



Closing a Protection Gap

'to have [our] interest at heart, as opposed to the government's interest'

National Report 2010-2011

Irish Refugee Council
Samantha Arnold
Louise Sarsfield Collins, research assistant



Closing a Protection Gap Recommendations

The contents of this report are the sole responsibility of the author and can in no way be taken to reflect the views of those endorsing the recommendations. The recommendations, as a reflection of the views and opinions of separated children and young people and their service providers, have been endorsed by:



Barnardos



IAYPIC
Irish Association of Young People in Care



ISPCC
ALWAYS HERE FOR CHILDREN

Irish Red Cross
Crois Dhearg na hÉireann 

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2. Introduction to *Closing a Protection Gap* in Ireland

Separated children have the right to a guardian who will protect their rights and best interests. Not only do separated children have to live in a country they do not know without their parents but, in some countries, they also run the risk of being detained because of their residence status or run the risk of being exploited by traffickers. These children have the right to a guardian who will protect their rights and best interests. The type of protection, care and guardianship a separated child receives depends upon the country which they have (often randomly) entered. The current differences in the level of protection separated children receive in European countries is not acceptable. All European countries have signed the Convention on the Rights of the Child (CRC) and have an obligation to take into account the special needs of separated children. Proper guardianship systems are also essential in finding the right solution for a separated child, whether that means return to their country of origin, transfer to another country (for example for family reunification) or

integration into the host country. The aim of this project is not to change the systems in the different European countries participating in this research project, but to look towards harmonising the protection separated children receive from their guardian. Eight partners, representing eight European countries, completed a national report on their system of guardianship and the qualifications and skills of service providers- all of which will inform an international report. A 'guardian-friendly' version of the report will accompany the international report and the Irish national report, identifying key standards for guardians working with separated children in Europe.¹

The mission of this project is to improve the situation and opportunities for development of separated children by means of: *closing a protection gap for separated children in Europe by developing core standards with a focus on qualifications of guardians based on the views of separated children in relation to their rights according to the CRC and Council of the European Union (EU) directives.*

In the communication from the European Commission to the European Parliament concerning the Action Plan 2010-2014 for unaccompanied minors the Commission ask States to consider: *'[i]ntroducing review mechanisms to monitor the quality of guardianship in order to ensure that the best interests of the child are represented throughout the decision-making process and, in particular, to prevent abuse'.²*

This project provides an instrument to improve the qualifications of a guardian to take the special needs and rights of separated children into account. Separated children in Europe should get the guardian they are entitled to irrespective of the EU country they entered. The assumption is that when all guardians have sufficient qualifications to work in the best interest of the child, the level of protection children receive in the different European countries will harmonise.

Sub goals of this project are:

- To assist guardians in finding the right solution for the child.
- Boost a European Community policy and harmonisation of guardianship in practice.
- Strengthen adherence to the CRC.

The core standards are based on the participation of separated children and focus on the rights of the children according to the CRC.³ The basis of this research is the interviews with separated children, aged-out minors and guardians in eight countries. This corresponds with the right to participation in Article 12 of the CRC. The national report will focus on good practices and recommendations in relation to service providers in Ireland to be incorporated into the international standards.⁴ Furthermore, the report maps legislation on guardianship and child care as well as existing research in relation to separated children and guardianship.

¹The International Report to be published and circulated in September 2011.

² See: <http://www.statewatch.org/news/2010/may/eu-com-action-plan-unaccompanied-minors-com-213-3-10.pdf>. p. 10.

³ The project is inspired by the Quality4Children standards for Out – of -home childcare in Europe (<http://www.quality4children.info>).

⁴ For recommendations, see: Appendix 5.

The partners in the project were divided into Research Development partners and Field Research partners. All eight partners carried out the research in the same way but the Research Development partners had a bigger role in developing the core standards in 2011.

Project Partners:

Research Development partners:	
Defence for Children International -ECPAT	The Netherlands
Plate-form Mineurs en exil – Service Droit des Jeunes	Belgium
Save the Children	Sweden
Defence for Children International	Italy
Field Research partners:	
Save the Children	Denmark
Slovene Philanthropy	Slovenia
Irish Refugee Council	Ireland
Bundesfachverband UMF	Germany

The purpose of the Irish research was not different from that of the overall project aims. However certain distinctions were made in the initial stages. There were three main points of divergence that reflect the Irish context. Firstly, in Ireland, the system for guardianship is the Health Service Executive (HSE), which is governed by the Child Care Act 1991, as amended.⁵ The Child Care Act 1991 states that every child taken into care in Ireland must have an allocated agent of the HSE, most commonly a social worker. For the purposes of this project, the focus of the qualifications and recommendations for persons working with separated children was the social work profession, rather than a system for guardianship, which in the Irish context, is the guardian *ad Litem* service. The guardian *ad Litem* service is discussed in this report, but falls outside the scope of the research as the role of the guardian *ad Litem* is only to provide an independent service to be the voice of the child in the courts, not to act as the person legally responsible for the child. This is different from the other European systems of guardianship such as Nidos, the national agency in the Netherlands, with responsibility for appointing guardians, or persons legally responsible, for separated children and also children in asylum seeking families. Nidos believes the guardian is responsible for education and care. However, the daily care is commissioned to third parties, while the guardian maintains a supervisory function. ‘The guardian ensures that sufficient conditions exist for the child’s growth and development. The guardian also supervises adequate execution of the asylum proceedings. The guardian is the legal representative and in that capacity protects their rights.’⁶ This is quite different from the Irish system, as the social work institution is also charged with the responsibilities of caring out the duties set forth by the guardian in the Dutch context. Ireland was the only country involved in the research that had a social worker performing the duties of a guardian and social worker, simultaneously.⁷

⁵ See: <http://www.irishstatutebook.ie/1991/en/act/pub/0017/index.html>.

⁶ Nidos – jeugdbeascherming voor vluchtelingen: Guardianship at Nidos. Available from <http://www.nidos.nl/Voogdij%20en%20gezinsvoogdij/Voogdij%20bij%20Nidos.aspx> [Accessed November 5 2010).

⁷ Meeting of ‘Closing a Protection Gap’ partners 2-4 November 2010, Ljubljana.

Secondly, the Irish report focused its research to consider the positionality of a statutory agency responsible for acting as a child's guardian and its ability to act in the child's interest uninfluenced, or independently, from agencies of the State, specifically where there are immigration or asylum concerns. This report looks at whether or not the HSE is in fact limited in their work due to their statutory position as well as whether or not other options are available. In accordance with the National Children's Strategy (2000-2010), each separated child should also be allocated a guardian *ad Litem* to act as the child's voice in the courts.⁸ In practice, this rarely happens. This report looked at the guardian *ad Litem* service as something that may be complimentary to the HSE service.⁹ Three guardians *ad Litem* provided input for this project, but the service was not a central focus as they are not the legal guardian.¹⁰

Lastly, the Irish report was written at a time of transition within the HSE service for separated children. At the end of 2009, the HSE began to implement a policy entitled, Equity of Care. The aim of the plan was to bring the care of separated children in line with the standard of care afforded the indigenous Irish. This involved a number of changes (which are discussed throughout), but most notably, the Dublin-based hostels which were formally used to accommodate separated children, were to be closed by the end of 2010. Separated children are no longer placed in hostels, but are rather received in Dublin and placed in a short-term residential home where they are now assessed. From the residential home, the child may either be placed in a long-term residential home (if they are near the age of majority or if they need to remain in Dublin for medical or other compelling reasons) or with a foster family. The majority will be placed in foster care.¹¹ This research was undertaken during this transition and therefore reflects the views and opinions of young people and service providers who worked predominantly in the hostel system. However, most of the views and opinions led to qualifications and recommendations which can be applied to any service provider working with separated children, pre and post transition. The key question in the interview that supports this was: 'Do you think guardians need different skills depending on the type of accommodation?'. All of the service providers working for the HSE stated that the qualifications needed to perform their duties are those of a social worker and therefore apply to any setting. However, the report acknowledges that the needs are different for separated children in foster care. All recommendations considered the views of separated children already placed in foster care or service providers working in the foster care setting.

⁸The Office of the Minister for Children, *The National Children's Strategy: Our Children- Their Lives*: In order to facilitate ratification of the *European Convention on the Exercise of Children's Rights*, which is intended to promote the rights of children in family law proceedings, action will be taken to implement those provisions of the Children Act, 1997, which provide for the protection of children in the court system who are the subject of custody or access disputes between parents. This action will include: the extension to the District Court of the power to order social reports in guardianship, custody and access proceedings; the provision of a Guardian-Ad-Litem Service in such proceedings to represent the interests of children. See: <http://www.omc.gov.ie/documents/Aboutus/stratfullenglishversion.pdf>.

⁹ The guardian *ad Litem* can only be complimentary under the current legislative framework, as the HSE remains the child's legal guardian if they are in their care.

¹⁰ A report with similar objectives was undertaken by the Children's Acts Advisory Board: Children's Acts Advisory Board, *Giving a voice to children's wishes, feelings, and interests: Guidance on the Role, Criteria for Appointment, Qualifications and Training of Guardians ad Litem Appointed for Proceedings under the Child Care Act 1991*. May 2009.

¹¹ Feedback on the report from the Health Service Executive.

Bringing the voice of the child to the fore

The strength of this report is the fact that it is a representation of the views and opinions of the service providers working with separated children and separated children themselves. The structure of the report, the recommendations and the qualifications highlighted are all elements of the report that were informed by the opinions and thoughts of the separated children involved in the research. The desk research forms only a small part of the report. It is the views and opinions of young people whose lives are affected by the qualifications of their guardians that are of paramount importance. The majority of the young people involved had very clear opinions on what they would like from their guardians and what would make them feel safe and secure in the absence of their family and outside of their country of origin.

The views of the children are to be given due weight in relation to their age and maturity and children shall have the opportunity to be heard in all proceedings affecting them.

CRC, Article 12

'I'd like my social worker to be a good listener and always [stand] behind me. [It] doesn't matter if I'm wrong or right' (Aged-Out Minor).¹²

'It's important to listen- ask them (separated children), they'll tell you' (Social Worker).¹³

'You have to ask yourself, have I considered the child's wishes and views?' (Guardian ad Litem).¹⁴

3. Methodology

Separated children in Ireland face innumerable obstacles from arrival at ports of entry to submitting a claim for asylum. Separated children in care are faced with a variety of protection gaps which may include: appointment of a social worker; consistent and reliable care staff; appropriate and safe accommodation; insufficient care-plan appraisals and lack of aftercare; lack of transparent guidelines for age-assessment; barriers to accessing education (particularly once a child is placed in care outside of Dublin); and independent representation in the form of a guardian. Although this list represents a diversity of concerns regarding the care of the separated child, this report focuses solely on the issue of guardianship- bearing in mind that independent representation for each separated child would be an important step towards eradicating a lot of the aforementioned protection gaps. At present, guardianship in Ireland means something different to the rest of Europe. If guardianship can be broken down into the person, or agency, legally responsible for a separated child, who is in effect a child in care in the Irish context, then the guardian is the HSE as represented by an agent of the HSE, which *may* be a social worker. This report focuses on the needs of separated children and those responsible for the care of separated children, with the aim of strengthening the qualifications of the agents of the HSE and to support them in their work in the absence of a system for independent guardianship.

¹² FG

¹³ IG5

¹⁴ IGAL1

The methodology of the national research consists of a literature review including a study of relevant research and legislation, 29 interviews with separated children and aged-out minors and 16 experts including HSE social workers, project workers, care staff as well as other experts. During these interviews the children and service providers were asked questions regarding: procedures, qualifications of a guardian, the best interests of the child assessment, reception facilities, return, legal knowledge and communication.¹⁵

In 2009, a pilot was undertaken by Defence for Children International– ECPAT, The Netherlands to develop and test the interviews with separated children and guardians.¹⁶ The results were discussed with the partners at an initial meeting in February 2010 and adjustments were made. The interviews with the separated children and guardians reflect qualitative semi-structured interviews with question lists as a guideline. It was essential for the consultations with the separated children and guardians to have as many ‘open interviews’ as possible. In this way it was possible to include new ideas, suggestions and recommendations from the interviewees in the report and not limit the results to the subjects in the question lists.

Terminology

This report identifies the term *separated children* as preferable to *unaccompanied minors* ‘because it better defines the essential problem that such children face. Namely, that they are without the care and protection of their parents or legal guardian and as a consequence suffer socially and psychologically from this separation’.¹⁷ The term separated children is largely used in the non-governmental organisation sector as well as the HSE. The Dublin Team uses the term separated children as it is defined in the *Statement of Good Practice* of the Separated Children in Europe Programme.¹⁸ However, in the Irish immigration and asylum context, the term *unaccompanied minors* is typically used.

The Refugee Act 1996 does not refer to either unaccompanied minors or separated children, but rather states that ‘where it appears to an immigration officer or an authorised officer that a child under the age of 18 years, who has either arrived at the frontiers of the State or has entered the State, is not in the custody of any person’, that child should be referred to the HSE.¹⁹ The use of the term ‘unaccompanied minor’ is used by the courts albeit not defined.²⁰ The Immigration, Residence and Protection Bill 2010 does not refer to either unaccompanied minors or separated children.²¹

However, for the purposes of this report, a separated child, as defined by the Separated Children in Europe Programme in their *Statement of Good Practice*, is ‘a child under 18 years of age, outside

¹⁵ See Appendix 1 and 2 for the question lists that served as a guideline for the interviews with the separated children and the guardians.

¹⁶ For this pilot, see: <http://www.defenceforchildren.nl/images/20/1098.pdf>.

¹⁷ Charles, K., *Separated Children Living in Ireland: A report by the Ombudsman for Children’s Office* Dublin: November 2009.

¹⁸ *Statement of Good Practice* 4th ed. Denmark: Separated Children in Europe Programme (2009).

¹⁹ Refugee Act 1996 as amended by section 11(1) of the Immigration Act 1999, section 9 of the Illegal Immigrants (Trafficking) Act 2000 and Section 7 of the Immigration Act 2003

²⁰ E.g. *H. [a minor] -v- MJELR and Anor [2009] IEHC 325 (17 July 2009)*.

²¹ Immigration, Residence and Protection Bill 2010 Section 81(7)(c) *Where the officer (whether or not having made appropriate enquiries under paragraph (b)) is not satisfied either that the adult is taking responsibility for the foreign national or that the adult is authorised to do so, he or she shall so inform the Health Service Executive,..* Bill available at: <http://www.oireachtas.ie/documents/bills28/bills/2010/3810/b3810d.pdf>.

their country of origin, and separated from both parents, or their previous, or customary primary caregiver’,²² regardless of adult accompaniment- which replaces and includes those termed *unaccompanied minors*.

This report also mentions *aged-out minors*, which is a term used to describe the particular situation of separated children who have reached the age of majority and are no longer in the care of the HSE.

Guardian

A guardian is the person or agency legally responsible for the child. The report identifies various persons working for the HSE as legally responsible, but assigns the allocated social worker as the focal point of the recommendations and research regarding the qualifications of the guardian in Ireland.

Agents of the HSE

‘Social workers’ are designated as having legal responsibility for the children taken into HSE care. ‘Project workers’, who are care staff linked to the hostels, carried out some of the duties of the social worker where they were not allocated or where it was more convenient to do so. ‘Care staff’ working in the residential units in Dublin were responsible for the day-to-day care of the separated children. Each Local Health Office also has a team leader (or team leaders) and a principal social worker. Only Dublin has a social work team that works specifically with separated children.

Guardian ad Litem

A guardian *ad Litem* is a person appointed by the courts to represent the child’s views in legal proceedings. They are the independent voice of the child. The guardian *ad Litem* is not legally responsible for the child.

Ethical considerations

The researchers were sensitive to the ethical dilemmas arising from interviewing separated children about their social workers, upon whom they are very dependent. All information was dealt with to the highest level of confidentiality. The interviewees were informed about the confidentiality of the conversation and signed an informed consent document for their participation in the project. The results of the interviews were presented without the names and contact details of the children and their social worker. All interviewees were allocated a code and were registered in the computer system of the project’s researchers. Access to this information was restricted to the project’s researchers and will not be made public in any other way.

Overview of Interviewees

In Ireland we conducted qualitative interviews with 29 separated children and aged out minors (including focus groups) and 16 service providers (including phone consultations). We approached social workers, project workers and children from different residential types and locations. We received permission from social workers and project workers through the Dublin Team to interview separated children under the age of 18. We were put in contact with social workers for interviews through the Dublin Team and Crosscare.²³

²² *Statement of Good Practice* 4th ed. Denmark: Separated Children in Europe Programme (2009).

²³ Crosscare Migrant Project is an organisation that provides information, advice and referrals to vulnerable migrants. Crosscare Migrant Project is a project through Crosscare an organisation that works with vulnerable

The interviews were conducted using questionnaires.²⁴ However, the interview format took shape as a loosely-guided conversation. This format allowed for a diversity of subjects, issues, concerns and practices to arise. Generally, the interviews covered the following main themes: appointment of the social worker, best interest assessment, qualifications of a guardian (social worker), return, family reunification, health care, education and more general care and protection issues.

In addition to the individual interviews, we conducted one interview which was held in the form of a participative focus group, made up of 19 aged-out minors, the majority of whom did not have an allocated social worker. The main topic of this focus group was on what a guardian meant to the young people. The focus group involved an activity where the young people got into groups of 4 or 5 and drew a guardian and labelled it to highlight the skills and qualifications they thought necessary to be a good guardian. This was followed by a smaller break-out focus group made up of eight aged-out minors who had had social workers allocated to them (some still had social workers past the age of 18), which looked at the same themes as the one-on-one interviews. The smaller group involved a more in-depth discussion about their social workers. This session followed the questionnaire in Appendix 2. This group was also given paper and markers and instructed to write 'me' in the centre of the page and then write down all the people who provided support to them in some way.²⁵ This method of collecting data allowed us to map a comprehensive list of the people in the separated child's life in Ireland. The mixture of these interview techniques made it possible to include information from in-depth conversations with individuals but also let the young people respond to each other within the focus groups.

A risk for the reliability of the results can be that the permission of the social work institution was needed to interview separated children. The HSE acted as gatekeepers for accessing separated children and may have been bias in their selection of participants. It is possible that social workers selected respondents that were most positive about their social worker. However, during the interviews the participants did express views which could be deemed as critical of their social workers, which might indicate that the social workers were not bias when selecting potential participants. We also chose to interview aged-out minors who were not dependent on a social worker. No permission was needed (except from the aged-out minors themselves) for these interviews. Furthermore, we interviewed three people, outside the HSE, involved in the lives of separated children who added information about their views on guardianship.

Separated Children

Young People	Gender	Age	Country of Origin	Living environment	Permit to stay
I1	Boy	17	Iraq	Residential Home	No
I2	Boy	17	Afghanistan	Residential Home	No
I3	Boy	16	Afghanistan	Residential Home	No
I4	Girl	19	Uganda	Foster Family	No

populations in Ireland by providing a number of expert services. In February 2010 Crosscare placed care staff in all remaining hostels for separated children. For more information about Crosscare, see:

<http://www.crosscare.ie/>.

²⁴ See: Appendix 1 and 2.

²⁵ See: Appendix 3.

I5	Boy	17	Afghanistan	Hostel	Yes
I6	Boy	20	Somalia	Hostel	No
I7	Boy	18	Iraq	Hostel	No
I8	Girl	17	Nigeria	Hostel	Yes
I9	Boy	21	Burundi	Supported lodging	No
I10	Boy	21	Somalia	Supported lodging ²⁶	Yes

Focus Groups- Dun Laoghaire Refugee Project

Young People	Gender	Average Age
FG	Mixed	20+
Break-out FG	Mixed	19

Guardians

Guardians	Gender	Locations	Dublin or Outside Dublin
IG1	Male	Hostels, Residential Homes, Foster Families, Supported Lodgings	Dublin
IG2	Male	Hostels, Residential Homes	Dublin
IG3	Female	Foster families	Dublin and Outside
IG4	Female	Hostels, Supported Lodgings, Residential Units	Dublin
IG5	Female	Hostels, Residential Homes, Foster Families, Supported Lodgings	Dublin
IG6	Female	Hostels, Residential Homes, Foster Families, Supported Lodgings	Dublin
IG7	Female	Hostels	Dublin
IG8	Female	Hostels	Dublin
IG9	Male	Supported lodgings	Outside Dublin
IG10	Female	Supported lodgings	Outside Dublin

Other experts

Irish Experts	Professional Title	Gender
IE1	Hostel Care Staff	Female
IE2	Solicitor	Male
IE3	Manager- Hostel Care Staff	Male

Consultation with Guardians ad litem

At the time the interview process began, the Dublin Team had only been aware of one separated child with a guardian *ad Litem* appointed by the courts. Three guardians *ad Litem* were consulted

²⁶ I9 and I10 are now in privately rented accommodation.

with for information on the ways in which their service may or may not fill some of the protection gap for separated children in Ireland. One guardian *ad Litem* was interviewed using questions deriving from the questionnaire. Two others provided input through phone consultations.

Guardian <i>ad Litem</i>	Gender	Type of consultation
IGAL1	Female	In-person consultation
IGAL2	Female	Phone consultation
IGAL3	Male	Phone consultation

National Advisory Panel

UNICEF- Ireland	Barney Shiels
Crosscare (Migrant Project- provide care team for separated children in Hostel accommodation)	Gordon Hill
Barnardos	Itayi Viriri & Catherine Joyce
International Organisation for Migration	Brid Mc Loughlin
Irish Red Cross	Jennifer Wilson
University College Cork (Department of Applied Social Studies)	Dr. Shirley Martin
The Health Service Executive- Principal Social Worker for the Dublin Social Work Team for Separated Children	Thomas Dunning
Children's Rights Alliance	Maria Corbett
UNHCR	Peter Fitzmaurice

Good practices and recommendations

The good practices and recommendations derived from the report are based on the views of the respondents and most are linked to the articles of the CRC. They can be found in Appendix 5.

4. Background and Context

4.1 Separated Children in Ireland

Separated children are children under 18 years of age, who are outside their country of origin, and separated from both parents or their previous, legal customary primary caregiver.²⁷ They can arrive in Ireland either totally alone or travelling with extended family members or other adults. Some have been smuggled or trafficked into Ireland and are victims of sexual and/or other forms of exploitation (e.g. labour).²⁸ Between 2000 and 2010, 5952 separated children were referred to the HSE, of which 2865 were placed in care.²⁹

²⁷ *Statement of Good Practice* 4th ed. Denmark: Separated Children in Europe Programme (2009).

²⁸ Mooten, Nalinie. *Making Separated Children Visible: The Need for a Child-Centred Approach* Dublin: Irish Refugee Council, 2006

²⁹ Barnardos, 2010.

Separated children may be seeking asylum because of fear of persecution or lack of protection due to human rights violations, armed conflict or disturbances in their own country. Others may have travelled to Ireland to escape conditions of extreme deprivation.³⁰ Many have witnessed violence or been the victim of physical or sexual violence themselves. They may have seen family members beaten, raped or even killed. These traumatic experiences place these children at risk of developing psychological problems in the future.³¹ A recent study by Abunimah and Blower reviewed case files of 100 separated children that entered Ireland in 2003 and 2004 and described separated children as a non-homogenous group of youth exposed to pre-flight experiences that placed them 'at risk of developing psychological problems'.³²

The Abunimah and Blower study concluded that the majority of separated children seeking asylum in Ireland were aged between 15 and 18 years of age, although children as young as seven were also documented by the researchers.³³ A similar study, conducted in 2001, came to the same conclusion. This study also found that nine per cent of separated children referred to the East Coast Area Health Board in 2001 were just five years old or under.³⁴ Separated children arriving in Ireland come from a wide range of countries. In Abunimah and Blower's study they found that in their representative sample of separated children, 31 countries were represented. Between 2002 and 2008 separated children applying for asylum accounted for approximately two to three per cent of all asylum applications each year. In 2009, the Office of the Refugee Applications Commissioner (ORAC) reported that the top three countries of origin were Nigeria, Afghanistan and Somalia.³⁵ In the first three quarters of 2010 (1 January- 30 September), 25 asylum applications were submitted by separated children, indicating that the overall numbers for separated children seeking asylum were down.³⁶ So far this year the top two countries of origin were Nigeria and the Democratic Republic of Congo. Somalia, Zimbabwe, Iraq and Pakistan were third. It is impossible to gauge, however, what percentage of separated children arriving in Ireland go on to claim asylum which correlates with the year they arrived. Separate statistics are kept by the HSE and the Department of Justice and Law Reform (DJLR). Nonetheless, it is thought that most separated children that are identified by the HSE eventually do go on to lodge applications for asylum with ORAC in order to normalise their legal status in the country. This is especially true for separated children approaching the age of 18.³⁷

4.1.1 Motivation for migration

Children, like adults flee their countries for a number of reasons. What needs to be stressed, however, is that in general, children do not make this decision for themselves. Evidence from the HSE,³⁸ and from Joyce and Quinn³⁹ suggests that in most cases, travel arrangements are made on behalf of children, often by family members.⁴⁰ Children sometimes do not know why exactly their parents have decided to send them away. Often children do not even know where they are going

³⁰ Ibid.

³¹ Abunimah, Ali and Blower, Sarah, "The Circumstances and Needs of Separated Children Seeking Asylum in Ireland" *Child Care in Practice* 16, 2 (2010): 129 – 146

³² Ibid, p. 130.

³³ Ibid.

³⁴ Veale, Palaudaries and Gibbons, 2003 cited in Abunimah and Blower, 2010.

³⁵ The Office of the Refugee Applications Commissioner, 2010.

³⁶ Ibid.

³⁷ See Appendix 4 for a detailed breakdown of applications from separated children.

³⁸ HSE and CDVEC two day seminar, *Understanding the Needs of Separated Children Seeking Asylum*, 21-22 September 2010, Tullamore, Co. Offaly.

³⁹ Joyce, Corona and Quinn, Emma. *European Migration Network: Policies on Unaccompanied Minors in Ireland* Dublin: The Economic and Social Research Institute (2009).

⁴⁰ IG6

until they arrive in Ireland.⁴¹ Most separated children seeking asylum have left their home country because of a fear of persecution, armed conflict, to escape poverty and deprivation or because of family circumstances, such as the death or the imprisonment of a primary caregiver.⁴² Evidence from past studies involving interviews with separated children seeking asylum suggest that some children may also be sent due to ill-health. These children typically present with long-term, chronic illnesses such as sickle-cell anaemia or hepatitis B.⁴³ Some children may also be sent for educational purposes.⁴⁴

Certain forms of persecution are specific to children and female children especially. These include female genital mutilation, child marriage, the sale of children, and the conscription of children into formal or informal armed forces.⁴⁵ In the Abunimah and Blower study, 12 were pregnant upon arrival, nine of whom reported that they had been victims of sexual assaults.⁴⁶ Furthermore, some separated children arriving in Ireland have been trafficked for sexual exploitation or domestic servitude and may have been victims of physical and/or sexual violence. According to Joyce and Quinn exact numbers are difficult to establish, partly due to the difficulty in proving the crime.⁴⁷

Children within the asylum process are at particular risk and require special attention due to their dependence on adults to survive, their vulnerability to physical and psychological trauma and the problems with accessing support or mainstream services essential to their growth and development due to their legal situation. Separated children are even more vulnerable because they lack essential adult care and the traditional support systems of parents and family. They need protection and care to overcome their traumatic past experiences and develop into healthy young adults.

5. Guardianship in Ireland: The Health Service Executive

*'...there should be just one person looking out for us so that we don't have to tell many people our private things (separated child)'.*⁴⁸

The following section focuses on the HSE rather than the guardian *ad Litem* service as the agency *legally* responsible for the care of separated children.⁴⁹ However, input from guardian *ad Litem* regarding their experience working with separated children is used where relevant. There is no specific legislative instrument that deals with separated children in Ireland. However, both the Refugee Act 1996 and the Child Care Act 1991, as amended, provide a framework for the care of separated children and the processing of their immigration applications. Under the Refugee Act 1996, where a child presents and is identified at the border or within the State who is alone or accompanied by an adult whom the immigration officer has reason to believe does not have a genuine relationship with the child, the officer must refer the separated child to the HSE.⁵⁰ From this

⁴¹ *All I have to say: Separated children in their own words* Audio CD Dublin: Ombudsman for Children and Young People (2009) .

⁴² Joyce and Quinn 2009, p. 32.

⁴³ Ibid.

⁴⁴ HSE and CDVEC seminar, 2010.

⁴⁵ Ibid.

⁴⁶ Abunimah and Blower, 2010, p129 – 146.

⁴⁷ Joyce and Quinn, 2009.

⁴⁸ I1

⁴⁹ Children's Acts Advisory Board, *Giving a voice to children's wishes, feelings and interests: Guidance on the Role, Criteria for Appointment, Qualifications and Training of Guardians ad Litem Appointed for Children in Proceedings under the Child Care Act, 1991*, 2009 (herein after CAAB, 2009).

⁵⁰ Refugee Act 1996, Section 8(5)(a).

point onwards the Child Care Act 1991 applies.⁵¹ ORAC also refer separated children to the HSE under Section 8(5)(a) of the Refugee Act 1996.⁵²

Section 8(5)(a) states that once a child is referred into the care of the HSE that the 'provisions of the Child Care Act, 1991, shall apply'. The HSE thus assumes all legal responsibility for the child. Sections 3.1 and 3.2 of the Child Care Act 1991 require that the HSE promote the welfare of the child up to 18 years of age if they are not receiving adequate care and protection.⁵³ Separated children may be taken into care under Sections 4 or 5 of the Child Care Act 1991. However they are more likely to be taken into care by the HSE utilising Section 4 of the Act, or voluntary care.⁵⁴ Section 4 requires the HSE to take a child into care when the child cannot be protected outside of their remit.⁵⁵ Under Section 4, the HSE, has responsibility to keep the child in its care until they reach the age of majority,⁵⁶ as well as to take positive steps to reunite them with their parent where it is in their best interests.⁵⁷ Less frequently, separated children are referred into the care of the HSE utilising Section 5 of the Child Care Act 1991, which provides care and accommodation for homeless children.⁵⁸ It is then at the discretion of the HSE to institute proceedings to make an application for a care order in respect of a child in need of protection. This typically happens if the child is quite young. Separated children in the care of the HSE may be appointed a guardian *ad Litem* by the courts if it is in the best interest of the child. In practice this has only happened in extreme cases. In cases where they have been appointed, the HSE were responsible for the costs of any services associated with the guardian *ad Litem* as stipulated in Section 26 of the Child Care Act 1991.

When a separated child is referred to the HSE, they are assessed and allocated a short or long term social worker by a duty social worker. Each separated child is then allocated a long-term social worker who acts as their legal guardian.⁵⁹ If the child was placed in a hostel, the HSE had a presence in the form of project workers who were hired to work with all the young people in the hostels. The role of the project worker was envisaged to compliment the role of the social worker in this specific area of work (the care of separated children, specifically).⁶⁰

⁵¹ Where it appears to an Immigration Officer or an authorised officer that a child under the age of 18 years, who has either arrived at the frontiers of the State or has entered the State, is not in the custody of any person, the officer shall, as soon as practicable, so inform the health board in whose functional area the child is and thereupon the provisions of the Child Care Act, 1991, shall apply in relation to the child (Refugee Act 1996, Section 8(5)(a)).

⁵² The Office of the Refugee Application Commissioner (ORAC) is the office where applications for refugee status are submitted and where first-instance interviews are carried out.

⁵³ Durville, I, Child Protection: Meeting our Responsibilities. Presentation for the Irish Medical Organisation Annual General Meeting. Available at: <http://imo.ie>.

⁵⁴ Child Care Act 1991 4.—(1) Where it appears to a health board that a child who resides or is found in its area requires care or protection that he is unlikely to receive unless he is taken into its care, it shall be the duty of the health board to take him into its care under this section.

⁵⁵ Child Care Act 1991, Section 4.

⁵⁶ Child Care Act 1991 2.—(1) In this Act, except where the context otherwise requires—

... a child means a person under the age of 18 years other than a person who is or has been married;

⁵⁷ Child Care Act 1991 4.—(4) ...where a health board takes a child into its care because it appears that he has lost or that a parent having custody of him is missing or that he has been deserted or abandoned, the board shall endeavour to re-unite him with that parent where this appears to the board to be in his best interests.

⁵⁸ Child Care Act 1991 5.—Where it appears to a health board that a child in its area is homeless, the board shall enquire into the child's circumstances, and if the board is satisfied that there is no accommodation available to him which he can reasonably occupy, then, unless the child is received into the care of the board under the provisions of this Act, the board shall take such steps as are reasonable to make available suitable accommodation for him.

⁵⁹ The social worker would have been from the Dublin Team, pre-Equity of Care plan.

⁶⁰ IG7

As a result of the number of perceived actors in a separated child's life, the 'break-out' group, a focus group of 8 aged out minors were asked to map out the people who were in their lives when they were separated children in the care of the State. They all drew a diagram placing themselves in the centre and drew a circle around themselves and placed titles of roles of persons supporting them in some way before they 'aged-out'.⁶¹ They identified their social workers, project workers, care staff working in the hostels, churches, their Refugee Legal Service (RLS) case workers, teachers, the managers of their hostels, foster families and psychologists. Other groups that were placed on the second ring around them offering support on a more informal basis were friends, classmates, roommates in the hostels, the Church, the Gardaí (Irish Police), youth clubs and their general practitioners. However, it is the HSE that serves as the legal guardian for separated children, and this may manifest in the form of a social worker, project worker, and/or social care worker (care staff), or a combination of any of the aforementioned service providers working under the HSE aegis.

The HSE, and all her agents must act in *loco parentis*, they have 'legal responsibility for the care and protection of children'.⁶² Where a child is on a care order, the social worker, specifically, becomes the separated child's legal guardian once appointed, and thus performs all legal duties related to the child's general welfare in the absence of the parent- a responsibility shared by the agency. However, where a care order is not in place, the social worker is not always able to act in *loco parentis*. For example, Section 5 does not explicitly mention the legal responsibility of the HSE. This often leads to complications where medical treatments and exams are concerned for children under the age of 16. Where a social worker is not allocated to an individual child, another social worker on the Dublin Team carries out the duties of caring for and protecting the young person. The Dublin Team has had responsibility for separated children, specifically, since 2000.⁶³ However, outside Dublin, confusion around who is legally responsible for the separated children is prevalent.

The legal responsibility of the HSE covers all duties related to the young person's care as well as their protection needs (outlined in the Child Care Act 1991 and the Refugee Act 1996, respectively). One social worker stated that it is the HSE's role to ensure that the young person has their basic needs met with regard to food, clothes, 'social belonging, education, social stimulation, spiritual needs, [and] psychosocial needs'.⁶⁴ Although they have responsibility for separated children, the persons responsible for ensuring the young person's basic needs are met may vary from child to child, which may include a social worker, a project worker, and/or care staff. All three may perform the duties of a legal guardian, acting in *loco parentis*.⁶⁵ However, only the HSE, as an agency, is *legally* responsible for the child.

How do service providers see their role?

When service providers were asked what their role is or what the role of the guardian is in relation to their client group, a cacophony of responses arose. Some felt their role was to do the basic day-to-day duties to work towards ensuring the welfare of the child was looked after. This response typically came from the project workers or care staff in the residential homes or hostels. The social workers saw their role as being their keeper or a person making life decisions in the absence of the

⁶¹ See appendix 3 for an example drawn by two aged-out minors.

⁶² IG1

⁶³ Joyce and Quinn, 2009.

⁶⁴ Ibid.

⁶⁵ However, without a care order none of the agents listed above may legally act in *loco parentis*.

child's family or sometimes just their case manager.⁶⁶ One social worker stated that their role was '[to mind] them as a whole person'.⁶⁷ However, there was a clear divide among social workers, some who saw themselves as case managers and some who saw themselves as the child's acting parent.

Do separated children know where to complain about their guardian?

No separated child interviewed knew where to complain if they had a problem with their social worker or RLS solicitor.

All social workers informed the interviewer that all children are briefed on the process for making a complaint which is to simply contact the team leader or the principal social worker. However, there is no independent process for complaints.

One social worker stated that a child would eventually learn that they could talk to the principal social worker or team leader when a problem arose. However, most separated children would keep quiet about their social worker even if there was an issue. Some respondents worried about making complaints about the HSE, because they did not view them as entirely independent and worried it may affect their case for protection or leave to remain. Where separated children did wish to express concern over their social worker or legal representative, they went to non-governmental organisations or various projects for support, rather than the HSE.⁶⁸

⁶⁶ IG1

⁶⁷ IG5

⁶⁸ See the Ombudsman for Children's Office website for information on making an independent complaint: http://www.oco.ie/assets/files/OCO_Leaflet1.pdf.

The guardian ad Litem service

Section 26 of the Child Care Act 1991 provides the courts with the option of appointing a guardian *ad Litem* in any instance where the child is the subject of court proceedings, or the subject of a care or supervision order. The role of the guardian *ad Litem* is to be the voice of the child, or to represent their views, feelings and interests in court proceedings. Most guardians *ad Litem* have a background in social work, child care or psychology and typically hold other jobs outside of their guardianship positions. One guardian *ad Litem* stressed that a person wishing to act as a child's guardian *ad Litem* needs a background in social science or psychology, but more importantly, needs experience working with children and providing them with support to be able to assess their support system and determine if their circumstance reflects their best interest.⁶⁹

The guardian *ad Litem* is independent from all other persons working with the child and from any agencies responsible for the child.⁷⁰ The guardian *ad Litem* is only appointed where the child is viewed as vulnerable by the courts. In cases of extreme vulnerability arising from an event that occurred *sur place*, a guardian *ad Litem* has sometimes been appointed. An example of this was in 2006, where guardians *ad Litem* were appointed for Afghan separated children⁷¹ who had been involved in a hunger strike and threatened suicide if the Garda Síochána (Irish police) tried to forcefully move them from the church where they congregated.⁷² In cases other than those deemed exceptional, the appointment of a guardian *ad Litem* is rare and one respondent noted that, although guardians *ad Litem* can sometimes complicate the work of a social worker, there have been instances where separated children needed the services of a guardian *ad Litem* yet they were not appointed.⁷³

The service providers interviewed had mixed feelings about the utility of guardians *ad Litem*. On the one hand, guardians *ad Litem* have been able to be the young person's voice in the courts where the HSE was limited (e.g. where cost liability is concerned).⁷⁴ On the other hand, some social workers felt that guardians *ad Litem* complicated their work, especially where there was a conflict regarding the care of the separated child which falls within the remit of the HSE.⁷⁵ However, it was of the opinion of all guardians *ad Litem* interviewed that their service is essential to ensure that the children's 'wishes, feelings and interests'⁷⁶ are taken into account. One guardian *ad Litem* stated that their role is to independently represent the child in their best interest, whilst taking into account their views.⁷⁷ The guardian *ad Litem* also needs to ensure their physical needs are met, as well as to protect their 'emotional and personal development'.

Some social workers found working with guardians *ad Litem* to be very positive. One respondent who had worked with a guardian *ad Litem* found them to be very proactive with the interest of the child in mind.⁷⁸ Some remarked on the high cost of the guardian *ad Litem* in relation to the amount of hours they put in with the child. One guardian *ad Litem* also criticised the guardian *ad Litem*

⁶⁹ IGAL3

⁷⁰ However, the costs of the guardian *ad Litem* are billed either to the HSE or to the courts.

⁷¹ IG5

⁷² For more detailed information on the hunger strike, see:

<http://www.foxnews.com/story/0,2933,196156,00.html> or <http://news.bbc.co.uk/2/hi/europe/5000202.stm>.

⁷³ IG5

⁷⁴ IG1

⁷⁵ IG5

⁷⁶ CAAB, 2009

⁷⁷ IGAL2

⁷⁸ IG4

service as having no clear guidelines in place and the respondent felt that the service could have a better monitoring system.⁷⁹ The National Children’s Office Review of the guardian *ad Litem* service reiterates this by stating that the rules governing the appointment of a guardian *ad Litem* provide no clear definition of who may be appointed.⁸⁰ One respondent also highlighted the apparent lack of need for the service based on the fact that separated children attending court appointments are uncommon.⁸¹ However, this is more likely to do with the limitations of the HSE. The social worker, as an agent of the HSE, is not in a position to move for a judicial review of the care system or asylum process because there is a conflict of interest and they are not in a position to be liable for the costs if the review was not ruled in their favour.⁸²

Overall, guardians *ad Litem* and social workers have reported good working relationships. Martin et al, found separated children with an allocated social worker and a court appointed guardian *ad Litem* to be best practice.⁸³ Where a separated child is appointed a guardian *ad Litem* and a social worker, lines of communication between the child and service providers are better and the child is better represented in the courts and in care than a child without a guardian *ad Litem*.⁸⁴ However, this is hard to measure as a guardian *ad Litem* has only been appointed in the most extreme circumstances where the child is exceptionally vulnerable and they were urgently allocated a guardian *ad Litem* out of necessity. For this reason, it may not be possible to generalise the unique experiences of separated children with guardians *ad Litem*.

5.2 Social and Educational Backgrounds of the HSE staff

‘Social work is just a professional touch to [youth] work’ (social worker).⁸⁵

The National Social Work Qualification Board (NSWQB) accredits professional social work education and awards the Republic of Ireland’s professional qualification in social work, the National Qualification in Social Work (NQSW). Within Ireland a number of universities offer postgraduate courses in social work which are accredited by NSWQB. Typically students come from a social studies or social science degree. However, for those that do not, it is possible to obtain a higher Diploma (hDip) in Social Policy which serves as a bridge between an undergraduate degree and a Social Work masters. Two universities, Trinity College Dublin and University College Cork, offer four year undergraduate courses which include NQSW. University College Cork, however, restricts access to this programme to mature students – that is students who are older than 23 years in February of the year they are applying.

For people educated outside of Ireland, it is necessary to apply on an individual basis to NSWQB for recognition of qualifications. This application is assessed on a number of criteria including length of

⁷⁹ IGAL1

⁸⁰ National Children’s Office, Review of the Guardian *ad Litem* Service, 2004, 35.

⁸¹ IG1

⁸² IE2

⁸³ Martin, S. Christie, A., Horgan, D. And O’Riordan, J. (2010) ‘What role for guardians? Work with separated children in Ireland’ Presented at the Issues in Safeguarding Refugee and Asylum-Seeking Children Conference (BAPSCAN) University of Lancaster, Preston.

⁸⁴ Ibid.

⁸⁵ IG3

training, level of training, both the academic and practice content of the curriculum and the professional recognition in country of qualification.

The NSWQB view the NQSW as the initial professional qualification for social workers and expect social workers to undertake **continuous professional development** throughout their careers in social work. As part of this commitment to continuous education, NSWQB accredits a number of post-qualifying programmes based on developing skills; gaining new knowledge and information; and contributing to professional knowledge and practice.

The agents of the HSE that were interviewed were from diverse educational, personal and cultural backgrounds. The Dublin Team consisted of Irish, non-Irish European, African, North American, and Australian social workers, project workers and care staff. Most social workers, project workers, social care workers (care staff) had a background in youth work. Some, in addition to their social work or social care qualification, had degrees in the humanities and had undertaken or are undertaking research in areas such as gender based violence.⁸⁶ Most service providers interviewed were non-Irish and commented on their own integration experiences. One social worker thought it was an advantage to be a part of diverse team responsible for a diverse group of young people.⁸⁷

Most social workers and project workers identified areas where they would like to receive more training. One social worker was concerned with the level of legal training and wished to have training on the asylum procedures as well as the new trafficking legislation- Criminal Law (Human Trafficking) Act 2008.⁸⁸ Another social worker wanted more trafficking training, specifically in the area of trafficking for the purposes of labour exploitation.⁸⁹ The most common request for additional training was around cultural sensitivity, or cultural competence.

5.3 An analysis of the HSE and the care of separated children

Once a care order is in place, the child must remain in the care of the HSE. In the absence of a care order, separated children, on a practice level, also remain in the care of the HSE until they reach the age of 18.⁹⁰ The HSE is responsible for a variety of different actions on behalf of the child including to decide the type of care to be provided for the child under Section 36 as well as to give consent for medical and psychiatric evaluations, assessments and treatments.⁹¹ The social worker assumes the role of legal guardian at the operational level. The social worker is thus responsible for the total care of the child in all areas of their development and to ensure their welfare is considered first.⁹² This includes drafting a care plan that reflects the individual needs of the child. The social worker is also charged with the responsibility of determining whether or not to submit an application for protection on behalf of the child. It was found that where a social worker was not allocated, a project worker performed these duties.

⁸⁶IG8 and IE1

⁸⁷ IG1

⁸⁸ IG3

⁸⁹ IG5

⁹⁰ 'Ageing-out' discussed in section 5.9.

⁹¹ Child Care Act 1991 18.—(3) ...and shall have, in particular, the authority to—(1) decide the type of care to be provided for the child under *section 36*; (ii) give consent to any necessary medical or psychiatric examination, treatment or assessment with respect to the child.

⁹² IG1, IG2

The welfare of the child is of ‘paramount’ importance in every aspect of the HSE’s service provision. This fundamental principle is outlined in Section 24 of the Child Care Act 1991.⁹³ The welfare of the child, regardless of nationality, is at the core of the work for the HSE in caring for at risk youth. Each Administrative Area applies their own methodology based on the way in which they interpret the Child Care Act in relation to separated children, practice in the local area, and available regional resources.⁹⁴ According to the HSE, the legal advice from the Attorney General outlined the two sections applicable to this client group- Section 4 and Section 5. The main protection gap in the context of referrals under different sections of the Child Care Act 1991 and the possibility of a subsequent care order is that where a care order is not in place, the social worker is not able to act in *loco parentis*. Although this has not been an issue in Dublin where the general practitioners are accustomed to working with this client group and the Dublin Team, this may be problem in counties outside of Dublin where children are under the age of 16 and need consent for medical treatment or exams. Section 24 places responsibility on the HSE to consider the child’s welfare as paramount and requires the HSE to take into account the wishes of the child.⁹⁵ Section 24 does not, however, go far enough in outlining the ways in which the best interest of the child may be assessed. This is left up to the social work institution. Each local health office may interpret their responsibilities under the Child Care Act differently.

Regional Examples

The Dublin Team predominately utilises Section 4 of the Child Care Act, which means they take separated children into voluntary care. In cases where the child may be identified as higher risk or where there is concern the child may have been trafficked or where family members are present but have not been proved to have responsibility for the child, the Dublin Team may apply to have the child placed in care on an interim care order under Section 17.

In Cork, the Liberty Street Social Work Team utilises Section 5 of the Child Care Act and provides care to separated children equivalent to that provided to the out-of-home indigenous Irish. Cork receives a smaller number of separated children. The legal advice they received formed the basis for their decision to invoke Section 5 which deals with homeless minors where a child is not under the age of 16.⁹⁶ The Cork Team felt the homelessness service was the best developed service. Children under the age of 16 are referred into the standard protection services under Section 18 of the Act. However, for those referred under Section 5 of the Act, the social worker/HSE is not the guardian and is therefore limited in what they can sign or approve for the child.⁹⁷

⁹³ Child Care Act 1991 24. – In any proceedings before a court under this Act in relation to the care and protection of a child, the court, having regard to the rights and duties of the parents, whether under the Constitution or otherwise, shall- (a) regard the welfare of the child as the first and paramount consideration, and (b) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child.

⁹⁴ Supra note 75.

⁹⁵ Child Care Act 1991 Section 24(b) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child.

⁹⁶ Feedback on the report from the Health Service Executive.

⁹⁷ Joyce and Quinn, 2010.

In Wexford, the Social Work Team applies varying sections of the Child Care Act, depending on an individual assessment of the child's needs and circumstances. Typically, if the child is over the age of 16 they invoke Section 5 or the out-of-home service. If they are under the age of 16, they are typically taken into care under Section 13, with an emergency care order, followed by the application of Sections 17 and 18, or interim care order and care order respectively.⁹⁸ The method applied in Wexford reflects best practice. Individual assessment is critical in determining the needs of each separated child and the provision of a care order provides the most safeguards for any child in the Irish care system.

5.3.1 Guardianship and the care of separated children up to 2010

The person or people providing the basic-needs service differed from accommodation centre to accommodation centre. Previously, the majority of separated children were placed in hostel accommodation in Dublin and few would be placed in either residential units, supported lodgings or with foster families. The hostels were viewed as a response-solution, or 'project', with HSE-hired project workers who worked with all the young residents. The project worker was hired to act as a physical presence linked to the hostel, responsible for the day-to-day care of the separated child along with the hostel staff. They would also link in with social workers (where they were allocated). Due to the sudden spike in the numbers of separated children after 2001, often the project worker would perform duties of a social worker with this client group. During this time there were not enough social workers to meet the needs of the influx. The project workers were the main link between the social workers and the children. Aged-out minors who participated in this research and had lived in the hostels would have relied mostly on the project workers assigned to the hostels for their day-to-day needs. The hostels, up until February 2010, did not have a 24 hour care staff presence. The project workers were not always in the hostels and often the young people only had the hostel staff to rely on for issues related to their day-to-day care.

A third group of service providers in Ireland are care staff. The care staff worked in the residential units and each separated child was assigned one or more key workers from the care staff teams (in addition to their social worker where allocated). Three residential units opened in 2009. Each residential unit is registered and subject to inspection by the Registration and Inspection Service and is only built to house six young people, where they have their own rooms.⁹⁹ When interviewed, young people living in residential units in Dublin reported that they went to their key worker if a problem arose. The key looked after their basic medical, educational and extracurricular needs. One young person stated that his key worker would always ask questions about his well being, such as: 'are you sleeping?' and 'why aren't you eating?'.¹⁰⁰ The feedback from the young people living in the residential setting was that most felt they had their basic needs met and felt that the care staff in the hostels felt responsible for them.

Supported lodgings through the HSE are not being used to the extent they were in the past. They are, however, considered as part of the service provided by the two HSE contracted private fostering

⁹⁸ *ibid.*

⁹⁹ IG1 and IE1

¹⁰⁰ I1

agencies.¹⁰¹ Supported lodgings are private family units with built in support offered by families or individuals who have a spare room or spare rooms. Supported lodgings are meant to be somewhere between a foster family and independent living where there is varying degrees of support for those aged between 15 and 18 years.¹⁰² At the time this research was conducted, no separated children resided in non-HSE supported lodgings.¹⁰³ Lastly, some separated children were placed with foster families, where their primary carers were the foster parents. Until January 2010, very few separated children were placed in foster care.

Most separated children living in residential homes felt safe, some even felt they were being watched too closely. They reported being unable to stay out of the house with friends or stay out all night. One respondent complained of having more than one key worker assigned to them and too many care staff in the house.¹⁰⁴ Most respondents living in hostels felt safe. However, all young people interviewed, but one had lived in hostels with 24 hour Crosscare care staff. One respondent, who lived in a hostel before the introduction of Crosscare staff, was concerned with their safety and compared living in the hostel to living in a prison. This respondent visited a Dublin prison on a field trip from school and commented on the similarities and worries about security.¹⁰⁵ Presently, this young person is now in foster care and has no security concerns directly related to the place of accommodation.

From 2000-2010, the HSE was constantly criticised for their care of separated children, specifically in relation to the use of inadequate hostels, and the issue of missing children (to be discussed in section 7.5). All social workers and project workers interviewed expressed their concern over the care of separated children in the hostel setting and also stated that part of their work during that period was advocating for an improvement of the system as most felt they could not perform their duties as social workers in that setting. On a positive note, the concentration of the young people in Dublin (where the hostels were located) allowed the Dublin Team to build up considerable expertise, something that will be difficult to replicate across the country in new Care Areas as the transition to 'Equity of Care' continues to roll out.

5.3.2 Post January 2011 and the 'year in transition (2010)': The HSE Equity of Care Plan

In 2009, the Commission to Inquire into Child Abuse, a statutory committee established in 2000 whose function was partly to investigate child abuse in State institutions, published the *Ryan Report*.¹⁰⁶ The Report brought a number of issues to light, some of which affected the service provided for separated children. The Office of the Minister for Children and Youth Affairs' *Report of*

¹⁰¹ Fostering First (<http://www.fosteringfirstireland.ie/>) and Five Rivers (<http://www.fiveriversireland.ie/>).

¹⁰² See the Irish Association of Young People in Care for more information about supported lodgings: <http://www.iaypic.org/care-a-to-z.html?PHPSESSID=290cfab143082611a84dc4d7fe42f0b1#SupportedLodgings>.

¹⁰³ IG1

¹⁰⁴ I1

¹⁰⁵ I4

¹⁰⁶ See <http://www.childabusecommission.ie/rpt/pdfs/>.

the Commission to Inquire into Child Abuse 2009 Implementation Plan made various recommendations that affected the ways in which separated children were accommodated, which included:

- All organisations with a statutory function in relation to children at risk, in care and in detention have a duty to ensure regulations are applied and any breaches reported to the relevant authority (*ongoing*).
- The HSE will **end the use of separately run hostels for separated children** seeking asylum and accommodate children in mainstream care, on a par with other children in the care system (*by December 2010*).
- In the interim, the HSE will **inspect and register residential centres** and hostels where separated children seeking asylum in the care of the HSE are placed, in accordance with the Child Care Act 1991, pending the commencement of the Health Act 2007 for children's residential services (*ongoing*).
- The HSE will ensure that **all children in care will have an allocated social worker and a care plan**, in accordance with the regulations (*by December 2010*).
- The HSE will ensure that **all relatives as carers and foster carers are assessed**, in accordance with the regulations (*by December 2011*).¹⁰⁷

The result of years of internal lobbying, external lobbying and the *Ryan Report Implementation Plan* was the HSE's Equity of Care Plan which aimed to bring the service provided to separated children in line with that which is provided for the indigenous Irish. Although the *Implementation Plan* did not require most changes to occur until the year's end, the HSE Equity of Care Plan took effect at the start of 2010. The HSE slowly began closing hostels and where hostels remained open, Crosscare provided a 24 hour care staff (since February 2010).¹⁰⁸ Crosscare took an interest in the care of separated children following various media reports on the situation of separated children in hostels and the lack of care staff.¹⁰⁹ In this period, the HSE also began to look towards placements with foster families for new arrivals rather than hostels. This means the young people may be placed anywhere in Ireland. After a six week assessment period in Dublin, the majority of separated children will be moved to different parts of the country.

Dispersal

*'One has just moved, she's part of that dispersal, she moved to Cork from Dublin, didn't work out, her placement broke down so she's been moved to Portlaoise – so it's all up in the air where her file is going' (Social Worker).*¹¹⁰

¹⁰⁷ The Office of the Minister for Children, the *Report of the Commission to Inquire into Child Abuse 2009 Implementation Plan*. July 2009.

¹⁰⁸ The introduction of Crosscare care staff, resulted in a significant change in the hostels. Crosscare staff reportedly built very strong relationships with their clients that have allowed the young people to confide in the staff as well as utilise them in the areas of healthcare, education, activities, community involvement as well as in relation to their application for protection.

¹⁰⁹ See, for example: E.g. O'Brian, B. *What happened to all the missing foreign children?* Irish Times. 27 February 2010 citing Phil Garland's (HSE assistant national director for children) comments on the failures of State care in relation to missing children.

¹¹⁰ IG10

Although the Equity of Care plan is largely praised and seen as ‘a long time coming’, many social workers, project workers and care staff have flagged concerns over the new policy, namely to do with issues arising as a result of the programme of dispersal. Separated children who have aged out have been placed predominately in Galway, Sligo, Waterford and Cork. Those who are being placed in foster families may be placed outside of these 5 counties (including Dublin). This means, in practice, that the new localities have the responsibility of building up services around the separated child, in the same way the Dublin Team built a community around separated children in the capital. However, there was a large number of children in Dublin whereas in the new system, the localities will be trying to build a community for only one or a few separated children.

In the same vein, the added stress of making the trip up to Dublin for asylum interviews and meeting their solicitor is of concern. Separated children based outside Dublin are often subjected to a morning train/bus/car journey (up to three hours) to Dublin to then sit through a traumatic and lengthy substantive interview, only to return home the same day. Furthermore, it will be up to the local care teams to determine responsibilities and there is a concern that the right person may not be attending interviews and meetings related to a claim for asylum. This is compounded by the new policies in the Refugee Legal Service, whereby country of origin reports and the questionnaire are completed in advance of the substantive interview and a case worker will no longer be provided to attend the interview with the child.¹¹¹ A social worker or other guardian (which may be the foster carer) will have sole responsibility for looking after the child’s well being. This social worker will not have the expertise comparable to someone from the Dublin Team. One social worker outside Dublin stated that they had:

*‘been to ORAC and to RLS with the young people, we’re very lucky in that our principal social worker here and our team leaders always supported that and felt very strongly that the young people should have an advocate with them. I’ve a huge problem with the ORAC interviews taking place in Dublin and I’ve voiced my concerns to ORAC and I’ve been on back and forth, at this stage now I’m like a broken record. I think it’s disgraceful that they are expected to travel up, have a horrific experience when they’re there and travel back down’.*¹¹²

Most of the service providers interviewed welcomed the move from hostels to residential homes and foster care. One respondent reflected on their experience having children in hostels as ‘sole destroying, because you couldn’t do the best you could’.¹¹³ However, most criticised the move as being too quick.

At the time of the completion of this project, there were only three hostels in operation. The remaining hostels must close by the end of December 2010. The HSE’s Equity of Care plan also required that all separated children have an allocated social worker on the day they arrive in line with the ‘Actions to Be Taken’ of the Office of the Minister for Children and Youth Affairs’ Report.¹¹⁴ This may mean the duty social worker on that day will take the case.

¹¹¹ IG1

¹¹² IG10

¹¹³ IG5

¹¹⁴ Four residential units will remain in Dublin, three of which will be used for initial intake over a period of 6 weeks, where they will be allocated a social worker, their care plan will be designed, and a foster placement will be organised where appropriate. One residential unit will be used as a long-term unit for young people who are close to the age of majority or may need to remain in Dublin for reasons related to family or compelling medical needs. Children under 12 will not be required to undergo a 6 week assessment. They will be placed directly in a foster placement. In line with the recommendations and the HSE’s Equity of Care plan:

Fostering and concerns under the new regime

Foster families provide a family experience for separated children across Ireland. In some cases there are more than one separated children living with one family. The foster parents become the primary caregiver and part of the guardianship structure of the HSE, they are not, however, the legal guardian. The HSE often tries to find cultural matches for young people. There are positives and negatives to this methodology. One respondent stated that if a child is a potential victim of trafficking it may make them more vulnerable to place the young person into a family who is part of the same community as the child.¹¹⁵ There is also a question mark surrounding the methodology of cultural matching and whether or not a separated child views the match positively. Two African separated children commented on the fact that it was more difficult working with an African agent of the HSE, or foster parent, who is not from the young person's country, or more specifically the same region.¹¹⁶ Some young people stated that they would prefer to be with an Irish family so they could experience what it is like to be part of an Irish family for purposes of integration. The positive aspects of 'cultural matching' may be that the child's transition into Ireland may be eased slightly and be less overwhelming. There may be less cultural differences to account for and some families may have experience with the immigration procedures as well.¹¹⁷

5.4 Social Work in Practice

5.4.1 Allocation and First Contact

When the separated child presents to the HSE, the Dublin Team tries to have a social worker meet the child. The child is then brought into an interview room that is 'open-topped'.¹¹⁸ Often one social worker does the assessment who may not be their allocated social worker, but a duty social worker. However, if the social worker carrying out the initial assessment does not have a full case load it may be that that social worker will be the child's allocated social worker. Generally, at the intake meetings on Wednesdays, the social workers who did the initial interview will try to take on that child's case because they feel that they are the person best placed to do so with the knowledge they acquired upon first meeting the child.¹¹⁹

The interview consists of acquiring basic information, making sure the child has food and water, as well as checking the child's belongings and person for anything that might be dangerous- this is done in front of the child with one other person present. The interview typically takes between one and two hours. The social worker asks basic questions, such as: 'What is your name, date of birth and country of origin?'; 'When did you arrive?'; 'Do you have family here?'; 'Did you go to school and which school?'; and 'Do you need anything?'.¹²⁰ If it goes on too long, the social worker may decide to split it up over two days. Sometimes the children are too tired to sit through the interview in one go, and in those instances, the social worker may again decide to split it between two days.

Local Health Office throughout the country will be responsible for the appointment of a social worker once the children are moved out of Dublin.

http://www.omc.gov.ie/documents/publications/Implementation_Plan_from_Ryan_Commission_Report.pdf

¹¹⁵ IG4

¹¹⁶ I4 and I5

¹¹⁷ IG3

¹¹⁸ Where the walls would not touch the ceiling. One respondent identified the room as not being ideal, in terms of confidentiality, but recognised that it has served the Team and the children well.

¹¹⁹ IG1

¹²⁰ IG1

Most newly arrived separated children, or those identified at ports of entry, had an interpreter present for the initial assessment. Social workers stated that they repeated things and broke-down information as needed. In the absence of an interpreter, the social workers used various methods to ensure the child understood what was being discussed, including what their role is and what they should expect during their stay in Ireland. Most social workers stated that they would use an interpreter until the child's English was of a good enough standard to understand them. However, there is no formalised procedure for working with this client group during the initial assessment.¹²¹

Each separated child meets with a social worker for the initial assessment on the first day they are referred to the HSE Dublin Team. The time it took to allocate a social worker was dependent upon the day of the week the child was referred to the Dublin Team. Every Wednesday morning, the social work team had an intake meeting where new children were allocated a social worker. The child was allocated a social worker based not on the child's preference, but rather the case load of the social worker, considering the complexities of the cases. However, the Team considered a number of elements such as: availability, language and personality.¹²²

Presently, the policy that no new arrivals go unallocated prevails. However, in practice, some separated children are still without an allocated social worker. In the absence of a formal allocation, each child on arrival may be allocated a temporary social worker until the intake meeting. Occasionally, social workers were appointed on the day of arrival. However, one respondent stated that Local Health Authorities may allocate social care workers where social workers do not have capacity to take on more young people.¹²³

Despite the improvement in allocating social workers there is still a protection gap. Separated children are not appointed a guardian *ad Litem* in Ireland. According to the National Children's Strategy, all unaccompanied asylum seeking children 'will be treated in accordance with best international practice including the provision of a designated social worker and guardian *ad Litem*.'¹²⁴ The present National Children's Strategy provided guidelines to be in effect from 2000 to 2010. The Children's Strategy to begin in 2011 has not yet been drafted.

5.4.2 What is the caseload of a social worker in Ireland?

*'When you are a minor, you usually don't get enough explanation. And you probably have a lot of questions to ask, but because you haven't built that big trust with the social worker, because he's not or she's not working with only you (because there's so many people). So you are just another person, another element in the crowd. So you actually have that fear of asking questions. And even the social worker has a limit- they can't really do everything, (Aged-Out Minor).'*¹²⁵

The majority of the social workers interviewed from the Dublin Team feel their caseloads were appropriate. However, most also stated that less would be better. One respondent thought six to eight would be ideal.¹²⁶ In practice, most social workers on the Dublin Team have between eight and 15. The principal social worker stated that one social worker had a caseload of 15, which was seen as

¹²¹ IG1, IG2

¹²² IG1 and IG2

¹²³ IG1

¹²⁴ <http://www.omc.gov.ie/documents/Aboutus/stratfullenglishversion.pdf>

¹²⁵ Break-out FG

¹²⁶ IG2

high. Those determining the case load of the individual social workers take into consideration the capabilities of the social worker and would monitor the appointments to make sure no one has an unworkable amount and at the same time ensure no one has too light a case load. The principal social worker may assign a higher number to a social worker if they requested more clients; however, additional cases may be taken off if the quality of work suffers.

The suggested minimum contact for children in care is every 6 weeks.¹²⁷ However, most social workers interviewed stated that they visited the separated child at least once a month. It varied if separated children were in foster care or had been in foster care for a long period of time. According to the service providers interviewed, the children in foster care are visited less. Although a caseload of eight to 15 seems to be good practice, the feeling among some separated children was that they did not feel the social worker had enough time for them.

Fostering social workers have around fifteen foster carers in their case load. However, some families would have more than one separated child in their home. The fostering social worker would also be required to link in with the children's social workers in addition to the family. Often the families, especially those who have not themselves been through the asylum process, need assistance in navigating the complex immigration procedures and resolving cultural differences.

One respondent commented on the availability of social workers, stating that they 'are not as available as a parent would be'.¹²⁸ Young people in this circumstance 'need someone 24/7'.¹²⁹ This same respondent highlighted separated children's reliance on individuals whom are too busy. One legal representative stated that they were too busy to provide the service necessary to support the child in their best interest: 'I can't always return calls when they call. It is not good for the child'.¹³⁰ This respondent was insistent that a guardian *ad Litem*, or independent guardian is needed to fill this gap. Having a guardian *ad Litem* perform 'linking'¹³¹ duties would give social workers more time to focus on the child's care and accommodation. One social worker noted that they would like more time to have more 'space to practice what you get in theory... instead of just fighting on the ground'.¹³²

One guardian *ad Litem* who had also worked as a social worker with separated children felt that social workers often fall into a position of case management and lack adequate time to look after the child's best interest and to be able to support the young person as much as they would hope to. This guardian *ad Litem* felt that the child's best interest is the fundamental element in their work and stressed that where a social worker does not have adequate time to support the child, the appointment of a guardian *ad Litem* may fill this gap. The respondent felt that in the process of case management, 'the child gets lost'.¹³³

Some separated children reported never having met a social worker, or rarely seeing their social worker. However, others reported they had regular contact with their social workers and knew they could call them anytime if they needed something. One young person stated that '[social workers]

¹²⁷ IG1 and IG5

¹²⁸ IE2

¹²⁹ Ibid

¹³⁰ Ibid

¹³¹ Linking the child with community around the child (e.g. social worker, teachers, legal representatives, general practitioners etc).

¹³² IG3

¹³³ IGAL3

should be free to come and see you if you have a problem, maybe every week or month and you should be able to call them when you need to talk'.¹³⁴

'Sometimes contact by phone or better to meet for coffee in person. I don't like to speak on the phone. I'd prefer to meet [them] even for half an hour and tell [them] things that are going on (separated child).'¹³⁵

6. A Day in the Life of the Social Worker

The day-to-day schedule of the social workers, project workers, care staff, and guardian *ad Litem* differed significantly depending on their individual caseload. Some interviewed were only responsible for: young people in residential centres; young mothers and babies or pregnant separated children; young people in hostels; or providing a link between the HSE and foster families. Each service provider had different experiences depending on the residential setting, if they were project workers or care staff, and different again if they were social workers with a specific remit such as foster care. Although all social workers and project workers worked an eight hour day (nine to five), there were some instances where social workers would have to be on call after hours or over the weekends (e.g. in cases where a young mother may go into labour). Although all the experiences were reportedly diverse, all service providers reflected on their work positively, regardless of caseload or responsibilities. The average social worker, however, working with separated children in various residential placements, divided their time between doing paperwork, which includes updating care plans, and visiting or making contact with the separated children in their care. Working with their client may entail going to visit general practitioners, psychologists, teachers, meeting solicitors or going to interviews related to the child's asylum claim.

6.1 How is the best interest of the child determined?

The social worker is responsible for ensuring the best interest of the child is considered during their time in care. According to the HSE, this means providing for the child's social, emotional, educational, psychological and physical needs. The assessment is documented by the social workers, project workers and social care workers. The HSE have also stated that they use the UNHCR guidelines on best interest determination.¹³⁶ The child's views are considered when decisions are made. Their views are learnt through the development of relationships between the separated child and the social workers, project workers and social care workers. The weight of the child's views depends upon the age and history of the child.

There are no formal guidelines on assessing or determining the best interest of the child. UNHCR facilitates inter-agency training that includes the best interest assessment and determination of the child. Most recently, UNHCR provided training which involved the HSE in July 2010.¹³⁷ However, this training only reached the Dublin Team.

¹³⁴ 11

¹³⁵ IG1

¹³⁶ IG1

¹³⁷ Inter-agency training on Separated Children. Organised by UNHCR Ireland in conjunction with UNHCR Geneva. 5 – 7 July 2010.

One guardian *ad Litem* stated that they assess the best interest of the child by assessing their support network to determine if they are adequate in meeting the child's protection needs, this is done in consultation with the child- considering their views.¹³⁸ The assessment should incorporate the child's views and their best interest without considering the limitations of the agency or the child's immigration circumstances.¹³⁹ This highlights the need to consistently monitor and review one's own practice.

6.2 Education and social life of separated children and the role of the social worker

'For me, more than the social [worker], is the school'(Separated Child)¹⁴⁰

The separated child is a child who no longer has the comfort and support of their community and/or their family. For this reason, it is important that the social worker, in conjunction with other service providers, builds a community, or a support network around the child. A large part of this is linked to their education, extracurricular life and social life. At present a lot of these services are provided in Dublin, such as: the City of Dublin Vocational Education Committee (CDVEC) who provide a specialised service including language supports and homework clubs (as well as operates the Big Brother and Big Sister programme) for separated children,¹⁴¹ specifically; the Irish Society for the Prevention of Cruelty to Children's mentorship programme;¹⁴² the Dun Laoghaire Refugee Project,¹⁴³ and the countless school principals and teachers who have worked tirelessly to ensure separated children had the basic supports needed for a successful academic experience in Ireland.

All children within the asylum process are entitled to the same access to primary and secondary education as Irish children, although their often traumatic backgrounds, lack of English language skills, and possible disruption to education in the past means that they usually need extra supports to flourish. Separated children in particular, are in need of extra support in education.

Separated children with little or no English in Dublin, first attend an intensive English Language School run by the CDVEC. They are then incorporated into the mainstream education system. According to the Ombudsman for Children's Office (OCO) report on *Separated Children Living in Ireland*, report however, many children felt that this move came too soon and some children were enrolled in standard schools despite not having the linguistic capabilities to cope.¹⁴⁴ Experiences within schools can vary depending on the resources available, and the attitude of the principal and teachers towards the children. Some schools have excellent integration policies in place, with a buddy system for new students, while other schools segregate Irish students and International Students in the class room.¹⁴⁵ Another concern for the transition to foster care outside Dublin is language supports throughout the country and access to an intensive language programme. Some social workers, young people, teachers and principals have already encountered difficulties accessing education.¹⁴⁶

¹³⁸ IGAL3

¹³⁹ IGAL1

¹⁴⁰ FG

¹⁴¹ See: <http://www.cdvec.ie/en/index.cfm/do/UnaccompaniedMinors>.

¹⁴² See: <http://www.ispcc.ie/Services/Teenfocus/Teenfocus-Parent-Mentoring.aspx>.

¹⁴³ See: <http://www.drp.ie/>.

¹⁴⁴ Charles, Karla *Separated Children living in Ireland: A report by the Ombudsman for Children's Office* Dublin: Ombudsman for Children's Office, 2009

¹⁴⁵ Ibid.

¹⁴⁶ IG3, IG4 and IE1.

Being able to fully participate in school life is another important part of integration. In order for separated children to integrate into school life, they need to be able to join in activities with their peers. According to the OCO report, however, many find that the cost of extra-curricular activities and trips is difficult to manage, with some anecdotal evidence suggesting that in some cases teachers pay for separated children out of their own money so that they are not excluded. These costs are in addition to the costs of school uniforms, books, and materials for classes such as art which add further stress to students.¹⁴⁷ Child poverty is a consistent theme with this client group as they only receive €19.10 per week rather than the full child welfare benefit. One respondent stressed concern over lack of spending money and his frustration with not being able to go to a movie with his peers.¹⁴⁸

The Irish government-approved *consistent* poverty measure was developed by the Economic and Social Research Institute in 1987 and revised in 2007 highlights some areas where separated children are vulnerable to enforced poverty in Ireland. Consistent poverty is measured in Ireland as having a household income below 60 per cent of the median household income and being deprived of two or more of the basic deprivation indicators which are listed as the following:

1. Two pairs of strong shoes
2. A warm waterproof overcoat
3. Buy new not second-hand clothes
4. Eat meals with meat, chicken, fish (or vegetarian equivalent) every second day
5. Have a roast joint or its equivalent once a week
6. Had to go without heating during the last year through lack of money
7. Keep the home adequately warm
8. Buy presents for family or friends at least once a year
9. Replace any worn out furniture
10. Have family or friends for a drink or meal once a month
11. Have a morning, afternoon or evening out in the last fortnight, for entertainment¹⁴⁹

Separated children living in hostels and residential homes experienced a lack of a number of these items. Most relevantly, separated children were not able to have friends for a drink or meal once a month, nor could they have a morning, afternoon or evening out once a fortnight for entertainment (unless it is pre-arranged by their care staff). If there was a house or hostel outing, the young people would have gone with their house/hostel-mates and not with their friends from school. The €19.10 a week was a barrier to their full integration into Irish school life and society on the whole.

Separated children also face problems when they approach their 18th birthday. For those that have been granted leave to remain, if they are in Dublin, under the care of the Dublin Team there is a dedicated aftercare unit which helps the young people to transition from being in care to living independently. It also helps them to stay in school.¹⁵⁰ For those that still have applications being processed, they are transferred from the care of the HSE to the Reception and Integration Agency (RIA) who generally place them in adult asylum-seeker accommodation, often involving a move to

¹⁴⁷ Ibid.

¹⁴⁸ 11

¹⁴⁹ *Social Exclusion: What is poverty?* Available from <http://www.socialinclusion.ie/poverty.html#howcan> (10 October 2010).

¹⁵⁰ Joyce and Quinn, 2009.

another part of the country. This can have hugely detrimental effects on the young person's ability to continue with their secondary education.

Separated children with some form of status can access further education on the same basis as Irish citizens. However, once they have secured a position in third level education they are no longer entitled to unemployment assistance. They may apply for a higher education grant. Currently students must be ordinarily resident in the administrative area of the local authority from 1 October prior to applying for the grant. From 2011/2012, students must also be resident in Ireland for three out of the previous five years in order to meet the residency requirements for the higher education grant.¹⁵¹ Furthermore the grant is not enough to cover the cost of living, and many Irish students rely on the financial support of their families to get through college. Separated children however, do not have this family support to fall back on. There are some charitable agencies that provide additional supports such as the Dun Laoghaire Refugee Project but they have limited resources.

Separated children who are themselves young mothers face further challenges to accessing education. According to the OCO report, the Community Welfare Office will not cover crèche fees to allow these young women to access education.¹⁵² They must contribute to the costs from the €19.10 they receive each week. The OCO found that no young mothers had returned to education in the past number of years as a result of this arrangement.¹⁵³

In the new system, separated children will no longer be attending schools in Dublin. This is an important point to consider as the Dublin schools have had separated children in large numbers in attendance for the last decade and have built up considerable expertise. The HSE has liaised with various organisations, community learning centres, teachers and principals for placements in schools and English classes. Social workers, project workers and care staff have worked for years to get separated children education and language supports as well as work to integrate children into Irish schools by working with schools and informing them of their needs. The Dublin schools have learnt how to advocate for separated children as well. The worry among service providers and young people is that these systems, which have been built up for years in Dublin, will not be in place outside the capital. Care staff whom are involved with transferring aged-out minors and assisting young people with moves to foster care placements, have already found accessing education and language supports as their biggest challenge.¹⁵⁴

Importance of building a community around the separated child

Education has been an important part of the lives of separated children living in Ireland. One reason for this is the feeling of community the schools offer. In the old system, separated children had very little contact with consistent adult figures- having contact only with immigration officials and later the HSE. In the new system, separated children will have contact with a wide variety of adult strangers in the first six weeks (immigration officials, duty social workers or short-term Dublin-based

¹⁵¹ Citizens Information: Higher Education Grants Scheme Available from http://www.citizensinformation.ie/en/education/third_level_education/fees_and_supports_for_third_level_education/higher_education_grants_scheme.html (accessed 1 December 2010).

¹⁵² Charles, 2009.

¹⁵³ Ibid.

¹⁵⁴ IG3 and IG4.

social workers, and general practitioners), but they will not have contact with consistent adult figures until they are placed with their foster families. Abunimah and Blower found that 89 per cent of their sample arrived without siblings and only 6 per cent kept in contact with their families or carers in their country of origin.¹⁵⁵ The study also found that 69 per cent of their sample established support networks in the form of friends they met in the hostels or in schools. Moreover, the study cited past research that found separated children identify other separated children as their key supports 'regarding extreme social isolation, anxieties about family members in the home country, fears about the future, managing with the day-to-day challenges of school and adjusting to life in a new country'.¹⁵⁶ Based on past research and interviews with young people, it was found that separated children wanted consistent adults in their life.

Most of the young people interviewed for this report and those interviewed for the OCO report had been involved in various different community groups and organisations, or had a mentor (e.g. a big brother or big sister). It is part of the role of the social worker or other service provider to build a community of adults and young people around the separated child to create a family feeling and to put in place a support network for the young person. The social worker should also be a consistent figure in this built-community by 'offering advice and sometimes admonishment if the child has appeared to misbehave'¹⁵⁷ and by being the link between the child's community and the child. All of this, of course, is dependent upon consultation with the child.

6.3 Access to healthcare and the role of the social worker

All separated children in Ireland have access to the public health care system. Many of the issues that they experience are similar to issues experienced by all people living in Ireland and reliant on the public health care system. A number of issues particular to separated children in the care of the HSE were raised in the OCO report '*Separated children living in Ireland*'. Of considerable concern are the delays that children face in getting a doctor's appointment. According to the HSE, a child may make their own appointment however children who spoke to the OCO were told that these appointments had to be made by either their project worker or their social worker. This invariably led to delays in securing an appointment, with one young person having to wait almost three weeks for an appointment.¹⁵⁸ However, only two respondents (one separated child and one care staff) emphasised concerns over accessing health care.

In emergency situations, where a child had to attend at an Accident and Emergency department, the separated child was often accompanied by a hostel manager rather than a social worker due to these events generally taking place outside of normal working hours. The hostel managers, however, have no guardian-like responsibilities for the children in the hostel and were often placed in difficult situations in relation to consent. They themselves were concerned about this situation and it was raised by several hostel managers in discussions with the OCO.¹⁵⁹ Another issue related to consent

¹⁵⁵ Abunimah and Blower 2010, p. 134.

¹⁵⁶ Goodman, J (2004) ; Mels, Derluyn and Broekaert 2008 in Abunimah, Ali and Blower, Sarah "The Circumstances and Needs of Separated Children Seeking Asylum in Ireland" *Child Care in Practice* 16, 2 (2010) p. 129 – 146.

¹⁵⁷ Abunimah and Blower 2010, p 134.

¹⁵⁸ Charles, 2009.

¹⁵⁹ Ibid.

that is also relevant in the new system is the fact that foster families are not officially the separated child's legal guardian. One social worker expressed concern over this division of power within the HSE:

'One of my clients [was] sick overnight and she [had] to go to hospital and then the foster carers believed that they were guardians and then when they arrived in hospital they were told you cannot sign anything, you are not guardians, and they were so disappointed and the doctor was attending to this family and said unfortunately we had to wait for your confirmation letter to say that she is in the care of the HSE and please explain to the foster carers that they are not guardians, I think they were quite upset about it. I think in situations like that, they should be given that limited guardianship for situations like this'.¹⁶⁰

This highlights the need for regular contact with children placed in hostels, residential units, supported lodgings **and** foster care. Social workers should not see the child as needing less from the social worker because they have a care provider in-house. This also highlights the confusion regarding who is responsible for the child under the HSE aegis, even in the new system.

Another area of concern is that of interpretation.¹⁶¹ In one interview, a member of a non-HSE care staff team recounted an incident where the staff member had to take a separated child for out-patient surgery. When they arrived at the hospital, the interpreter had not arrived. Due to time constraints, the staff member had to bring another young person from the hostel to interpret. The young person went into surgery without having spoken through a professional interpreter.¹⁶²

In connection with this concern is that of privacy. It is common practice for social workers to accompany children to their doctor's appointments. On the one hand, this can be useful as a child may not fully understand their diagnosis or treatment and having a project or social worker on hand can be helpful. Nonetheless the presence of the project or social worker impinges on the child's right to privacy and autonomy, an issue that is of particular importance to young people aged 16 and older. The allocated social worker should always be the person attending a medical appointment with a child under the age of 16. Children over the age of 16 should be given the option of going to their medical appointments accompanied or on their own. Medical information should only be discussed between the medical professionals and the child, where they are over the age of 16.

The OCO report also raised the matter of a lack of sensitivity to separated children in the wider health care system. In particular, separated children who are themselves young mothers were found to be particularly vulnerable to inappropriate questions and a general lack of understanding of their circumstances and needs. The project worker interviewed with responsibility for young pregnant separated girls was on call 24 hours a day near to the due-date and worked closely with a Dublin Hospital- instituting procedures for the doctors or nurses who picked up their files. Their files had information for the hospital staff regarding their particular vulnerabilities, including the number for the Dublin Team and instructions to ring the Team if a pregnant separated child was admitted. This is another example of the good practices that have developed in Dublin.

The social workers and project workers did not feel they had problems accessing medical services for the young people. No separated children interviewed complained about medical services specifically. Most stated that a social worker, project worker or care staff went with them to hospital visits. However, two respondents did state that they attended some appointments on their own.

¹⁶⁰ IG6

¹⁶¹ For more information on interpretation in relation to the asylum seeking population, see: Azevedo, J., McNulty, I., Morales, L., and Rylands, J. *Working with Interpreters in a Psychology Service: Reflections of the Psychology Service for Refugees and Asylum Seekers*. 2010. 36:5, p. 103- 106.

¹⁶² IE1

Importance of building a relationship

The Abunimah and Blower study found that 59 per cent of their sample had been exposed to violence in some form and 39 per cent presented with ill mental or physical health. The study found that nearly half of the group had had mental health problems and 40 per cent had physical health problems during their stay in Ireland.¹⁶³ It is evident from this study and from the interviews with young people and service providers for this report that separated children have particular health needs that arise from pre-flight trauma. For this reason it is essential that the social worker forms a relationship built on trust and confidentiality to ensure the child feels comfortable confiding in an adult who can then make appropriate medical and psycho-social referrals. Two of the young people living in hostels stated that when problems arose and they needed to talk to someone, they would work it out on their own and they would isolate themselves.¹⁶⁴ Neither young person had an allocated social worker.

7. Protection Gaps: the importance of being an advocate and being able to act independently

From the 16 interviews (including consultations with guardians *ad Litem*) with service providers and 29 interviews (including those who participated in the focus groups) with separated children and aged-out minors, the following concerns were identified as the main protection gaps associated with the HSE guardianship service: age assessment; missing children; family reunification; return and restoring family links; aftercare; and migration policy. The child care system in Ireland does not go far enough to address the specific needs of separated children and those responsible for the care of separated children to assist them in navigating the complicated immigration, asylum, and family tracing processes, as well as integration into Irish society.

The service providers interviewed for this project all felt they had positive experiences working with this client group. Most commented on how grateful separated children were. Those who had worked with Irish children as well noted how different the work was and how working with separated children was easier in terms of behaviour and respect. However, most identified areas of their work that proved to be stressful at times. The Dublin Team had learned how best to support a separated child through experience, but they all expressed frustration with their limitations. This section discusses the areas of concern which informs the recommendations in Appendix 5. This section also identifies gaps in the system as it was found that it was often the limitations of the social work institution that prevented good social workers from acting on behalf of the child and in their best interest.

7.1 Age Assessment

The responsibility to age assesses a separated child falls with the DJLR. However, the HSE social worker has the right to challenge the decision based on their opinion following the initial intake meeting or after a period of observation. Age assessment interviews are carried out by an Immigration official- at the airport or port of entry or in ORAC if identified in the country. An interpreter is either present or available by phone. The procedure consists of a series of questions surrounding education, family and reasons for travel. ORAC determines the applicants age by observing 'demeanour', 'physical build', 'responses to questions' and 'degree of maturity of the

¹⁶³ Abunimah and Blower 2010, p. 138.

¹⁶⁴ I6 and I5

young person and whether or not she/he displays any signs of vulnerability of any description'.¹⁶⁵ The use of demeanour, physical maturity and degree of expression of vulnerability can be contentious. One aged-out separated child pointed out that 'their lives are so much different than the children in Ireland' and that their experiences make them more mature.¹⁶⁶

If the young person is determined to be over the age of 18, it must be communicated to the young person and is then subject to reassessment by an Immigration Officer in cooperation with the HSE. In practice, it seems to be that the Dublin Team carried out a separate age-assessment and then informed ORAC, where, on rare occasions, the decision might have needed to be reviewed.¹⁶⁷ When a focus group of aged-out-minors were presented with the question of whether they underwent an age-assessment or not, they reported that when they were processed, the age-assessment would have been at ORAC and a social worker more than likely would not be present. This was due to the fact that very few separated children were allocated social workers in the past and even fewer were allocated a social worker prior to their initial meeting at ORAC. More separated children have social workers now and practice has changed significantly due to experience and built up expertise. However, practice still varies and whether or not a social worker is present at an age-assessment with ORAC is case-by-case.

Presently, Ireland does not collect biometric information through medical examinations for age-determination. However, in practice, separated children and social workers reported the use of dental exams and x-rays to determine the age of some age-disputed separated children.¹⁶⁸ One separated child stated that a friend of his was 'age-tested' three times by a dentist, by referral from the DJLR, and each time was determined to be under the age of 18: 'it wasn't really fair to him'.¹⁶⁹

The provision relating to biometric information in the Immigration, Residence and Protection Bill 2010 does not exclude children, which may lead to less-favourable interpretation of this provision as it relates to age-assessment.¹⁷⁰

Some separated children from the aged-out bracket believe the social worker is responsible for age-assessment. The DJLR has overall responsibility for age-assessment, but as stated above, the HSE may make an enquiry to the ORAC regarding the age-assessment of a young person they may believe is of an age other than what was originally determined.

'I think it's not good to judge someone's age because some people *sic* grow up quick in mind?.. I'm 18, but not according to the things I went through [when I was growing up]- the sufferings. Those things make you grow up quick and strong. So when I came here and these people just say, 'oh you're lying'. And when you go school you see your classmates- we are the same age, but because of the things we've been doing back home, you feel like you grow much [quicker]... ...'because life back in Africa is totally different'.¹⁷¹

¹⁶⁵ Veale, A. *Separated Children Seeking Asylum*. Irish Refugee Council, p. 35.

¹⁶⁶ IG4

¹⁶⁷ IG1

¹⁶⁸ IG7 and Break-out FG

¹⁶⁹ Break-out FG

¹⁷⁰ Immigration Residence and Protection Bill 2010:

<http://www.oireachtas.ie/documents/bills28/bills/2010/3810/b3810d.pdf>.

¹⁷¹ I4

7.2 Missing Children

From 2000 to 2008, 463 unaccompanied minors went missing from HSE care.¹⁷² Of these, 58 have been found. In 2009, a total of 46 separated children went missing, of which nine were found. Seven young people went missing from HSE care between January and August 2010. The HSE identified the following factors which may result in separated children going missing:

- the child's appeal for asylum has been refused and he/she is nearing eighteen and is reacting to the pending threat of deportation;
- the child, or young person, has been smuggled into the country to join the workforce on a consensual basis and is availing of the child protection service as a fast track route into the state; and/or
- the child has been trafficked into the state by traffickers using the child protection service as an easy route.¹⁷³

Based on their review of 100 case files of separated children, Abunimah and Bowler suggest that young people in HSE care go missing within days or weeks of arrival due to their fear of deportation resulting from a failed asylum claim rather than factors related to the provision of care itself.

In 2008 and, more so, in 2009, there was a significant decrease in children going missing from state care. This may be a result of the HSE's collaboration with the DJLR as well as the Gardai.¹⁷⁴ The HSE has begun to put in place more stringent safeguards to prevent separated children from going missing from their care. As mentioned previously, the hostels now have 24 hour care-staff. Furthermore, the HSE has an agreement with the GNIB whereby immigration officials will inform the HSE if they identify a separated child at the airport during office hours. Where possible, a social worker will undertake a joint interview at the airport. A social work team is in place for afterhours referrals.¹⁷⁵

In cases where separated children arrive after normal HSE work hours, they are then referred into after-hours care. In the past this meant they would not be met by care staff in the hostels where they may stay before meeting a HSE social worker or project worker. However, in light of recent developments in Ireland, including the *Ryan Report Implementation Plan*, separated children were not placed in a hostel without care staff present after February 2010. Though, they may not meet a social worker until one is allocated during intake meetings at a later stage.

One respondent stated that in order to successfully trace a missing child, information is a key priority.¹⁷⁶ Some separated children who have been reported missing, especially those referred after hours, might not meet with an agent of the HSE before they go missing. It is thus necessary, and certainly the view of the respondent, that information must be available for each separated child to initiate a search or trace if a child goes missing from the accommodation centre. This may involve a photo, but also any information about possible connections in Ireland. They recommended this information to be furnished on arrival.

¹⁷² Joyce and Quinn 2009, p. 36.

¹⁷³ See: Duncan, P., *500 children seeking asylum went missing in the past decade* in The Irish Times:

<http://www.irishtimes.com/newspaper/ireland/2010/0201/1224263502609.html>

¹⁷⁴ <http://www.inis.gov.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf>

¹⁷⁵ IG1 and IG5

¹⁷⁶ IG5

Trafficking

Joyce and Quinn cite a report from 2009 which indicated that between 2007 and 2008, 102 women and girls, who might be considered victims of trafficking, presented at Irish services. 11 of these were children when they arrived in the State.¹⁷⁷ Agencies working in the area however, believe that this number is a gross under-estimation of the problem. Furthermore, the report only focused on women and girls trafficked for sexual exploitation. It is likely that more children, both male and female are trafficked into Ireland for forced labour. One respondent stated that they have identified several potential victims of trafficking, but knows of only two who received the recovery and reflection period under the Criminal Law (Human Trafficking) Act 2008.¹⁷⁸

7.2.1 Reporting mechanisms

Once a separated child is reported to have gone missing, the HSE has responsibility to inform the GNIB and the local police station. A missing persons report accompanied by a photograph of the separated child, where one can be provided, is distributed to the Child Care Manager in the child's locality. The Manager then disseminates the information throughout the country to other Child Care Managers. The social workers may also fill in a Garda form for missing children to be placed on the Irish and international missing persons websites. This is not always done as it is HSE policy to regard cases of missing children from care as extremely vulnerable and they remain hesitant to 'disclose details of any child in care except in exceptional circumstances'.¹⁷⁹ The amount of information collected and documented on separated children varies greatly between social work teams in different regions and also the 'perceived vulnerability' of the child. Joyce and Quinn highlight that the lack of follow-up and information sharing between social work teams has resulted in 'extremely low' successfully traced missing separated children.

7.3 Family Reunification, Return and restoring family links

The 'Restoring Family Links' process lies with the Irish Red Cross- a service that includes family tracing, messaging and reunification.¹⁸⁰ The aim of the services provided by the Red Cross are designed to assist members of dispersed or separated families to correspond with other members, discover each others' whereabouts and to be reunited if possible and if that is what is requested.¹⁸¹ The decision of whether a separated child should access the service is in the hands of the HSE. All social workers interviewed stated that they informed the children under their care about the option to look for their family or try to contact them. However, when separated children were asked, they did not know if they had initiated the process, or if they had been told about this option and some were interested in beginning to pursue a restoring family links application after the interview took place. Separated children may not remember if they had started the process or not due to the amount of information introduced in such a short period of time after arrival. For this reason, it is recommended that service providers repeatedly explain important conversations and explanations of processes like these, or better, write them down. Perhaps best practice would be to incorporate family tracing into their care plan and ensure the child has a copy of it.

¹⁷⁷ Kelleher, P., O'Connor, P., Kelleher, C., and Pillinger, J. *Globalisation, Sex Trafficking and Prostitution- the Experiences of Migrant Women in Ireland*. Immigrant Council of Ireland (2009).

¹⁷⁸ Criminal Law (Human Trafficking) Act 2008

<http://www.irishstatutebook.ie/2008/en/act/pub/0008/index.html>.

¹⁷⁹ Department of Justice and Law Reform, 2009 in Joyce and Quinn 2009, p. 38.

¹⁸⁰ For more information, see:

http://www.redcross.ie/corporate_site/quick_links/home/restoring_family_links.

¹⁸¹ Ibid.

Where the social worker, in consultation with the separated child, decides it is in the child's best interest to return to their country of origin, the social worker links in with the International Organisation for Migration Ireland Mission (IOM). Irish legislation does not specifically provide for return. If a return is initiated, the IOM provides in-kind assistance including transit from Ireland and funding for accompaniment by at least one social worker.¹⁸² Ireland has not 'opted-in' to *Council Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals*. Ireland operates return and reintegration missions at the policy level with a multi-agency approach. It is largely the responsibility of the Health Service Executive to initiate voluntary return procedures with the IOM as well as to support the separated child through the process. It is thus an important part of a guardian's work in Ireland and adequate support and training are required to ensure returns are carried out in line with international best practice in the absence of documented policy or legislative provisions.

7.3.1 Irish policy on family reunification and return and the role of the social worker

The process of 'restoring family links' is a process that is left to the social workers. The social workers have the paperwork on file and often fill them in, in consultation with the young person and send them to the Irish Red Cross. The child never meets with a person from the Irish Red Cross. Joyce and Quinn identified difficulties in verifying family information as provided by the child through the referral process. The IOM noted that a lack of information or inaccurate information may be a reason for being unable to contact family members at home and also one of the reasons for low numbers of return. However, there are several reasons for low numbers of return.¹⁸³ It is of the opinion of the Irish Red Cross that a child should have the option to meet with the Red Cross privately. The Red Cross in conjunction with UNICEF Ireland has worked to set up a system whereby a social worker would physically bring the young person to their offices to initiate family tracing, however, to-date, this has not been agreed upon with the HSE. Involving the child in the process, and even putting them in control of it, may help them retain information regarding family tracing—putting them in a position where they know to request updates or to be kept informed. Some social workers stated that they had made contact with persons in the child's country of origin exclusive of the Irish Red Cross for the purposes of locating family or age-assessment. Making contact with local schools and families may not be in the best interest of the child as the child may be at risk of harm from their family or communities in the region from which they fled. It is recommended that the social workers go through the Irish Red Cross in any efforts to restore family links.

Following an assessment from the HSE, the child may be reunited with their legal guardians or relatives resident in Ireland under Section 4(4) of the Child Care Act or be placed into the care of the HSE itself. One social worker stated that it was *usually* in the separated child's best interest to be returned home.¹⁸⁴ However, Abunimah and Blower found that only 43 per cent of the children in their sample had been cared for by a parent before reaching Ireland and one-third were cared for by 'non-relatives, institutions or nobody in particular'.¹⁸⁵ Their research suggested that the majority of

¹⁸² One respondent stated that in most cases the social worker would be known to the child.

¹⁸³ Input from IOM representative on the Advisory Panel for Closing a Protection Gap.

¹⁸⁴ IG4

¹⁸⁵ Abunimah and Blower, 2010, p. 134.

their sample of separated children ‘experienced unstable or violently disrupted social and family relationships’.¹⁸⁶

For those returning to countries of origin, in most cases, separated children are returned to families, but in a few cases minors were returned to non-State, specialised care facilities. Presently, Ireland does not have a policy regarding the return of minors to alternative care facilities.¹⁸⁷ In 2009, 7 cases involving 11 separated children and 5 cases involving aged-out minors were referred to IOM programmes. Out of these referrals, 4 separated children and 3 aged-out minors were returned. Nine referrals were made in 2010, so far four separated child have been returned.¹⁸⁸

Table 2: Return to the country of origin (Source IOM)¹⁸⁹

2005	2006	2007	2008	2009	2010	Total
4	1	2	2	2	4	15

It is the responsibility of the HSE, acting as legal guardian, to assist the child in voluntary returns if it is deemed to be in their interest and return is a viable option. This decision is made in consultation with the separated child. At present, voluntary return is a joint effort between the HSE, the IOM and sometimes a judge depending on the separated child’s care order. The IOM Mission in Ireland provides assistance to separated children under the Voluntary Assisted Return and Reintegration Programme. The HSE is responsible for determining whether or not pursuing voluntary return is in the best interest of the child and may, depending on the area of work and the care team responsible for the separated child, engage in family assessments in the country of origin and also look into agreement options in monitoring the child’s reintegration.

Initiating a return begins with the social worker or, in the absence of an allocated social worker, a project worker. The social worker, in consultation with the separated child, makes the decision to refer the child to the IOM. Once the IOM receives a referred child from the HSE, they will begin to attempt to make contact with the applicant’s family in the country of origin. In addition, the IOM and the HSE contact local social care agencies, where they are established, in order to assist with the family assessment in the country of origin. Reintegration needs are also assessed along with family assessments (which may be conducted more than once). While this process is carried out, the separated child will remain in the care of the HSE, without distinction. When a suitable placement with extended family or guardian cannot be arranged in the country of origin, the social worker and/or the HSE team responsible for the child will make the decision to keep the child in HSE care in Ireland. This does not necessarily mean the child will be given immigration or protection status.

In the case of returns, a social worker returns to the separated child’s country of return with the minor and may accompany the child to their family home. In this case, the social worker oversees the reunification and possibly arranges for follow up visits during the first few days after

¹⁸⁶ Ibid.

¹⁸⁷ Joyce and Quinn, 2009.

¹⁸⁸ As of 17 December 2010.

¹⁸⁹ The number of returns in a particular year will often not match the number of referrals in that same year. This is due to the complicated nature of cases dealing with separated children, they often can take months before a decision is made and the child returns.

reunification. The social worker provides the IOM with a ‘return reintegration care plan’, which is the reintegration form outlining the needs of the child. This is typically filled in by the social workers and the child’s family during the return process. Upon return, the IOM Mission in Ireland follows-up with the IOM office in the country of return in relation to the child’s reintegration and monitoring the grant. Any information collected in the local IOM offices in the child’s country of origin is then reported back to the Dublin IOM office and the information is then shared with the HSE social worker (by request).

Monitoring the separated child’s return is also the responsibility of the child’s HSE social worker. The local IOM mission office in the country of return and the IOM Mission in Ireland facilitate the exchange of information.¹⁹⁰ However, it is the social work institution (possibly in communication with a local social work agency in the country of origin, which may include weekly or monthly telephone conversations with the minor and their family and/or home visits) that has responsibility for monitoring the child’s return. Monitoring returns is not a statutory requirement and is thus the decision of the individual social worker or the social work team. No agency is in fact responsible for monitoring the child’s return and reintegration.

To facilitate returns, the social workers interviewed stated that they would make contact with the child’s family in the country of origin by getting their contact details from the child or through other means; none mentioned the Red Cross in this context. In two cases, social workers or guardians *ad Litem* visited the family in the country of origin to assess the family and determine if they felt it was in the child’s best interest to be reunited. Once returned, the social workers involved in reunifications or the process of reunifications stated the IOM would then follow up as they would not have the capacity or contacts to do so.¹⁹¹ However, the IOM notes that they are not a protection agency and they are only able to monitor the reintegration grant and would therefore have contact with the child’s family for this purpose. If the social worker requests additional monitoring from the IOM mission in Ireland, they may make efforts to contact the family to facilitate their request. This only happens by explicit request from the HSE. There may be other organisations or agencies in the area where the child is returned that may be able to provide a more localised monitoring service. This is dependent upon the region and what is available. The responsibility to monitor therefore rests with the HSE; however, they are no longer legally responsible for the child once they leave the jurisdiction. There seems to be a protection gap where the social work care of the child ends due to return and there is no one in place to monitor the returnee in terms of the child’s social and care needs.¹⁹²

7.4 After Care: When a minor reaches the age of 18 years

‘I really think my role is an advocate, but I suppose I am very conscious....not to create a dependency because at the same time we don’t know where they’ve come from, we don’t know what their experience was so I don’t want them to be dependent on one person and then say I leave my job...I’d rather they become independent’ (social worker).¹⁹³

Aged-out minors who were in the care of the HSE are placed in a relative legal limbo when they reach the age of 18 years. Occasionally separated children will not submit an application for protection

¹⁹⁰ This is dependent on the capacity of the local mission office.

¹⁹¹ IG5 and IG4

¹⁹² Feedback from IOM representative on the Closing a Protection Gap Advisory Panel.

¹⁹³ IG10

where the social worker does not deem it suitable, which leaves them without any form of regulatory immigration status. It is then up to the child to apply for protection or leave to remain at the discretion of the minister (the different immigration statuses available to separated children will be discussed in the following section). Once an application for protection is made the child is then referred to the Reception and Integration Agency (RIA) of the DJLR. In this case, the child is entitled to a continuation of care and would move into adult accommodation.

If the separated child submitted an application for protection while in the care of the HSE, but has yet to receive a decision on their claim, they will also be transferred to RIA where they will be placed in adult accommodation. Both categories of aged-out minors are not automatically entitled to after-care in the form of accommodation and/or the continuation of their social worker. However, it is up to the discretion of the social worker or the HSE to advocate for after-care on behalf of the child which is done on a case-by-case basis. In practice, the provision of after-care in the transition from hostel accommodation to adult accommodation is rare. In some cases, the care order the child is referred under influences the decision to provide after-care. For example separated children in care utilising Section 5 are more likely to receive aftercare support than those taken into care utilising 'voluntary care'. Separated children who were placed in foster care prior to turning 18 may receive aftercare support if they are still in full-time second-level education (two of the young people interviewed were still receiving some HSE support which included accommodation and the continued presence of a social worker).

Aged-out minors who turn 18 while in the care of the HSE and who have been granted refugee status, subsidiary protection or leave to remain at the discretion of the minister are often able to avail of aftercare services which may involve de-institutionalisation, accessing education, and learning life skills for independent living. This may include aftercare placements, which are residential units staffed by two aftercare workers.

The young people interviewed viewed facilitating their transition to independent living as an important part of the role of the social worker. One separated child stated that 'the social worker should be organising things for the future, when I am over 18, making sure that I get sent to a good place'.¹⁹⁴

7.5 Migration policy for separated children in general

'We can never underestimate the anxiety they feel going into their interview because their whole future depends on it'.¹⁹⁵

Official State policy is that no unaccompanied minor shall be refused entry to the state, however according to Joyce and Quinn there is anecdotal evidence to suggest that this does happen when a person's age is in dispute.¹⁹⁶ More important, however, is that the vast majority of separated children are identified in the State rather than at a port of entry. Many are not identified until they present at ORAC for asylum. Evidence from the OCO's separated children project suggests that

¹⁹⁴ IG1

¹⁹⁵ IG10

¹⁹⁶ Joyce and Quinn, 2009.

agents who smuggle children into Ireland frequently leave the children in Dublin City and point them in the direction of ORAC's offices.¹⁹⁷

Figures from ORAC show that out of all decisions made between 2002 and 2008 on applications for asylum from separated children, on average 77 per cent of applications were refused.¹⁹⁸ These children did have the option to then apply for subsidiary protection or leave to remain on humanitarian grounds but figures are not available on the outcome of these decisions. The asylum process in Ireland is an adult-orientated system. The use of legalistic language can be confusing and upsetting for children. The forms they must fill in and the interviews they must attend are not designed with children in mind. Often children age-out before a decision has been reached. For all the reasons mentioned above, the role of the guardian, who more often than not is the social worker, includes a legal element. Understanding the procedures and the pressures the young people face is a crucial part of the work with this client group.

*7.5.1 Asylum procedure of the separated children in general and the role of the guardian*¹⁹⁹

'I really don't agree with the whole process, it's not child friendly' (social worker from outside Dublin).

The Child Care Act 1991 entered into force before separated children had begun to arrive in Ireland. There is no specific provision in the Child Care Act or the Refugee Act that states the HSE's responsibilities where the submission of a claim for protection is concerned. In the event that an application for protection is not submitted on behalf of the child, whether it is in the child's best interest or not, the child is without legal immigration status and there is no legislation that provides guidance in these cases to the HSE. The Immigration Residence and Protection Bill 2010 proposes a new legislative framework for the consideration of asylum claims, specifically, it provides for the consideration of both refugee status and subsidiary protection in one procedure, but it does not address the separation of power between child care and immigration legislation or the issues that have arisen therein.²⁰⁰

As previously mentioned, social workers are responsible for determining whether or not it is in the child's best interest to submit an application for protection or not. This is a big responsibility and some social workers expressed concern over the system and the ways in which it is not child-friendly. One respondent from outside Dublin felt that:

'... it's [not] in the best interests of a child to be in the asylum process, full stop. But they don't have any legal right to be in Ireland if they're not. So one YOUNG PERSON that I am working with just transferred from Dublin and the Dublin team decided not to put her in the Asylum process because she's only 15. I totally understand where they are coming from but that child has no legal basis to be in the country and I think that's a huge area, a grey area so I'd prefer if they weren't in the asylum process because I don't think its child friendly.....[in one case ORAC came to Cork for a few interviews in one day] and I think that's in their best interests, they can get out of their own beds, come over here, half an hour, have their interview, if they need to they can stay with us for a couple of hours and then they can go back. Whereas in Dublin it's hectic, you're running for the train, you don't get to give them that support.'

¹⁹⁷ Charles, 2009.

¹⁹⁸ Joyce and Quinn, 2009.

¹⁹⁹ Here, 'guardian' refers to any person accompanying the child in the interview room.

²⁰⁰ The Immigration Residence and Protection Bill 2010, see:

<http://www.oireachtas.ie/documents/bills28/bills/2010/3810/b3810d.pdf>.

This social worker stated that *'that's how you can meet their best interest – just keep lobbying'*.²⁰¹ The Dublin Team felt they had the legal knowledge necessary to navigate the asylum system in order to determine whether or not it is the young person's best interest. However, the local care teams feel unprepared and unsupported in their position as receiving Care Areas for separated children.²⁰²

If the HSE decides it is in the best interest of the child to submit an application for protection, the social worker would then refer the child to the ORAC for their initial interview with an interpreter if necessary. The first interview only involves a few basic questions to determine the child's need for protection. This interview will occur before legal consultation and can sometimes lead to conflicting statements when compared to the substantive interview after the child is referred to a legal professional. The understanding among social workers outside Dublin in relation to their role in the asylum process was more a feeling of confusion: *'the role of the social worker within the whole process, is another area, it's a bone of contention....because I just feel are we part of the system? Or are we not part of the system? And by going, we're saying its okay to treat people like this when I don't think it is, you know, so I'm constantly bringing that up, even with our team leaders and with our principal social worker and with [the Dublin Team] themselves'*.²⁰³ However, in Dublin, the HSE staff are much more confident. Most social workers and project workers interviewed stated that they could always know more, but that they felt they had the enough knowledge of the asylum system, and other processes related to immigration, to assist a young person. One respondent stated that although she felt she knew enough to support a separated child in the context of migration, if she had additional questions, she *'knew where to turn for the answers'*.²⁰⁴

Following the initial interview, the separated child will then be referred to the RLS, a branch of the Legal Aid Board, which provides free legal advice for asylum seekers. The RLS have a small team that specialises in working with separated children and minors who are potential victims of trafficking. Separated children are allocated a solicitor who oversees their case, but they typically meet with a case worker. The solicitors meet the separated child accompanied by the social worker (or another representative from the HSE) to prepare for the first interview. The social worker and the case worker assist in filling in the questionnaire. As stated previously, the asylum process, including the questionnaire, is the same for adults and separated children. However, the RLS do have guidelines for their work with separated children, specifically.

In the past, during the first-instance interview with ORAC for recognition as a refugee, the RLS solicitor or case worker was present as well as the social worker. RLS no longer has a physical presence in the interview room. Where a guardian *ad Litem* is appointed, they may attend as well. The social worker's responsibility in this context is to make sure the child is not getting agitated, too stressed, or tired. If the child exhibits signs of any of the aforementioned states, the social worker may then ask for a break. The separated child in conjunction with the social worker can request an interpreter at any point during this process. After both interviews, the child will have to sign off on

²⁰¹ IG10

²⁰² HSE and CDVEC Seminar, 2010.

²⁰³ I3

²⁰⁴ IG7

what was said. Often young people looked back at what they had signed (once their English improved) and were able to identify inaccuracies or things they did not say.²⁰⁵

If the applicant receives a positive recommendation, the child is recognized as a refugee and has most of the rights of an Irish citizen. If the child receives a negative recommendation, the child has the option of applying for either Subsidiary Protection²⁰⁶ and/or Leave to Remain at the discretion of the Minister.²⁰⁷ Alternatively, they may appeal the decision. If the decision is going to be appealed, the case will often be referred to a private solicitor. This is a result of the position of the HSE and RLS as statutory agencies.

Section 8(5)(c) of the Refugee Act 1996 states that the HSE will not be liable for any costs for a child in the asylum system. However, if the HSE were to act as Next Friend,²⁰⁸ the HSE would be liable for costs incurred if the child's case was not successful. One respondent asked: 'is it appropriate for the HSE to act where their own interest might be in conflict'?²⁰⁹ One social worker explained the effect the ORAC interview and their positionality had on the relationship with the young person in her care:

'In relation to my role, again it goes back to my own confusion around what is my role in the whole asylum process so I've quite often had to say to them I'm not part of the system but I'm coming to support you and I suppose I've had to in the interviews say can we break, or no I don't agree with that question or what have you but it's very...but I just think it changes your relationship with the young person after you've been to Dublin with them. One young person who I worked with was quite angry after his interview that I didn't intervene, but I didn't have a role to Intervene, and he couldn't understand that....sometimes their expectations are poles apart'.²¹⁰

It is the role of the social worker to decide whether or not it is in the separated child's best interest to submit a claim for protection or leave to remain. If the social worker decides to assist the child in submitting a claim for protection, it is the social workers role to support the child through the process. Due to the complexities associated with navigating the asylum system, it is important that the social worker knows where to turn to for help. It is also important that the social worker seek out training and information that will help them in their work supporting separated children.

²⁰⁵ Break-out FG

²⁰⁶ Subsidiary protection is a form of complimentary protection for applicants who do not fit the narrow definition of what it means to be a refugee. For more information, see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>.

²⁰⁷ A person who has been refused a declaration as a refugee and who is not eligible for subsidiary protection, may be granted leave to remain in the State. A person may also withdraw from the asylum process and seek leave to remain in the State. Leave to remain is granted at the discretion of the Minister for Justice and Law Reform, usually on humanitarian grounds. See: http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/refugee_status_and_leave_to_remain/leave_to_remain.html.

²⁰⁸ Next friend is someone authorized to act on behalf of the child in the courts. The same rules apply to the next friend as the guardian *ad Litem*.

²⁰⁹ IE2

²¹⁰ IG10

7.5.2 Legal knowledge of separated children

'I want to know about my case. Where is my case? What's going on? What's happened? I want news from my case from social worker' (separated child).²¹¹

The separated children interviewed, who did not have status/permission to stay in the State, were predominately concerned with their legal situation, or their case, and wanted more information: *'The first thing I did understand, [was that your application is] not explained to you until Justice people look at your case. And you're just told: 'sign here', 'sign there''.*²¹² Another respondent was especially distressed over his case appealing a Dublin II transfer order.²¹³ The case remains in the high court and the child is unable to get in touch with his solicitor for regular updates.²¹⁴ The private solicitor interviewed expressed concern over not being able to afford time to separated children who have concerns or questions regarding their claim for protection or otherwise, yet have no way of rectifying the situation in the absence of a dedicated and *independent* legal guardian to be the communication link.²¹⁵

Support needs of service providers

Some respondents discussed the difficulties associated with working with this client group and the difficulties of listening to the hardships separated children faced before arriving in Ireland as well as the problems that arise during their stay as a result of the asylum process, and their feeling of helplessness. One member of a non-HSE care staff team described how one of the residents in their hostel had to accompany a child to out-patient surgery and immediately following the surgery, the child was brought to the GNIB because the child was due to appear. This respondent also noted that the night previous, they had been up all night talking to another client who was in the process of ageing-out and was nervous about being relocated outside Dublin into adult asylum seeker accommodation.²¹⁶ There appears to be an inordinate amount of stress associated with working with this client group in Ireland due to a lack of a support framework. Many commented on their inability to always act in the best interest of the separated children because of the limitations of their service, which includes the element of aftercare. This stress is compounded by the pressure of assisting a young person through the asylum process, one that lacks transparency and is not child friendly. One respondent noted that people working with separated children, and fulfilling guardianship duties, should have emotional strength.²¹⁷ Service providers need support in their work with this group in the form of supervision as well as training and information. However, it is also the responsibility of the service provider to seek out supervision and support where needed.

²¹¹ I2

²¹² Break-out FG

²¹³ I2

²¹⁴ Ibid.

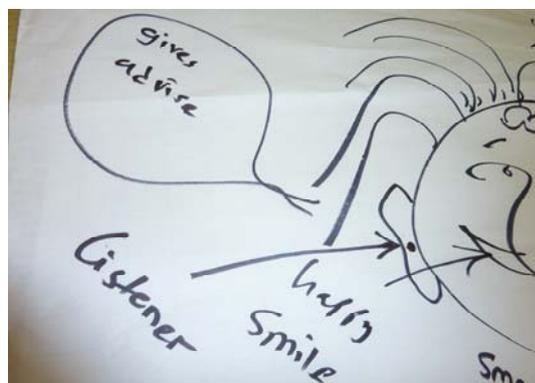
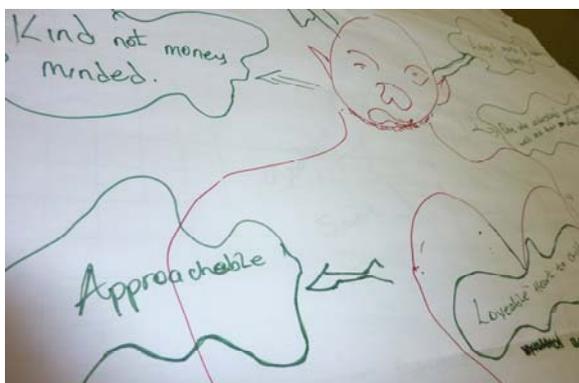
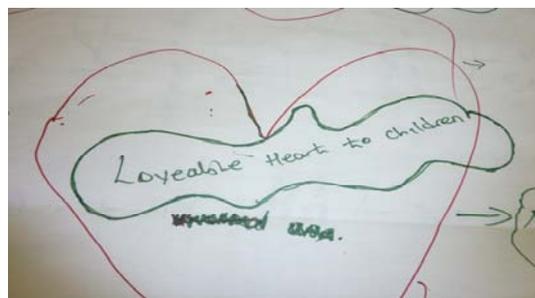
²¹⁵ IG2

²¹⁶ IE3

²¹⁷ IG8

8. Separated children on guardianship and their experiences with social workers²¹⁸

8.1 Separated children and the qualifications of a guardian



The overall feeling of all separated children and aged out minors interviewed with regard to the qualifications of a guardian was, at its core, that they must have a good heart and show that they are working with the child because it is what they want to do, not because it is their job and they get paid to do so.

Gender, Religion, and Culture

'I like my social worker to know me as an Angolan citizen- understand where I come from' (separated child)²¹⁹

In the focus group, no aged-out minors preferred one gender over the other or preferred a specific age group. During the one-to-one interviews, only one separated child explicitly mentioned that he would have preferred a woman social worker, because they are 'smarter than men' and men cannot 'control kids or know what they need'.²²⁰ Some young people stated that a woman may be preferable, but it was based on a positive experience with a female social worker or project worker.

²¹⁸ No separated children/age out minors interviewed had been appointed a guardian *ad Litem*.

²¹⁹ FG

²²⁰ IG1

No one interviewed had a preference about religion. However, most stated that they thought it was important for service providers to know something about their country-of-origin and to be interested in their culture. Most service providers thought knowing about countries of origin and learning about the cultural background of separated children was an important part of relationship building.

Recommendations from separated children

Guardians should:

- enjoy working with children
- put their heart into their work
- make the child feel that you are responsible for them and that you feel responsibility towards them
- be a good listener
- have an open mind
- give good advice
- have knowledge about the client group and their legal situation

8.2 Should guardians be paid or be volunteers?

Social workers are paid by the HSE. Most interviewed believed whether or not a person acting as a guardian was paid was irrelevant. One aged-out minor stated that it would not matter if the guardian was paid or unpaid as long as their heart was in the right place.²²¹

Despite the general feeling among separated children and aged-out separated children that there would be no difference in care regardless of their employment status, most separated children and aged-out minors identified two important themes:

1. There is a conflict in the service as the social worker is seen as someone who works for the State first, and looks after the welfare of the child second.
2. Volunteers from non-statutory organisations were identified as people who positively impacted their lives and provided support and information.

One aged-out minor commented on her experience with a volunteer mentor- highlighting that she found her Big Sister²²² to be helpful and interested in her for no other reason than to improve the quality of her life.²²³

8.3 Do children want to do fun things with their social worker?

Some separated children interviewed wanted to do fun things with their social workers and all social workers wished they had the time and resources to take their clients to do fun things. However, some separated children were resistant to spending more time with their social workers as they also

²²¹ FG

²²² Big Brothers and Big Sisters is a service provided for young people by Foroige, a children's charity that provides frontline services for young people through education assistance, mentors and group social and educational activities and through the CDVEC in Dublin, Parnell Square. Big Brothers and Big Sisters provide independent volunteer mentors for separated children under and over the age of 18.

²²³ Aged-out minor presenting at HSE and CDVEC seminar, 2010.

have care-staff in the hostels and sometimes feel like they are being treated like children younger than they are.²²⁴ Some separated children would prefer if they were given money to do things with their school friends. Nearly all social workers identified the need and benefit to engaging with their clients in a more casual and fun way in order to build a relationship and trust and to allow for disclosure in a more comfortable setting. Most young people and service providers clarified that ‘fun things’ meant doing social activities (e.g. getting a cup of coffee).



‘You can go out and you don’t mind doing stuff together’.²²⁵

Social workers, project workers and care staff also stressed the importance of being able to do fun things with young people in order to build that trust and preserve the young person in care’s childhood. However, both young people and service providers noted that not all young people are open to spending time with the service providers. In some cases, young people felt care staff were too involved and would have liked less supervision and less involvement. Most service providers expressed concern over the lack of funding for fun activities and wished they could do more with the young people in their care.

8.4 Do separated children see their social worker as a person they can trust?

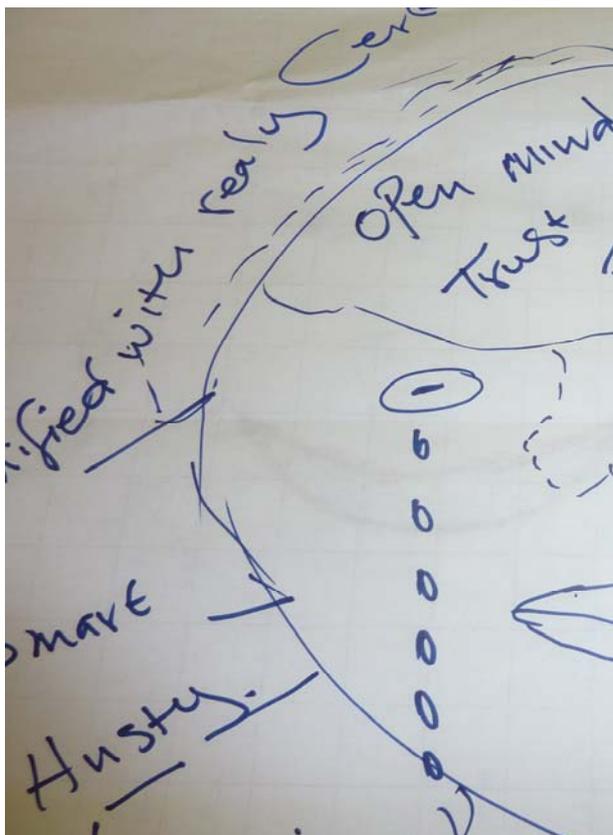
‘I think the first thing is... to start wanting and to start building a relationship before you take it any further- that you meet someone and you do not expect them to just open their heart just like that [snap]... Build a relationship step-by-step and before you know it this person will be all yours if you start with the right thing.’²²⁶

Most of the children who were interviewed were either never allocated a social worker, or allocated a social worker after a long period of time, rarely communicated with their social worker or if they were assigned a social worker did not seem to trust them. There were a couple of instances where a separated child felt their social worker was there for them. However, only a few separated children identified their social worker as someone they could trust.

²²⁴ I1

²²⁵ FG

²²⁶ Break-out FG



'There are some things that make it easier to eat the food... A bit of friendship and add the salt and some seasoning, so it will be edible so you can go through the process with [friendship] as well' (separated child reflecting on relationship building).²²⁷

If a separated child has had an allocated social worker in their time in Ireland, they tend to have had a number of social workers that change quite frequently. One separated child who had recently arrived in the country (7 months) had had an allocated social worker from the point of her arrival. The social worker has not changed. The young person identified the social worker as a person she can trust, confide in and contact when she has a problem. This particular young person stated she would go to the social worker before going to 24 hour care staff in the hostel.²²⁸ This is different from most other young people interviewed in hostels. The reason for this may be a result of a social worker being allocated at the outset and the social worker remaining as a consistent figure.

8.5 What would separated children do if they were a guardian?

'I would help young people. I would give them information,...[If] they have appointment I will bring them to hospital or GNIB. [At] school, [if] they have [a] problem, I will [help] him' (separated child).²²⁹

The separated children who were interested in becoming a guardian or a social worker in Ireland, were asked what they would do if they were able to work in this role. One Afghan young person said he would help, simply. He expressed his concern with the social work service in this regard, stressing that social workers are meant to care about children rather than 'only caring about their jobs'.²³⁰ If he became a social worker he would be available to the young person if they had any questions and he would do whatever he could and whatever was in his power to help the young person allocated to

²²⁷ Break-out FG

²²⁸ 18

²²⁹ IG1

²³⁰ 11

him. An Iranian boy had a similar response, but he felt that as a guardian, he would be more concerned with providing his clients with the necessary tools to be independent.²³¹ Most separated children and aged-out minors stressed the importance of having knowledge of the legal systems in Ireland and being able to help young people with their claim for asylum.

Most separated children stated that if they were a guardian, they would make their young people feel *safe*. One respondent noted that *consistency* was paramount.²³²

9. Conclusions: Who is the guardian in Ireland and what is their role?

The legal guardian of the separated child in Ireland is the HSE, which includes: a team of social workers and project workers as well as social care workers (or HSE-funded or appointed care staff). A guardian, in most cases, is a social worker with a case load of 12 separated children. The social worker and the HSE are responsible for their care plan in conjunction with project workers and social care workers, where they are in place. The HSE determines: under which care order the child be taken into care; whether or not the child should submit an application for protection; whether or not the child should initiate a search for the child's family (family tracing or restoring family links with the Irish Red Cross); their living arrangements; their day-to-day needs; *and* their overall well-being. The HSE is also responsible: for linking in with the *RLS* if the child enters the asylum system; communicating with schools, general practitioners, mentors and guardians *ad Litem* where appointed; and facilitating possible returns to the country of origin. The responsibilities of the HSE are manifold and complex. Furthermore, working with this client group is often new to the regional social work teams.²³³ Separated children are a vulnerable heterogeneous group of young people with very particular needs- needs that can only be assessed on an individual basis. Separated children, like all children, need the support of adults. However, Separated children are particularly vulnerable due to their lack of family, parent or habitual caregiver. Separated children are often frightened and distrustful due to pre-flight trauma and conditions in their country of origin. They need a person they can trust and confide in and someone who can give them advice as they navigate the complex immigration systems as well as their own path towards integration.

However, the HSE has not developed protocols to assess the best interest of the separated child and often separated children do not have standard care plans. Furthermore, Social workers, project workers and care staff all expressed concern over their limitations in their work looking after the child's welfare and promoting their best interest- whether it is due to their lack of control over where a child is placed in residential accommodation after the age of 18 or how the Department of Justice ultimately decides their future.

What is the solution? The two main themes arising from the research revolved around the issues of independence and resources (e.g. time and money to spend with or on, the young person). The paper by Martin et al, which addressed the issue of independence, found that where a guardian *ad*

²³¹ Both young people were resident in the same type of accommodation centre where they would have a relatively high level of supervision by their key workers.

²³² 14

²³³ Post HSE *Equity of Care Plan*.

Litem was appointed, the child had better overall care. In the Irish context, this is best practice in providing the best possible protection for the young person- having a dedicated social worker and guardian *ad Litem* to act in their best interest and be their voice. The social work teams interviewed were dedicated and, in the Dublin case, experts, but they all felt they were limited in their work- due to this, their clients suffered. Additionally, the National Children’s Strategy 2000-2010 states that all separated children should be appointed a guardian *ad Litem*, and this should be something to be included in the 2011 Strategy. However, in order, for the guardian *ad Litem* system to be applied effectively, guidelines, protocols and a professional body set-up to monitor the guardians *ad Litem* need to be formalised. Furthermore, training in the area of separated children would need to be a part of the process of mainstreaming the service as well as a formalised procedure to determine the best interest of this client group. Despite the gaps in both systems, it is recommended, in line with international best practice, that a separated child is appointed an independent guardian in addition to their social worker and legal representative. Perhaps, with this scenario, the gaps can begin to be narrowed.

Is there another option? Yes, the social worker may seek out independent advocates, who may be in the non-governmental organisation sector who can work alongside and support social workers. It is thus, of paramount importance, that either the guardian *ad Litem* or the independent advocate and the social worker build a relationship based on trust, communication and they should assume mutual-monitoring roles. It is the responsibility of all guardians or service providers to build a relationship based on trust with the separated child. It is also their responsibility to ensure they constantly review and improve their practice to ensure separated children are not left behind, despite their status and the fact that they remain in a care system governed by a legislative framework designed before separated children had arrived in Ireland, and thus does not cater for their particular needs.

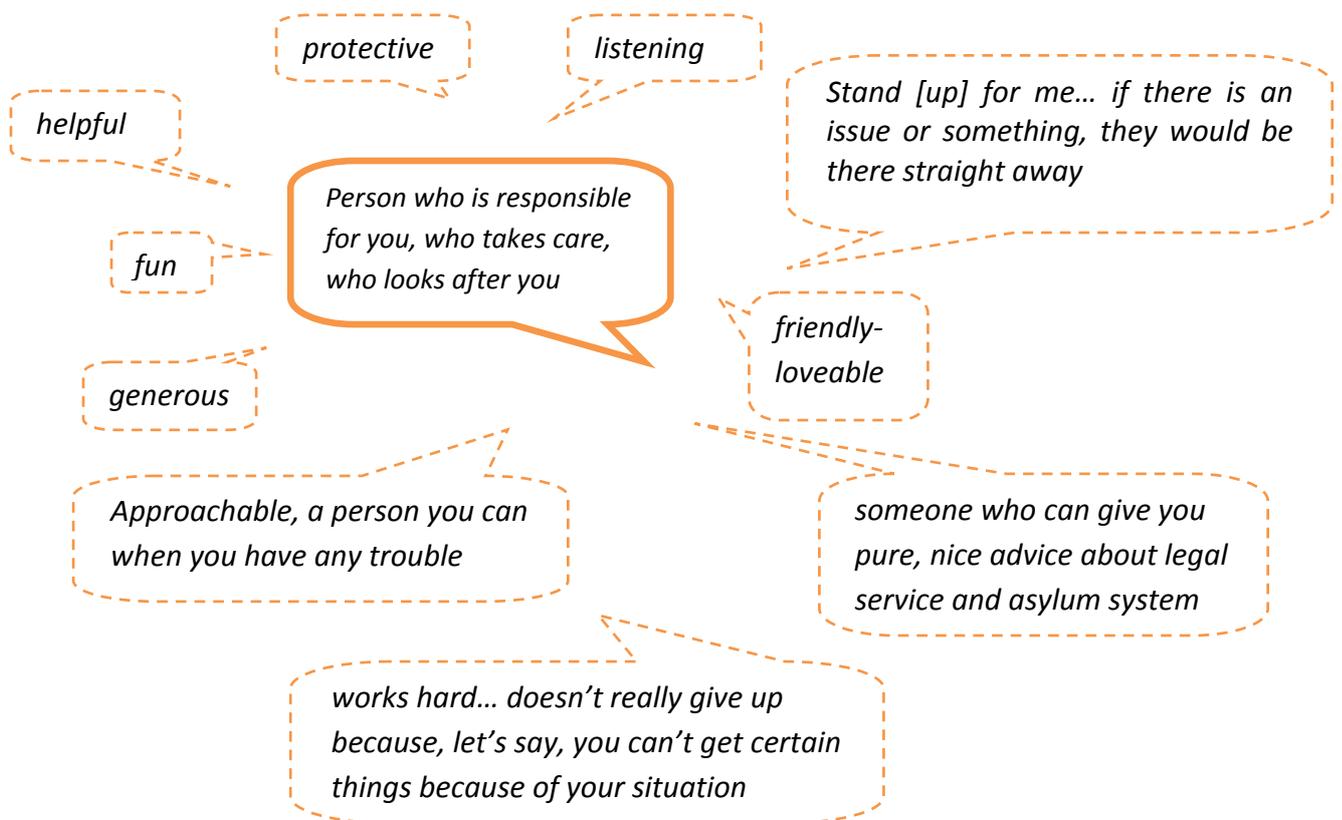
What can I do, as a social worker, as a guardian *ad Litem*, or as a service provider? Keep these recommendations to hand and continue to better your practice by seeking out training and learning from the experiences of others. More importantly, make it known to separated children that you feel you are responsible for them, show them that your heart is in your work and that you are working on behalf of them and their best interest. Be an advocate- do not be afraid to stand-up and be the child’s voice. When a fundamental element to the child’s care is not automatic, this may mean advocating within your organisation or other statutory bodies. Ask for help within your organisation and from others every step of the way.

This report was written with two goals in mind. Firstly, it is meant to be a tool for service providers of separated children. Its purpose is to be a review of the experiences of service providers in the area for *new* service providers to use as a reference. Secondly, it is meant to be a critique on the system and to highlight areas where the services provided to separated children may be improved. The key finding was that resources, to-date, have not been adequate to provide adequate representation for separated children. The CRC Article 27 requires States to provide material supports to those responsible for all children to promote ‘the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development’. The ‘resources’ and ‘supports’ also cover the appointment of a social worker and the service they are able to provide, respectively. This report stresses the need for a representative, a legal guardian, in

accordance with international standards, practice and law. It is therefore imperative that each separated child is appointed a social worker, in line with Irish child care law and a guardian *ad Litem*, in accordance with the next step recommendations of the National Children’s Strategy. From there, Ireland can begin to build on the quality of care provided to separated children.

9.1 What do you think being a guardian means?

Responses from Separated Children:



Appendices

1. **Appendix 1:** *Question list interviews separated children*
2. **Appendix 2:** *Question list interviews guardians*
3. **Appendix 3:** *Example of aged-out minor mapping exercise: service providers*
4. **Appendix 4:** *Total number of asylum applications submitted by or on behalf of separated children and countries of origin up to August 2010*
5. **Appendix 5:** *Good practices and Recommendations*

Appendix 1

Question list guardians

These questions are a guideline for the interviews with the guardians. You do not have to ask these questions one at a time. You can have a conversation with the guardian and check by the end of the interview if you have an answer to the questions.

Start by explaining the project, your organisation and potentially something about yourself. Discuss the informed consent document and explain that everything discussed is confidential. Do not discuss things a child mentioned about this guardian.

1. General information

- Name and contact information:
- Gender:
- Date of birth:
- Country of origin:
- Education, training:
- How long have you been working as a guardian?

Make notes of non-verbal communication and describe the setting of the interview.

2. Introduction/Situation analysis

- How would you describe the role of a guardian?
- Why have you become a guardian?
- Can you tell me something about how your day/week normally looks like? What do you do? What would you like to do?
- What do you like most about being a guardian? What don't you like?

3. Appointment of a guardian

- In which facility do you work? How many days per week?
- What is your caseload? Do you think this is too much (if yes, why)?
- When do you first meet a child? Do you think this takes too long?
- Are you present when an age assessment takes place?
- What does your first meeting with a child look like? What do you talk about? What is the setting?
- How many times do you meet a child (per month)?
- How do you divide your time?/ Do you have time to accompany a child when he has an interview, court hearing?

- Do you experience a lot of differences between the level of understanding of children (when it comes to explaining the procedures etc.). How do you make sure that a child understands what you are telling him/her?

- Do you feel you have enough knowledge about the migration procedure and children's rights or would you like to get more training?

4. Qualifications of the guardian

- How would you describe a 'good guardian' (maybe think of a colleague you really appreciate as a good guardian) Which qualifications and qualities does a good guardian need?
- How would you describe your role as a guardian?
- Could you tell me something about your methodology? Has it changed over the years? What do you think is good about it? What would you do differently?
- How do you explain to a child what your role is as a guardian?
- Do you think a child –after you explained so- understands what your role is?
- Do you experience that children have different expectations of you?
- What do you think a guardian should help a child with?
- Do you think a guardian is responsible for doing fun activities with a child?
- Can a child reach you whenever he or she has a problem?
- What do you tell children about yourself?
- How do you deal with language and cultural differences? Can you tell me something about your experiences with that?
- Do you think a guardian should always be a paid person?

- How would you describe the communication/relation with lawyers, mentors etc? Are you in contact on regular basis? Are there good/bad examples?

- How do you assess the best interest of the child? And how do you defend this best interest (do you feel it is difficult to protest against decisions of migration authorities)?
- Do you have enough time to work on a bond (of trust) with the child?
- Which kind of training would you attend? What would you like to learn more? How should this training look like?
- Do you think guardians need different skills on the basis of the location/facility where they work (for example different skills for a guardian working in a detention facility or a guardian of a child in a foster family)
- Do you think a guardian should be a social worker (with a training on legal aspects) or do you think a guardian should be a legal specialist (with a training in social work)?

5. Return/reunification

- What do you think is necessary for a successful return of a child? What is the role of a guardian in relation to return?
- How do you discuss possible return of the child to the country of origin?
- Do you know something about the countries the children are coming from?
- Do you talk to the child about the situation in the country of origin?

- Have you ever been in contact with a child after they have returned?
- Do you assess the situation in the country of origin? Are you in contact with authorities over there?
- Do children often have contact with their family (maybe in other European countries)? Do you support this contact and how?
- When children return, do you think a guardian should join them?
- How do you prepare a child for turning 18? What is the role of the guardian after the child turns 18?

6. Other needs and rights

- Education: how do you act when a child has difficulties at school? Do you have contact with teachers?
- Healthcare: have you ever experienced difficulties receiving healthcare for the child?
- Social life: Do children talk easily about friends? About their daily life (school etc)? About their history?
- Have you ever experienced a conflict of interest (for example that you needed to breach the confidentiality). How do you deal with this?
- Would you know how and where a child can complain about a guardian?
- Participation/right to be heard: How do you involve the child in the decision making process?
- Do you have ideas how we can inform children about their rights and the role of the guardian?
- What do you do when you experience a difficult situation? Have questions? Are there people in your organisation you can turn to?
- Do you ever experience difficulties when you maybe get too involved with the child (sleeping problems etc.)?

Social Worker (if GAL, change to SW)

- How often have you worked with a child's guardian ad litem?
- Do you feel the communication was good between you and the GAL?
- In your experience, have you found working with a GAL complicates your work?
- Would you recommend that every separated child is appointed a GAL? If yes, why?
- Did you find the GAL/SW had the best interest of the child in mind?

7. If you were an unaccompanied minor asylum seeker, what would you like your guardian to do for you?

8. Would you like to add or comment something that you have not been asked?

Appendix 2

Question list: interviews with separated children

These questions are a guideline for the interviews with the children. You do not have to ask these questions one at a time. You can have a conversation with the child and check by the end of the interview if you have an answer to each of the questions.

Start by explaining the project, your organisation and potentially something about yourself. Discuss the informed consent document and explain that everything discussed is confidential.

Preamble to interview to include limits of confidentiality and state that the project will serve to improve lives in future.

9. General information

- Name and contact information:
- Gender:
- Date of birth:
- Country of origin:

Make notes of non-verbal communication and describe the setting of the interview.

10. Situation analysis

- How long have you been in the country?
- Who is in your life in Ireland? Can you make a list?
- Do you know who is legally responsible for you? Who looks after you? How would you describe this person and your relationship to them?

11. Arrival

- Did you have your age assessed when you entered the country? Was a social worker present? Did he or she inform you about this procedure?

12. Appointment of a social worker

Discuss social worker

- Do you know who protects you, or who is legally responsible for you?
- Do you have a social worker now?
- Did you get a social worker the moment you arrived? Do you remember if your social worker was always with you or if sometimes, you had to do some interviews on your own?
- Did you have a choice? Prefer a man or a woman? Religion? Age?
- Did you understand the role of the social worker when you first met him/her?
- How many social workers have helped you?

13. Qualifications of the guardian

The focus groups would be broken up into small numbers where young people would be able to use markers and paper to draw an ideal guardian and label the drawing to highlight qualities. This can be used as an ice breaker and to establish the role of the guardian.

- What would a guardian mean to you?
- Who goes to meetings at school?
- Who signs documents for you when you need an adult to sign things?
- Do you think your social worker feels responsible for you?
- Can you tell me what your social worker does for you?
- What do you think a guardian should help you with?/What would you like your guardian to do for you?
- What have you been told about the Health Service Executive and the tasks and responsibilities of your social worker?
- How often do you see your social worker? Is this enough? In which way is there contact (skype, phone)? Can you reach him/her when you have a problem?
- Do you understand what your social worker tells you?
- Was/is translation needed?
- Have you had a problem in the last few months? What did you do? Who did you talk to? Who do you trust?
- What do you know about your social worker? Do you feel like you know him/her a little bit? Would you like to know him/her better? What would you like to know?
- Do you think every child should have a social worker? Why?
- How many children should a social worker take care of? Would you like a social worker who only works with you?
- How old do you think a social worker should be? Do you think yours is too old or too young?
- Do you know who your social worker's boss is? Who 'pays' him/her?

14. Return/reunification

- Has someone talked to you about the situation in your country of origin? If so, who? Does your *social worker* know anything about your country and is he/she interested in your country of origin?
- Does anyone support you in your contact with your relatives? If so, who?
- Have you ever heard of the Red Cross? Do you know they provide a service for separated children? If so, who told you about them?
- Did anyone assist you in meeting with the Red Cross to contact your family?
- Some young people may return to their country of origin. Do you think someone should join them? If so, who do you think should go? What should be arranged for children when they return to their country of origin? Who should be responsible for the arrangements?
- Do you think that there should be an automatic search for family?

- Has a family member talked to someone who works with you in Ireland, if so, who? Do you think social workers should have contact with families?

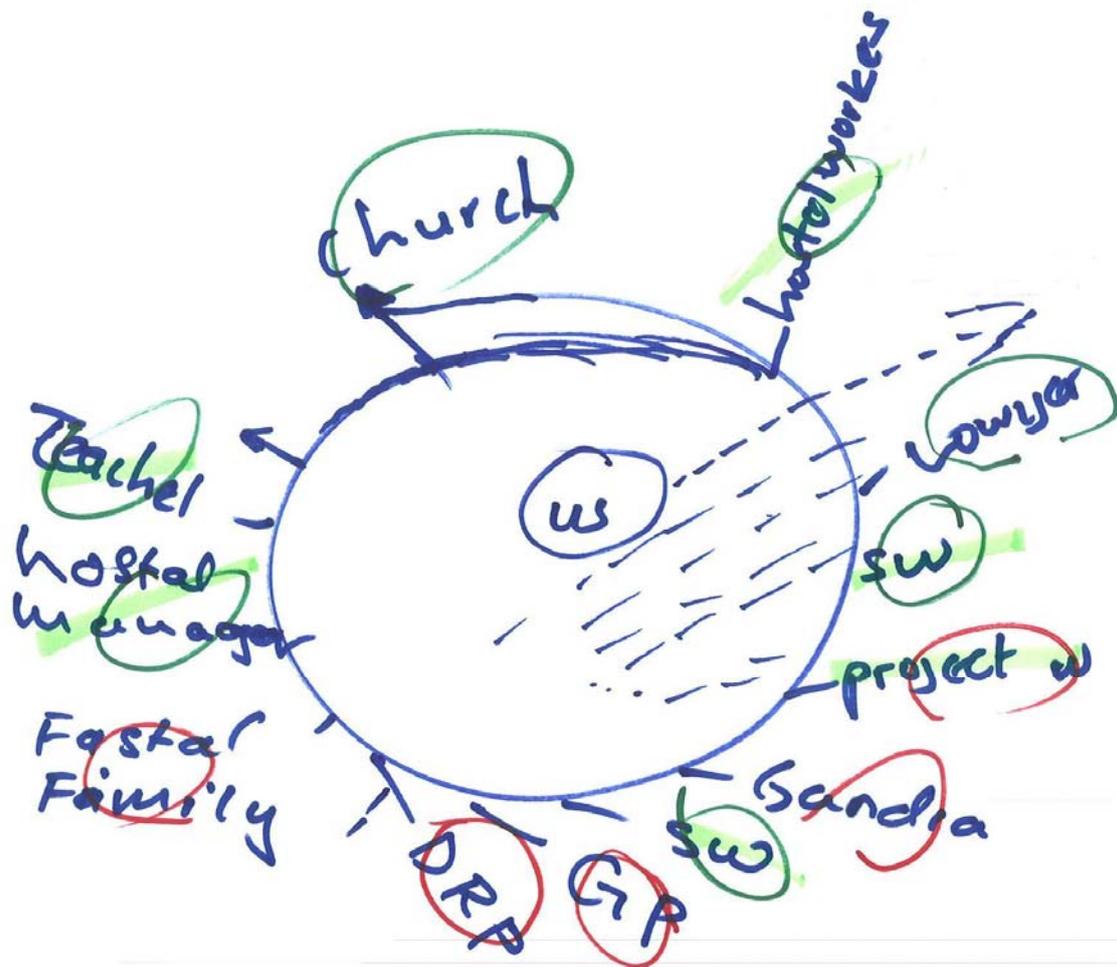
15. Other needs and rights

- Education: are you going to school? What do you learn there? Who is interested in your school life? Does anyone advise you? Who attends meetings at school? Who signs permission slips for school activities? Who helps you make decisions?
- How do you decide what classes to take? Activities to be involved in?
- Healthcare: have you been sick [in the last few months]? Who has helped you? Have you experience difficulties receiving healthcare?
- Do you get enough to eat, how much money do you receive? What kind of things can you do with this money?
- Social life: do you have friends? Where are they from? Do you tell anyone in your life anything about them?
- Emotional support: depending on age of the child. Have you been unhappy about something [in the last few months]? Is there anyone you could feel you could talk to?
- Do you feel secure? Can be in social life, education, residence situation etc.
- Would you know how and where to complain about the people supporting you (or 'people in your life'?)
- Participation/right to be heard: Does your social worker (or care staff, etc) ask for your opinion on decisions to be made?
- What kind of information would you like to receive? In what way (brochure, internet)? Do you have ideas how we can inform children about their rights and the role of the social worker?
- Do you know if anything changes when you turn 18? Do you speak to someone about that? Who?
- Aftercare?

16. How would you make a separated child feel safe if you were a guardian?

17. Would you like to add or comment something that you have not been asked?

Appendix 3



Appendix 4

Figure 1: Total number of asylum applications submitted by or on behalf of separated children and countries of origin up to August 2010.

<i>Total number of applications for asylum 2010²³⁴</i>	<i>Males of total</i>	<i>Females of total</i>	<i>Age 15-17</i>	<i>Total numbers of referrals into care in the Health Service Executive up to August 2010²³⁵</i>
22	8	14	21	<i>Referrals to HSE: 63 Reunification: 10 Taken into HSE Care: 47 Missing: 7</i>

Countries of origin (applications for asylum from separated children)

Nigeria (4), Pakistan (2), DR Congo (2), Zimbabwe (2)Afghanistan, Angola, Cameroon, China, Eriteria, Ethiopia, Georgia, Iraq, Somalia, South Africa, Togo (all 1) ²³⁶

²³⁴ ORAC 2010.

²³⁵ HSE 2010.

²³⁶ Stats do not add up- ORAC.

Appendix 5

Good Practice

INDEPENDENCE AND ADVOCACY

- ✓ Separated children taken into care with a care order where they are provided with a social worker *and* a guardian *ad Litem*.
- ✓ Having an *independent guardian ad Litem* assessing the best interest of the child-considering their views.
- ✓ Social workers who see their role as an advocate for the best interest of the child.

CONTACT

- ✓ Social workers arranging to meet, or ring, separated children during work hours, and occasionally after-hours if the child has a problem or concern.
- ✓ Social workers who visit new arrival separated children at least once a week.
- ✓ Social workers meeting with aged-out minors for coffee/tea.
- ✓ Liberty House in Cork operating an open-door policy for aged-out minors to 'drop-in'.

QUALITY OF HSE CARE TEAMS

- ✓ Diversity of backgrounds, education, culture and religion of social workers on the Dublin Team.

CONCERN FOR THE WELFARE OF THE CHILD

- ✓ Most social workers and project workers followed the young person's academic progress and addressed educational issues as they arose.
- ✓ Social workers asking children questions like are you eating?
- ✓ Social workers continuing to accompany aged-out minors to asylum related appointments.
- ✓ All social workers identified trust, relationship building and looking after the best interest of the child as integral to their role.

PREVENTION OF CHILDREN GOING MISSING FROM CARE

- ✓ Joint Protocol on Children Missing from Care signed by Garda Síochána and the HSE in 2009 which sets out responsibilities of agencies involved with missing children.
- ✓ Often, Cork and Dublin Teams photograph separated children on arrival.

RETURN AND REUNIFICATION

- ✓ Social workers accompanying the separated child to return to their country of origin.
- ✓ Separated children who may be returned or are awaiting return are treated in same way as other separated children in terms of accommodation, health care and education. No separated children being voluntarily returned is placed in alternative accommodation or a residence purpose-built for 'holding' persons being returned.

Appendix 5, cont.

Recommendations

The following recommendations were derived from the report and the gaps identified through interviews with separated children, aged-out minors, service providers and past research. The recommendations were reorganised under the following 13 categories to be used for quick reference for service providers working with separated children. Most categories also include a policy recommendation that would positively affect the ways in which social workers or service providers protect separated children. The last category is solely made up of policy recommendations.

ALLOCATION AND COGNIZABILITY

- ✓ Ensure each child has an allocated social worker. 
- ✓ The guardian should be cognizable and their role should be made clear. The child must be able to recognise who has legal responsibility for them. There should be one key person responsible for the well-being of the child and acting in their individual best interest.
- ✓ Ensure a social worker is appointed at the outset and with as few changes in social workers as possible. 

CARE PLANNING AND DETERMINING THE BEST INTEREST OF THE CHILD

- ✓ All children to be taken into care under a care order that provides the best protection and a durable solution for their individual needs, following an individual assessment, equivalent to that applied to the indigenous Irish, regardless of status. 
- ✓ Ensure every child has an individualised care plan that reflects the views of the separated child in collaboration with the project worker, care staff or foster carers and solicitors during the development of the plan. Give a copy of the care plan to the child. This corresponds with the right to participation and information of the child (CRC Article 12 and 13).
- ✓ Engage in a lengthy assessment to determine the best option for accommodation in consultation with the child. This should be monitored and re-assessed regularly.
- ✓ Incorporate UNHCR guidelines on Best Interest Assessment and Determination Procedures. Ensure best interest process is in the form of a document that is appended to the separated child's care plan.
- ✓ Ensure UNHCR training that deals with Best Interest Determination is shared outside Dublin.
- ✓ The social worker is responsible for determining whether or not return is in the best interest of the child. This decision should be taken with the child views in mind. Use UNHCR guidelines on Best Interest Determination as a reference. 

- ✓ In order to care for the best interest of the child, it is essential that social workers and other service providers take care of their own well-being. Use supervision time to discuss well-being and stress management to avoid 'burn-outs'.
- ✓ Service providers are responsible for monitoring their own work to improve their practice to ensure they are providing the best possible service to separated children in their care.

CONTACT

- ✓ Social workers to manage case load to ensure they are able to maintain reasonable contact with the separated child depending on the needs of the child.
- ✓ The social worker, acting as legal guardian, should meet with the child consistently to reduce reliance on other service providers for tasks that fall within the remit of the separated child's legal guardian. This is in order to prevent the separated child from having to inform large numbers of people of personal and sometimes traumatic information.
- ✓ When the social worker meets with a child in foster care, the social worker should arrange to be able to speak with the child separate from the family. This visit should be face-to-face. Next to face to face conversations it is recommended to give the child contact information of the social worker in order to communicate with the social worker directly and privately.

The aforementioned correspond with the right to information, participation and the right to privacy (CRC Articles, 12, 13 and 16).

- ✓ Provide greater, more consistent, support to new arrivals.
- ✓ Each social worker should manage their case load.

COMMUNICATION, UNDERSTANDING AND PARTICIPATION

- ✓ Develop standard practice and guidelines for the conveyance of information and procedures for effective communication with separated children that takes into account the necessity to build a relationship slowly and only introduce vital information, or immediate concerns, at the first meeting. Explain their legal, education and care circumstances slowly and ensure it is broken down and **repeated**. Child-friendly materials should be available at every HSE regional office for the first meeting with the separated child (CRC Article 13 – Right to Information).
- ✓ The social worker should explain their role and ensure the child understands what their role is.
- ✓ Ensure interpretation and translation services are available.
- ✓ Social workers and service providers to discuss options over long period of time with child, taking their wishes and best interest into account. These discussions to be repeated until

the social worker is certain that the child understands them to enable them to participate in the decision making process.

- ✓ The social worker and service providers should ensure that the child is aware of their right to an interpreter during interviews, assessments or meetings with any professional or service provider. If the child requests an interpreter the social worker should ensure that one is made available, ideally in person or alternatively via telephone. Another young person or friend should not be used in place of a professional interpreter.
- ✓ Inform separated children how and where to complain about their solicitor, social worker and carers (foster or residential) and also whether or not they have rights to request a change and any possible consequences of doing so. This should be accessible and written in a child-friendly way so the child can refer to the information in writing rather than have to approach their social worker to know where to complain (CRC Article 12 and 19).²³⁷

Communication Tips: Use visuals or have the young person repeat things back to you.

ADVOCACY

- ✓ Social workers should be able to be advocates for the child's best interest independently and must be able to deal with conflict with other agencies. Where this is not possible, the social worker should recommend an independent advocate or push for the appointment of a guardian *ad Litem* where the child's needs are not being met.
- ✓ Social workers should be able to speak on behalf of the child without consideration for economic limitations or concerns regarding a conflict of interest with the organisation to which they are affiliated. Where this is not possible, the social worker should refer the young person to work with an independent advocate through an NGO or advocate for the appointment of a guardian *ad Litem*.

COMMUNITY AND CHILD DEVELOPMENT

- ✓ Build a community around the separated child to put in place a support network and to create a family feeling for the young person.
- ✓ Social workers should link separated children in with specialised services, including mentor services and psycho social services.
- ✓ Social workers, as legal guardians, should act as an intermediary between the child, schools, lawyers and other service providers.

AGE ASSESSMENT

- ✓ Ensure that no separated child is subject to intrusive medical examinations that are contrary to Irish legislation through adequate support and representations from the social worker.

²³⁷ How to get help making an independent and confidential complaint: See Irish Association of Young People In Care, an independent agency that will assist. <http://www.iaypic.org/>.

- ✓ Work towards ensuring the child is supported through age assessment procedures. Appeal the decision with ORAC if, after observation, the child appears to be of a different age.
- ✓ The HSE to develop clear and transparent guidelines for social workers to support young people through age-assessment procedures. 
- ✓ Clear guidelines should be developed to regulate an age-assessment protocol at the national level, keeping the child's right to confidentiality in mind.

ASYLUM

- ✓ Support separated children by talking them through the asylum process often and let them know you are on their side and responsible for their care and well being until they reach the age of majority.
- ✓ Make information about the protection and immigration processes in different languages available in a child-friendly format available in hard copy to every separated child from when they first arrive to Ireland and repeat information regularly to check for understanding.

TRAINING AND KNOWLEDGE

- ✓ Social workers or service providers should prepare themselves regarding what to expect in the interview room and know their role and responsibilities in the process (e.g. asking for breaks for the young person when they appear distressed).
- ✓ Social workers should ensure that they are aware of the signs that a child has been trafficked and should be familiar with the relevant legislation and procedures for the protection of victims of trafficking.
- ✓ The HSE should make training available to social workers and other service providers in areas related to, but not limited to, legal issues surrounding trafficking, the asylum process, immigration law and cultural sensitivity. 
- ✓ Each social worker is responsible for their own professional development and should seek out training that will contribute to this continuous development.
- ✓ Ask for help every step of the way.

PREVENTION OF CHILDREN GOING MISSING FROM CARE

- ✓ The social worker is responsible for collecting identity information to the best of their ability.
- ✓ The HSE should establish guidelines ensuring that identity information is documented, accompanied by a photograph, and kept on file for each separated child. 

- ✓ The social worker should know the signs of trafficking, know how to act upon such signs and report those signals to the relevant authorities.
- ✓ Provide a consistent presence and build a relationship built on trust with the young person.

RETURN AND REUNIFICATION

- ✓ All social workers working with a separated child should contact the Irish Red Cross as soon as possible, to discuss options.
- ✓ Restoring family links to be included as part of care plan and shared with the child.
- ✓ Ensure the separated child knows they have the right to pursue an application to ‘restore family links’ **independently** and the child knows that the process is confidential.
- ✓ Social workers ensure that they are not contacting any person or body in the child’s country of origin that may put the child or the child’s family in danger. Family tracing should only be undertaken in consultation with the Irish Red Cross, or through the IOM where return is determined by the HSE to be in the child’s best interest.
- ✓ If the social worker initiates a restoring family links search for the separated child, he/she should let the Irish Red Cross know the new address for the child if they “age-out”.²³⁸
- ✓ Formalise policy regarding accompaniment for separated children through the returns process and for following up after the returns process. Ensure the social worker accompanying the child is known to them.
- ✓ Social workers should maintain contact with the separated child upon return until such time they are satisfied that the welfare of the separated child is being upheld in accordance with best interest.
- ✓ Social worker to make contact with IOM to get updates if they do not have contact with the child or the child’s guardian or social worker in the country of return.



RELATIONSHIP BUILDING: TRUST AND DOING ‘FUN’ THINGS

- ✓ Social workers respect the child’s right to confidentiality.
- ✓ Keep changes in social workers to a minimum.
- ✓ If it is not possible for the social worker to engage in fun activities with the children in their care, it is their responsibility to ensure that child is linked in with activities that are

²³⁸ Often the Irish Red Cross has to search for the aged-out minor after they leave HSE care when they need to contact them regarding their application. This happens because the HSE does not inform the Red Cross of their move and new address.

appropriate to the child's needs and interests, (CRC Article 31, the right to leisure, play and recreational activities).

Policy

- ✓ Ensure service providers have a budget to do fun things with separated children to facilitate a relationship built on trust and/or enough time to meet a separated child in a casual setting.
- ✓ Ring your separated child just to check-in, without any other administrative reason.

AFTERCARE

- ✓ Advocate for after-care support for all separated children. Social workers should maintain contact with the separated child until such time they are satisfied that the child is able to continue in Ireland independently and has an alternative support system in place - which may be a voluntary mentor.
- ✓ Provide after-care support for separated children, regardless of status.
- ✓ Support separated children through and after ageing-out and prepare them to live independently before they reach the age of 18.

Policy

Policy

EQUITY OF CARE- TRANSITION TO A NEW SYSTEM OF CARE

- ✓ Proper monitoring for the programme moving towards the 'Equity of Care'. Ensure adequate support is given to social workers who do not have experience working with separated children.
- ✓ Develop specialised services throughout country or keep separated children where services are established. Dublin Team should maintain contact with regional Teams for support and information. This is to give adequate support to the guardian (CRC Article 18(2)).
- ✓ Ensure Dublin expertise is shared outside Dublin.
- ✓ Ensure separated children have access to education when they are moved out of Dublin- including access to language supports.



Closing a Protection Gap

The type of protection and care a separated child receives from a guardian depends upon the country which they have - often randomly - entered. Separated children in Europe should get the guardian they are entitled to irrespective of the European Union country they entered.

The mission of this project is to improve the situation and opportunities for development of separated children by means of closing a protection gap for separated children in Europe by developing core standards with a focus on qualifications of guardians based on the views of separated children in relation to their rights according to the Convention on the Rights of the Child and European Union directives.

This project provides an instrument to improve the qualifications of a guardian to take the special needs and rights of separated children into account.

Endorsed by:



Irish Refugee Council
2nd Floor Ballast House, Aston Quay, Dublin 2
www.irishrefugeecouncil.ie
info@irishrefugeecouncil.ie
01 764 5854