CTAC when they are concerned that children in their care are being wrongly criminalised. There is also an understanding that trafficking victims need support under the Children Act 1989 and have made referrals to local authorities. However, staff frequently find that victims of trafficking coming into their care have not been referred in to the NRM. As Youth Offending Institution staff are not recognised First Responders<sup>11</sup>, they are not able to refer themselves. The NSPCC considers that trafficking victims would be better

<sup>8</sup> Not all of these children are necessarily detained in custody.

<sup>9</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005, CETS No. 197, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

<sup>10</sup> Crown Prosecution Service Guidance on Human Trafficking and Smuggling, available at: [http://www.cps.gov.uk/legal/h\\_to\\_k/human\\_trafficking\\_and\\_smuggling/#council](http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#council)

<sup>11</sup> First responders are the agencies who are able to refer suspected victims of human trafficking into the National Referral Mechanism, see <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism>

protected if qualified youth offending practitioners were permitted to complete NRMs by being designated 'First responders' by the Serious and Organised Crime Agency, who manage the NRM.

**The NSPCC recommends that where it comes to a Local Authority's attention that there is a potential child in their area who is detained in an adult prison, the detention itself should be considered a form of 'significant harm', in turn ensuring that the Merton-compliant age assessment and subsequent care planning is completed in a timely manner.**

**Qualified youth offending practitioners should become recognised first responders and receive appropriate training to help them in this role.**

**11. Are local authorities and immigration officials dealing satisfactorily with the issue of children and young people whose ages have been disputed, and has the Government considered developing an independent multi-agency panel-based approach to determining age assessments?**

It is important that, where age is disputed, that an assessment is undertaken to ensure that children receive age appropriate support and communications.

As was highlighted in the response to question 10 above, children are still wrongly being placed in adult custody. This needs to be addressed by local authorities prioritising age assessment given the significant harm that will result in a child being placed in adult detention. Children should be also given the benefit of the doubt to avoid them being placed in adult detention in the first place. As stated by the UN Committee on the Rights of the Child, assessments "*should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such*".<sup>12</sup>

It is particularly important that, where identity documents are known to be false, that authorities do not rely on the data contained within them as evidence of the document holder's age. A separate Merton-compliant assessment will be required.

*"Very sad for me to go through age assessment, they dispute my age, said I am not 16 but above 18 , then they send me to social services to do that about my age....first they accepted my age and later they said they don't accept my age because of the document. The document made me 39. They said that's my age."*

Robert, aged 18, victim of trafficking for domestic servitude.

<sup>12</sup> CRC General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6, 1 September 2005), para 31, available at <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

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## 12. What assessment has been made of the impact of funding cuts on care provision for unaccompanied migrant children and young people, and what steps have been taken to ensure that such individuals are provided with sufficient support and care?

Local authority spending data published by the DfE shows that there was a £43 million (35%) decrease in spending on services for asylum seeking children between 2009/10 and 2011/12, with a further £12 million projected for 2012/13.<sup>13</sup> Furthermore, NSPCC commissioned research on spending cuts in children's social care in general found that in 2011/12 spending decreased by 8.9% in England compared with the previous year.<sup>14</sup> These budget cuts are likely to have a significant impact on the availability of support and care services for separated children.

## 13. Is the relationship between immigration legislation and child welfare legislation compatible with the UK's international human rights obligations?

Separated and trafficked minors are children first and migrants second, however in practice they are not treated as such. This means that immigration considerations tends to take precedence over child welfare legislation and their rights, as protected in domestic and international legislation, are not upheld. As mentioned previously in response to question 2, in spite of the obligation on UK to safeguard and promote the welfare of all children in the UK, the NSPCC is concerned that this is not applied in practice. **All agencies and professionals dealing with separated children need to have a full understanding of their statutory responsibilities and that child welfare legislation applies to all children in the UK, irrespective of their immigration status.**

### For further information, please contact:

James Bury  
Public Affairs Officer  
[James.bury@nspcc.org.uk](mailto:James.bury@nspcc.org.uk)  
020 7825 2853

### About the NSPCC

The National Society for the Prevention of Cruelty to Children (NSPCC) aims to end cruelty to children in the UK by fighting for their rights, listening to them, helping them and making them safe.

We share our experience with governments and organisations working with children so together we improve the protection of children and we challenge those who will not learn and change. We campaign for better laws and we educate and inform the public to improve understanding about child abuse.

Our services include the NSPCC Helpline, for adults worried about a child, and ChildLine, the UK's free, confidential helpline for children and young people.

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<sup>13</sup> DfE (September 2012) Planned Expenditure of Local Authorities on education and Children's social care functions, available at <http://www.education.gov.uk/rsgateway/DB/STR/d001085/index.shtml>, see also <http://www.communitycare.co.uk/Articles/28/09/2011/117506/asylum-seeking-children-and-family-support-suffer-most-cuts.htm>

<sup>14</sup> insert reference

ChildLine is a service provided by the NSPCC. Registered charity numbers 216401 and SC037717.