



**Scottish
Guardianship
Service** SINCE 2010



Scottish Guardianship Service MSP Briefing Parliamentary Debate 4th Nov

Motion S5M-22742: Angela Constance, Almond Valley, Scottish National Party, Date Lodged: 17/09/2020

10th Anniversary of the Scottish Guardianship Service

That the Parliament recognises that September 2020 marks 10 years of the Scottish Guardianship Service and the partnership between Aberlour and the Scottish Refugee Council supporting trafficked and unaccompanied asylum-seeking children and young people arriving alone in Scotland; understands that, in that time, the service has been by the side and on the side of nearly 700 children and young people across 29 local authorities, supporting them to navigate the complexities of the UK asylum and immigration systems, engage with statutory services and support them to build new lives in Scotland; considers that the service is an exemplar of a human rights approach to how a country should care for and support trafficked and unaccompanied asylum-seeking children and young people and has influenced the development of similar provision in Northern Ireland; commends what it considers the successful conclusion of its pilot in 2013, whereby the Scottish Government has provided statutory funding to the Scottish Guardianship Service and, in 2015, committed to long-term support for guardianship of separated children in the Human Trafficking and Exploitation (Scotland) Act 2015; believes that the partnership between Aberlour and the Scottish Refugee Council exemplifies Scotland's commitment to international human rights frameworks, including the UN Convention on the Rights of the Child, and has been key to ensuring separated children and young people's rights are protected and promoted, and considers that, at a time when so many children and young people around the world are fleeing conflict or persecution or are the victims of international trafficking, the Scottish Guardianship Service has never been more needed to ensure vulnerable children and young people arriving alone in Scotland are cared for, protected, integrated and seen as assets to Scotland.

This briefing gives background to:

1. The Scottish Guardianship Service (p.2)
2. Key highlights of the service (p.2)
3. The UNCRC & rights of separated children in Scotland (p.3)
4. National Transfer Scheme (p.4)
5. The UK's 'broken' asylum system (p.5)
6. Safe and legal routes to protection (p.7)

1. The Scottish Guardianship Service

The [Scottish Guardianship Service](#) (SGS) is a partnership between Aberlour and Scottish Refugee Council and supports children and young people from outside the European Union who have been separated from their parents or care-givers and arrive in Scotland to claim asylum by themselves or who have been trafficked into Scotland. The overarching role of the guardian is to help children and young people like [Hai](#), to understand what is happening and to help them participate and have their voices heard in the welfare, trafficking, asylum, justice and age assessment processes.

The service also provides a sense of community, introducing young people to others their age who have been through similar experiences to build new friendships, like [Tati](#), and helping them to realise their potential, thrive and build new lives in Scotland.

Instead of leaving young people to confront the trafficking identification and asylum system alone – confused, disorientated, at an extremely vulnerable time in their life – the Guardianship model provides a professional independent advocate who knows how to talk to lawyers, immigration officers, social workers and police officers. Guardians make sure young people, like [Zayn](#), understand and participate in the sometimes overwhelming processes that must be followed; being by the side and on the side of young people, like [Lyn](#), during often years of uncertainty.

Since 2010 the SGS has supported 688 separated children and young people arriving in Scotland across 29 of Scotland's local authorities. Young people have arrived from 38 different countries speaking 40 different languages. The top 5 countries of origin are Vietnam, Iran, Afghanistan, Iraq and Sudan. In 2019, 64% of arrivals in 2019 were Vietnamese with all arriving with indicators of trafficking.

2. Highlights

- Evaluations and inspections have shown that guardians has a crucial role in the protection, care and best interests of unaccompanied asylum seeking and trafficked children in Scotland.^{1 2}
- 81% have been granted refugee status or humanitarian protection.
- The Scottish Guardianship Service model is an award-winning service that has been recognised as a beacon for how separated children should be supported. It has directly informed the development of guardianship for all separated children in Northern Ireland in 2015 and a pilot for Independent Child Trafficking Advocates (ICTAs) in England and Wales for identified trafficked children.
- The Scottish Parliament legislated to place guardianship on a statutory footing under the Human Trafficking and Exploitation (Scotland) Act 2015. Section 11 of the Act places an obligation on Scottish Ministers to provide a guardian not just to children and young people who have been identified as victims of trafficking but who may be or

¹ Crawley, H. & Kohli R., (2013), *She Endures With Me: an evaluation of the Scottish Guardianship Service Pilot*, available at: http://www.scottishrefugeecouncil.org.uk/assets/6798/Final_Report_2108.pdf

² Chief Inspector UK Borders
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695310/An_inspection_of_the_best_interests_of_unaccompanied_asylum_seeking_children_March_2018.pdf

who are vulnerable to becoming victims of trafficking and where no person in the UK has “parental rights and responsibilities” towards that child. The Scottish Government has continued to fund Scottish Refugee Council and Aberlour to fulfil the spirit of the provision until the new statutory arrangements in place.

- The service has continued to innovate – introducing complimentary services and projects to support young people’s needs. For example, Aberlour introduced a befriending service and mental health peer support for young men, supporting young men like [Dlovan](#). In 2019, the service secured European funding through the Asylum, Migration & Integration Fund to expand and extend its work to support more young people and for longer beyond a positive decision on their asylum claim.
- The SGS has continued to be by the side and on the side of young people during the COVID-19 pandemic securing laptops, mobile phones and data to combat social isolation and ensure ongoing engagement with services. Since March 2020, we have delivered 700 one-to-one workshops on the asylum and National Referral Mechanism processes, attended over 1000 legal appointments and organised 44 online social gatherings. To ensure young people fully understood the changing COVID-restrictions and measures to prevent its spread, we have contacted young people individually with interpreters and made videos with interpreters so we could share with large numbers of young people.
- On 29 September, the SGS held a 10-year anniversary celebration on line, with young people lawyers, social workers, teachers and lecturers, foster carers, Home Office caseworkers and children’s unit staff – highlighting the essentially important role that all these professionals and individuals play in the protection, integration and welfare of separated children in Scotland.
- The Scottish Guardianship Service exemplifies Scotland’s commitment to international human rights, including the UN Convention on the Rights of the Child. The service enables the realisation of Article 22 of the UNCRC, and helps fulfil Scotland’s commitment to providing refugee children with the protection and assistance they need to fully understand and realise their rights. Central to achieving this is how the service works to empower separated children and young people, like [Shereen](#), to know about their rights and to understand how to exercise them

3. The UNCRC & rights of separated children in Scotland

The commitment by the Scottish Government to the incorporation of the UNCRC is significant step to further progressing and strengthening the rights of children and young people in Scotland ensuring those rights are embedded in law. The Scottish Government’s approach to incorporation should provide equity of access and enjoyment of rights for all children living in Scotland, regardless of their immigration status.

Beyond its commitment to guardianship, Scottish Refugee Council and Aberlour welcome the steps that the Scottish Government have already taken, in line with the New Scots Refugee Integration Strategy and Care Review, to afford separated children, as well as asylum-seeking children arriving in Scotland with their parents, the same rights and entitlements as all children and young people in Scotland. Recent examples include:

- Extending the Pregnancy and Baby Payment which replaced and increased the UK Government's Sure Start Maternity Grant to expectant mothers who are in the asylum process and, who are under 18 after negotiating with the UK Government that this would not have an adverse impact on their existing asylum support or claim.
- Ensuring all expectant mothers, under 18 and over 18, including women in the asylum system resident in Scotland also receive a baby box.
- Extending the franchise in local and Scottish elections to all those resident in Scotland over 16 with a form of immigration leave. This means that many separated children who have been recognised as refugees or accepted as victims of trafficking are now entitled to vote in next year's Scottish Parliamentary elections.³
- Ensuring that all separated children have access to digital equipment during the pandemic as looked-after children.
- Ensuring that asylum-seeking children, separated children and children in families with No recourse to Public Funds are eligible for free school meals including vouchers during the COVID-19 period.⁴
- Introducing the care-experienced bursary to provide financial support to care experienced students refugee young people attending college or university.⁵

Developing policy and legislation related to improving the lives of children and young people in Scotland should be inclusive of all children regardless of their immigration status. For example, **the current proposal in the Programme for Government to extend free bus travel to all young people in Scotland aged under 19 should not exclude the small number of unaccompanied and accompanied asylum-seeking children in Scotland. Or clarity around access to Educational Maintenance Allowance and clothing grants for asylum-seeking children who stay in school after 16.**

All children have equal rights, but children and young people seeking refugee protection experience significant barriers to accessing and realising these rights. Through the process of incorporation and development of the New Scots Strategy, we encourage the Scottish Government to fully consider how to best further protect and promote the rights of children and young people seeking refugee protection in Scotland. For example, **developing national guidance for social workers working with separated children to strengthen, improve and standardise good practice, and develop knowledge of immigration and asylum legislation.**

4. National Transfer Scheme

The National Transfer Scheme (NTS) for unaccompanied asylum-seeking children was created in the Immigration Act 2016 to enable the safe transfer of unaccompanied children arriving in the UK from one local authority (the entry authority from which the unaccompanied child transfers) to another local authority (the receiving authority).⁶ The scheme is on a voluntary agreement made between local authorities in England to ensure a more even distribution of unaccompanied children across local authorities across the UK. It was

³ <https://www.scottishrefugeecouncil.org.uk/working-for-change/policy-campaigns/right-to-vote/>

⁴ <https://www.mygov.scot/school-meals/>

⁵ This does extend to care leavers awaiting a decision in their asylum case or trafficking determination.

⁶ Originally, the NTS operated in England only, but section 73 of the Immigration Act 2016 enabled the Secretary of State to make regulations to extend any provisions made by sections 69 to 72 to Wales, Scotland and Northern Ireland. In December 2017, secondary legislation was introduced under the Immigration Act 2016 to extend the scheme to the whole of the UK.

intended to remove pressures on local authorities in the South East, particularly Kent, to ensure that any participating local authority does not face a disproportionate responsibility in accommodating and looking after unaccompanied children.

To date the scheme has not resulted in large movements of young people and is under review. In June 2020, the Home Office announced increased funding to local authorities supporting separated children.⁷ The scheme is based on the principle that no local authority should be asked to look after more UASC than 0.07% of its total child population, according to the Office for National Statistics' 2016 mid-year population estimates. Glasgow has exceeded the 0.07% and has stated it will not accept any children through the NTS at this time. Other Scottish Local Authorities have already agreed to take part in the NTS and children have begun arriving in Local Authorities across Scotland.

We welcome the increasing number of children arriving through this scheme providing protection places in Scotland to young people who are now facing very poor conditions on arrival in the UK, such as being accommodated in detention centres.⁸

The scheme was created explicitly excluding the locus of devolved governments, unlike the adult asylum dispersal scheme created in 1999⁹ and power to set up asylum accommodations centres.¹⁰ Thus discussions on planning have been focussed between the Home Office and Local Authorities with limited or no consideration of essential services, beyond the scope of those provided by local authorities such as legal representation or guardianship.

There is a need for a wider co-ordinated approach to ensure that all children arriving in Scotland through the planned NTS programme have equitable access to all necessary services and that these provisions can be planned and expanded accordingly.

5. The UK's 'Broken' Asylum System

The last six months have been some of the most difficult times that organisations working with refugees have known in Glasgow, with three separate and potentially avoidable tragedies occurring within the city's refugee community including the recent tragic death of Mercy Baguma.

Beyond Scotland, harrowing scenes of people crossing the Channel in barely sea worthy dinghies are becoming more common.

Everyone has the right to seek asylum in another country and with global politics in such a volatile state, it's very clear why people attempt to exercise this right – to try to save their own and their children's lives.

Housing for people seeking asylum is in disarray, with hotels and other types of temporary accommodation being used for far longer than should be acceptable. This includes setting up

⁷ <https://www.gov.uk/government/news/further-funding-uplift-announced-for-councils-caring-for-children-seeking-asylum>

⁸ <https://www.independent.co.uk/news/uk/home-news/child-refugees-minors-home-office-adult-detention-report-b1229079.html>

⁹ S.101 Immigration & Asylum Act 1999

¹⁰ See footnote below

an accommodation centre in a MOD barracks in Wales in September, without the required legislative consultation of Welsh Ministers.¹¹

More and more people have to endure destitution and rely on the courts to be recognised as in need of refugee protection. Most asylum seekers live below the breadline on just over £5 a day, and face heightened levels of stress, anxiety and ill health as a result. And despite the escalating public health crisis of COVID-19, the Home Office is continuing to force refused asylum seekers onto the streets.¹² Speaking in the Chamber in August in response to the death of Mercy Baguma, the First Minister said: *“The UK’s asylum system is fundamentally broken”*.

Scottish Refugee Council has called for a fatal accident inquiry into Mercy’s death and the deaths of Adnan Elbi Walid and Badreddin Abdalla Adam Bosh.¹³

On Sunday 5 October, the Home Secretary gave a speech to the online Conservative Party Conference. Using the same language of the asylum system being ‘broken’, she set out her intention for ‘firm and fair’ reform in a bill next year.

The speech¹⁴ was light on detail, but [two articles](#) in [The Times](#) (£) gave a clearer indication of what is under consideration for the proposed ‘Fair Borders Bill’ next year including presumption of refusal of asylum based on how that person enter the UK; and a move away from community dispersal to institutional accommodation of asylum seekers.

Scottish Refugee Council fundamentally opposes the solutions proposed by the Home Secretary. It is not people seeking safety that is putting pressure on the Home Office. It is years of mismanagement and hostility across the asylum system, from the outsourcing of asylum accommodation to private contractors, to poor standard and persistently slow asylum decision making: at the end of 2015 only 20% of people seeking asylum waited longer than 6 months for an initial decision; at the end of 2019, 56% were left in limbo for at least 6 months or longer. The cause is a Home Office that is too often dysfunctional and detached from those in its jurisdiction, as the Windrush scandal tragically exposed.

Scottish Refugee Council is gravely concerned with the UK Government’s rhetoric on asylum and international law. The intention to further stratify the rights of refugees who seek our protection by arriving on the UK’s shores, as they have the right to do so under the Refugee Convention, with refugees that the UK Government resettles is deeply worrying. This is in direct opposition to the goals of the New Scots Strategy: *“New Scots should aim to prevent a two-tier or multi-tier system – to provide equal support across Scotland regardless of how refugees and asylum seekers arrived in the country.”*

¹¹ Part 2 of the Nationality, Immigration & Asylum Act 2002 gives the SSHD the power to set up accommodation centres for people seeking asylum. S40-42 gives a clear obligation to consult with Ministers of devolved nations. For example: *s40 (1)The Secretary of State may not make arrangements under section 16 for the provision of premises in Scotland unless he has consulted the Scottish Ministers.*

¹² <https://www.independent.co.uk/news/uk/home-news/asylum-seekers-home-office-evictions-tier-3-b1374768.html>

¹³ <https://www.scottishrefugeecouncil.org.uk/scottish-refugee-council-calls-for-full-and-independent-public-inquiry-into-park-inn-tragedy/>

¹⁴ <https://www.freemovement.org.uk/priti-patel-party-conference-speech-2020-full-text/>

6. Safe and legal routes to protection

People are dying right now in the English Channel seeking protection as COVID-19 has limited entry points to the UK and critically there are very limited safe and legal routes for people, in particular separated children, to reach safety and protection in the UK.

Dubs children

In 2016 Lord Dubs led a successful campaign to amend the Immigration Bill to require the UK Government to relocate and support separated children from Europe. The 'Dubs amendment' initially set out a target of 3,000 children and young people. This was rejected by the House of Commons. A version of the amendment was subsequently agreed by the UK Government in May 2016 but with no specific target, and became section 67 of the Immigration Act 2016. In July 2020, the Home Office announced that it completed its set goal of relocating 480 separated children. 46 children arrived in Scotland under this scheme and the Scottish Guardianship Service extended its remit to support 32 of them.

Dublin III regulation

Under EU law, the Dublin III regulation provides the right for an individual asylum seeker to be transferred to another member state where a family member was already residing. This has provided a safe and legal route for children and other family members. The Scottish Guardianship Service and social work teams have supported some young people arriving to be with family members on an ad hoc basis. Between 2009 and 2014, before mandatory provisions were introduced by Dublin III, family reunions to the UK were an average rate of 11 people annually. Between 2016 and 2018, after the mandatory provisions were introduced by Dublin III, family reunions to the UK were carried out at an average rate of 547 people annually. The Dublin III Regulation will no longer apply to the UK after the Brexit transition period.

The Home Affairs Select Committee tabled a cross-party amendment to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill in June 2020 to require the UK Government to preserve the effect of the Dublin III Regulation. The SNP MP Stuart McDonald speaking on behalf of the Committee stated that:

*"We now have a situation where there are unaccompanied child refugees and refugees more generally living in appalling conditions in Greece and France. Of course those countries are under an obligation to do more to support and assist them, but many of those kids have family here, and I cannot see how any reasonable person can argue against the logic, the sense and the simple compassionate idea that that child should be reunited with their family in this country and have their asylum claim decided here."*¹⁵

Resettlement

The Vulnerable Children's Resettlement Scheme (VCRS) resettles child refugees and their families currently in Egypt, Iraq, Jordan, Lebanon or Turkey, where UNHCR deem resettlement to be in the best interests of the child. This was set up alongside the Vulnerable Persons Resettlement Scheme in 2015. As of end of June 2020, 251 children and their families were resettled in Scotland under the VCRS scheme and 3381 under the VPRS scheme. All refugee resettlement to the UK was paused on 12 March 2020.¹⁶

¹⁵ <https://researchbriefings.files.parliament.uk/documents/CBP-8946/CBP-8946.pdf>

¹⁶ As child refugees are arriving with their families under these resettlement schemes, have refugee status on arrival and are supported by local authority resettlement teams, the Scottish Guardianship Service has no involvement in their care.

Family reunion

The UK Government has its own refugee family reunion rules. Under these rules, partners and children of people with refugee status, humanitarian protection or settlement on protection grounds may apply to join them in the UK. Partners include a person's husband, wife, civil partner or person they have been in a genuine relationship with for two years before applying to settle. Children must be under the age of 18 and not married or in a civil partnership. However, separated children who are recognised as refugees in the UK, like [Mahad](#), are not allowed to sponsor their parents or other family members to join them here. This makes the UK have the most restrictive rules for family reunion for refugee children in Europe.¹⁷

Opening safe and legal routes cannot and should not wait. We are going to see more children and adults die seeking protection. **Scottish Refugee Council and Aberlour believe that the UK Government must immediately restart its resettlement schemes¹⁸; commit to relocating immediately separated children in Europe with or without family members in the UK.**

To ensure separated children and young people, like [Pshtewan](#), can fully rebuild a new life here, the UK Government must commit to amending the immigration rules to allow child refugees to be reunited with their family members in Scotland and the rest of the UK.

¹⁷ The UK Government has argued that changing the UK's policy on family reunion for refugee children would provide an incentive for parents to put their children at risk of human trafficking by sending them to the UK in the hope of joining them after they have received protection. To our knowledge, the Home Office has never presented substantive evidence to support this claim. Less than 3% of the children the service has supported since 2010 have made family reunion enquiries. In our view, the perception that children are sent as 'anchor' children to bring family over is unfounded. Children are more likely to make a family tracing and messaging search via the Red Cross as their family whereabouts are unknown or contact has been lost.

¹⁸ <https://www.scottishrefugeecouncil.org.uk/its-time-to-reopen-saferoutestosafety/>