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# **A Guardianship Service for All Unaccompanied Children in Wales**

## **A Research Briefing**

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## **About this briefing**

This briefing has been produced collaboratively by The Children's Society, The Bevan Foundation, Children's Legal Centre Wales, and The British Red Cross. It is based on the collective knowledge of all four partners, their research into the issue of Guardianship for Unaccompanied Children, and interviews with key stakeholders.

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*"If you don't have a guardian, it's like trying to look in the dark."*

Member, Youth-Led Commission, The Children's Society

## **Executive Summary**

### **Recommendation: Introduce a Guardianship Service on a statutory basis which would provide a guardian for every Unaccompanied Child<sup>1</sup> in Wales.**

Unaccompanied children and young people are some of the most vulnerable members of our society, who are required to engage with the complex process of seeking asylum. In our briefing, we make the case for a national Guardianship Service for all Unaccompanied Children Wales. We outline the need for such a service and present evidence of its benefits. Finally, we identify the key characteristics of an effective service and outline the key services that Guardians would offer.

### **Calls for a Guardianship Service**

The call for a Guardianship Service for all Unaccompanied Children has been made over many years and is supported by respected bodies within Wales and internationally:

- The establishment of a Guardianship Service has been a clear expectation of the UN Committee on the Rights of the Child for over twenty years. In its 2023 Concluding Observations, the UN Committee on the Rights of the Child again recommended that a Guardianship Service should be introduced for all Unaccompanied Children.
- Calls for a Guardianship Service in Wales have been made since 2005, with the most recent call made in 2023 in a report commissioned by Welsh Government on immigration advice services in Wales.
- Welsh Government's current Nation of Sanctuary Plan, published in 2019, sets out a vision for welcoming, supporting, and integrating people seeking sanctuary in Wales. Underpinned by the values of the United Nations High

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<sup>1</sup> Unaccompanied Children" are children under the age of 18 years who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

Commissioner for Refugees (UNHCR), the Nation of Sanctuary Plan makes several commitments that have particular resonance for Unaccompanied Children in Wales. It also committed to piloting a Guardianship Service in Wales, although that has not come to fruition.

- During the Fifth Senedd, the Equality, Local Government and Communities Committee recommended that Welsh Government should introduce a Guardianship Service in Wales.
- Over the past few years, The Children Society has worked with the Youth-led Commission, a group of young people with lived experience of navigating the asylum-seeking process. This group is calling for the introduction of a Guardianship Service in Wales and England.

### **Concerns addressed by a Guardianship Service**

Our briefing identifies gaps in support for Unaccompanied Children, particularly in respect of their ability to access justice and engage with the process of seeking asylum. We have identified the following concerns that would be addressed by the establishment of a national Guardianship Service for all Unaccompanied Children in Wales:

- The Social Services and Well-being Act (Wales) 2014 places a duty on local authorities to help children with accessing advice, assistance or support that would help meet any of their needs identified in their needs assessments. In the case of Unaccompanied Children that might entail support with navigating the process of seeking asylum. The Code of Practice requires social workers and personal assistants to work with legal representatives and Home Office caseworkers, and to provide support to young people seeking asylum.
- Based on data received from our Freedom of Information request, between 2020 and 2023, only 257 Unaccompanied Children, or 43% of Unaccompanied Children received support specifically for engaging with the process of seeking asylum.
- In 38% of local authority areas in Wales, social workers are the only professionals involved in helping Unaccompanied Children to obtain legal advice and representation.
- Only 38% of local authorities have working relationships with immigration lawyers or legal advice providers in their local areas, and only 47% of local authorities work with immigration lawyers or legal advice providers, within and

without their local areas, to assist Unaccompanied Children with their asylum claims.

- The introduction of the Illegal Migration Act presents a real risk to the rights of Unaccompanied Children. It poses difficulties to local authorities in Wales as they carry out their duties to support Unaccompanied Children. A Guardianship Service would provide tangible and vital protections.

## **Benefits of a Guardianship Service**

A Guardianship Service would have the following benefits:

- Advocating for the child and promoting their best interests.
- Improving legal outcomes for Unaccompanied Children.
- Identifying and preventing exploitation, trafficking, and radicalisation.
- Protecting children's rights and human rights.
- Supporting integration.
- Improving educational outcomes.
- Benefits for professionals working with Unaccompanied Children, such as cost savings and reducing workloads.

## **The work of Guardians**

We have identified some key characteristics of a Guardianship Service. The Service should be:

- Available to every Unaccompanied Child in Wales, and to all Unaccompanied Children on arrival in Wales.
- Independent of any statutory body. Able to protect the rights and interests of children without fear or favour.
- Staffed with Guardians trained to OISC Level 2 or IAAS equivalent or working towards achieving these qualifications. This will provide huge benefits to children as they navigate their way through the asylum process and will mitigate some of the effects of a serious decline in immigration legal provision in Wales.

- Work closely and supportively with social workers, legal advisors, Home Office caseworkers, schools, colleges, hospitals, and third sector asylum support agencies working with children.
- Remain engaged with Unaccompanied Children to provide a continuous source of support and protection as they grow towards independence and adulthood.
- Staffed with Guardians who are empowered to speak out for the children with whom they work, protect their interests, and promote and defend their rights.
- Sufficiently resourced to provide ongoing and comprehensive support to Unaccompanied Children.
- Built on the expressed needs of Unaccompanied Children, who should be involved in the development of the service.
- Staffed with Guardians who provide the following forms of support:
  - Building trust and a supportive relationship with the child.
  - Helping the child with orientation and social adjustment.
  - Helping the child to obtain legal advice and representation.
  - Keeping the child informed of legal and other proceedings.
  - Working with children to help them develop statements to support their asylum claims.
  - Attending Home Office appointments with the child.
  - Liaising with lawyers, social workers, healthcare professionals, police and Home Office officials on behalf of the child.
  - Explaining processes (e.g. legal, care, and education), ensuring that the child understands what is happening to them, the decisions that are being made, and the options that they have.
  - Ensuring that the voices and choices of children are heard and respected.
  - Facilitating the child's attendance at and engagement in meetings.
  - Providing children with holistic support to enable integration, continued advice and emotional support.

- Making referrals to specialist services (e.g. to address physical or mental health concerns, provide trauma-informed services, cultural services, or socialisation and play appropriate to the child's needs).

## **Opportunities**

- The refreshed Nation of Sanctuary Plan and the upcoming Social Care (Wales) Bill provide opportunities for introducing a Guardianship Service in Wales.



*"It is impossible to overstate how important a Guardian is to an unaccompanied young person. These young people go through various complex and traumatic legal processes simultaneously. Their Guardian is there, every step of the way, to make sure that the young person understands and can participate effectively in these processes... Simply put, every unaccompanied child must have one."*

Andy Sirel, Legal Director and Partner, JustRight Scotland

# 1. Introduction

*“These young people are caught between a traumatic past and an uncertain future. They desperately need a trusted person to protect them as their social workers do not have the knowledge and capacity to provide this sort of support for children going through immigration process, meaning that unaccompanied young people have to face the complex and frustrating asylum and immigration system alone.”*

Member, Youth-Led Commission, The Children’s Society

Unaccompanied Children are some of the most vulnerable members of our society, who are required to engage with the legal process of seeking asylum, often while experiencing trauma and upheaval. Children require assistance to help them navigate this complex and often confusing process. They need a consistent and knowledgeable point of contact and support and a trusted advisor to protect and explain their rights. Yet all too often, Unaccompanied Children in Wales are left without the knowledge, support, and advocacy that they need.

This briefing sets out the evidence in support of the establishment of a national Guardianship Service that would be available to every Unaccompanied Child when they arrive in Wales. It outlines the legal and policy context in which such a service would sit and presents the numerous calls for a Guardianship Service made by various stakeholders, policy documents, and international bodies over the course of several years. The briefing goes on to explore existing services, potential models for Guardianship, and the current situation in Wales which gives rise to the need for Guardianship for all Unaccompanied Children.

Finally, we set out our vision for a national Guardianship Service in Wales and explore some of the benefits and key characteristics of an effective and child-focused service.

## 2.1 Notes on methodology

Some of the findings in this briefing arose from a Freedom of Information request sent to all 22 local authorities in Wales. In this, we asked for information relating to support provided by local authorities to Unaccompanied Children, primarily in respect of the asylum-seeking process. We also asked for information about local authorities’ working relationships with immigration solicitors within their local areas. We received responses from 21 local authorities.

We have incorporated evidence and quotes from interviews carried out with Guardianship Scotland and JustRight Scotland. We approached the Independent Child Trafficking Guardianship Service but due to the pressure of work, no-one from the service was available for interview.

Quotes from young people within this briefing were gathered by The Children's Society and are from young people who participate in their Youth-Led Commission.

## 2. The basis for a national Guardianship Service

*"We just want to be in a safe country, in a safe environment. The whole system feels overwhelming. It's like too many things are happening at the same time."*

Member, Youth-Led Commission, The Children's Society

A commitment to respecting, protecting, and fulfilling the United Nations Convention on the Rights of the Child (UNCRC) has run through the heart of legislation and policy in Wales since early devolution.<sup>1</sup>

Since 2011, under the Rights of Children and Young Persons (Wales) Measure 2011, all Welsh Government Ministers must give due regard to the UNCRC and its optional protocols in the exercise of all of their functions.<sup>2</sup> The duty of due regard to the UNCRC is also placed on Welsh local authorities under the Social Services and Well-being (Wales) Act 2014.<sup>3</sup> Any child, including one seeking asylum, should be able to enjoy all of their rights set out in the UNCRC, and should be accorded the same protection as any other child permanently or temporarily deprived of their family environment.

Welsh Government policy acknowledges that Unaccompanied Children are highly vulnerable, and that children should be treated as children first and migrants second.<sup>4</sup> When we examine the obligations and commitments made in these policies, set against the benefits of a Guardianship Service, it is surprising that a Guardianship Service for all Unaccompanied Children has not yet been implemented in Wales. There have been repeated and consistent calls to establish a statutory Guardianship Service since early devolution and a Guardianship Service has been a clear expectation of the UN Committee on the Rights of the Child for over 20 years.

The introduction of legislation by UK Government, such as the Illegal Migration Act, threatens children's rights, is not compatible with Welsh law or policy, and presents a pressing need for a Guardianship Service that will help to safeguard the best interests of young asylum seekers.<sup>5</sup> Such a scheme would also help to deliver aims set out in the Welsh Government's Nation of Sanctuary Plan,<sup>6</sup> protect children's rights enshrined in international and Welsh law, and meet the seven goals under the Wellbeing of Future Generations (Wales) Act 2015.<sup>7</sup>

## 2.1 Repeated and consistent calls for a Guardianship Service in Wales since early devolution

Since 2002, in consecutive Concluding Observations to the UK State party and devolved administrations, the UN Committee on the Rights of the Child has recommended the establishment of a Guardianship Service for unaccompanied asylum seekers. This call is supported by evidence from the experience of young asylum seekers in Wales.

A detailed report published in 2005 entitled 'Uncertain Futures' by Save the Children Wales highlighted the significant needs of young asylum-seeking children in Wales. It recommended that:

*"The Welsh Government should establish a system of guardianship to ensure that the best interests principle is maintained and that separated children are supported through the asylum system."<sup>8</sup>*

This call was later made by the Wales UNCRC Monitoring Group, a national alliance of non-governmental organisations and academic agencies, in 2006<sup>9</sup> in a Wales wide conference and report on children's rights and in 2007<sup>10</sup> in the NGO alternative report that was submitted to the UN Committee on the Rights of the Child.

The call for a Guardianship Service was reiterated by the UN Committee on the Rights of the Child in their Concluding Observations 2008. In a report published by Save the Children in the same year, they again called for a Guardianship Service stating:

*"For the UK and Welsh Assembly Government to secure a legal duty for every separated child to have a statutory guardian to provide support to advise on the child's best interests in line with the UN Concluding Observations 2008"<sup>11</sup>.*

At this time Welsh Government made commitments to explore the potential for such a service (in the Refugee Inclusion Strategy 2008 and the consultation document for the Delivery Plan), but the work failed to be progressed<sup>12</sup>.

The call was again made by the Wales UNCRC Monitoring Group in 2015 in their report to the UN Committee on the Rights of the Child<sup>13</sup>. In 2016, Recommendation: 77 (b) of the UN Committee's Concluding Observations stated:

*"Establish statutory independent guardians for all unaccompanied and separated children"<sup>14</sup>.*

As part of an Inquiry undertaken by the then National Assembly's Equality, Local Government and Communities Committee in 2017,<sup>15</sup> entitled "'I used to be someone": Refugees and asylum seekers in Wales,' they recommended:

*"The Welsh Government should establish a Guardianship Service for Wales, supported by peer networks, as part of reaffirming Wales's commitment to welcome unaccompanied asylum-seeking children."*

In its 2019 Refugees and Asylum Seekers Plan, Welsh Government had committed to introducing a Guardianship scheme pilot, but unfortunately that commitment was not realised.<sup>16</sup>

The Wales UNCRC Monitoring Group report to the UN Committee on the Rights of the Child as part of the 6/7th reporting process again called for a statutory Guardianship Service in 2022.<sup>17</sup> In the examination of the UK State party and devolved administrations (May 18th/19th 2023) the UN Committee on the Rights of the Child asked questions regarding why unaccompanied asylum-seeking children, do not have access to an independent guardian in all regions of the UK. They reiterated their recommendation for a Guardianship Service in the 2023 UK Concluding Observations:

*"Develop a consistent, statutory system of independent guardianship for all unaccompanied children, and ensure that all unaccompanied children throughout all jurisdictions of the State party are promptly identified and appointed a professionally trained guardian<sup>18</sup>."*

The Committee expressed their concerns about Unaccompanied Children going missing from hotels. At least 440 children have been abducted from hotel accommodation in the UK since 2021.<sup>19</sup> Children taken from hotels in Sussex and Kent have been found in North and South Wales.<sup>20</sup> As has been recognised in Scotland ([see Section 3.3](#)) Guardians provide stability and help children recognise exploitation and trafficking, which are very real threats to Unaccompanied Children in Wales, and indeed across the UK.

The Committee also expressed deep concerns regarding the persistent use of unreliable methods for determining a child's age. Guardians support children to navigate complex age assessment processes preventing them from being wrongly assessed and ending up in unsupervised adult accommodation and detention, forcing them to share rooms with unrelated adults with no safeguards in place.<sup>21</sup>

We believe that a Guardianship Service will also help to deliver the UN Committee on the Rights of the Child's 2023 recommendations:

*“50 (d) Strengthen measures to ensure that all asylum-seeking, refugee and migrant children have equal and prompt access to education, health services, housing, psychosocial support, and social protection including benefit entitlements;*

*“(50 c) ensure that children receive age-appropriate information and legal advice about their rights, asylum procedures and requirements for documentation; that their best interests are given primary consideration in all asylum processes; that their views are heard, taken into account and given due weight; and that they have access to child-friendly justice mechanisms and remedies.”<sup>22</sup>*

Finally, the call for Guardianship was reiterated in a recommendation in a report in 2023, for Welsh Government, written by Dr Jo Wilding<sup>23</sup>.

## 2.2 The Nation of Sanctuary Plan

*“Equality and Human Rights are central to the work of the Welsh Government and our vision for Wales. We believe in fair treatment of every person, especially those who are most marginalised by social systems that prevent people from meeting their basic needs. We work to ensure a fairer future which enables equitable access to services and human needs to support every individual to thrive.”*

Welsh Government, Nation of Sanctuary – Refugee and Asylum Seeker Plan<sup>24</sup>

The Welsh Government’s Nation of Sanctuary Plan sets out a vision for working in devolved areas to welcome, support, and integrate people seeking sanctuary in Wales. Underpinned by the values of the United Nations High Commissioner for Refugees (UNHCR), the Plan makes several commitments that have resonance for Unaccompanied Children in Wales. A well-structured and robust Guardianship Service would support and extend the delivery of these commitments.

*Goal: Ambitious & Learning - Action 10: Support unaccompanied refugee and asylum-seeking children to ensure they have access to the advice and advocacy they need.*

When formulating the Nation of Sanctuary plan, the Welsh Government recognised the positive impacts that a Guardianship Service for Unaccompanied Children would have on children’s access to advice and advocacy. To support the objective, a commitment was made within the Nation of Sanctuary Plan to fund a pilot measure in relation to a Guardianship Service:

*Welsh Government will:*

*"Provide funding to local authorities during 2019 to support a pilot measure in respect of Guardianship, building upon existing and ongoing advocacy support under the Social Services and Well-being (Wales) Act 2014 and the Independent Child Trafficking Advocacy service."*

This pilot has never been implemented.

The time for a pilot has been overtaken by rapid developments in the asylum system and legal provision, which demand protection for Unaccompanied Children in Wales now ([see Section 3.1](#)). The renewal of the Nation of Sanctuary Plan presents an ideal opportunity to renew this commitment to access to justice, and to implement in full a Guardianship Service for all Unaccompanied Children.

An evaluation of a similar scheme in Scotland found that the independent position of Guardians helps them to quickly build trust with children ([see Section 3.3](#)). Guardians help children to navigate the asylum process. They accompany children to meetings with the Home Office, explain letters and decisions, facilitate access to legal representatives, support children to share traumatic experiences, and improve legal advocates' understanding of the children for whom they are working. Vivaly, the scheme has been shown to result in more grants of refugee status and humanitarian protection<sup>25</sup>.

*Goal: Prosperous & Secure - Action 9: Work towards preventing people seeking sanctuary, including those with No Recourse to Public Funds (NRPF), becoming human trafficking or modern slavery victims.*

The Independent Child Trafficking Guardianship Service in England and Wales provides advice, guidance, and support for children who have been exploited through trafficking and Modern Slavery ([see Section 3.2](#)). However, the service can only be accessed once a child is identified as a victim of trafficking or Modern Slavery and referred to the service.

By building early trust and providing holistic support, a Guardianship Service for all Unaccompanied Children would be better placed to identify signs of trafficking and exploitation, and to help children to understand when they are being exploited or groomed for exploitation. It would be more effective at prevention than the existing service alone and would provide better, and more widespread, protection to children vulnerable to trafficking and Modern Slavery.



## 2.3 Meeting legal duties to Unaccompanied Children

The Social Services and Well-being (Wales) Act 2014 is the primary legislation that sets out how Unaccompanied Children are to be supported. According to Section 21 of Part 3 of the Act, local authorities are required to conduct a needs assessment to determine whether the provision of, among other things:

*"...care and support, preventative services, or information, advice or assistance, could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment, [as well as] assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs, and take account of any other circumstances affecting the child's well-being."*<sup>26</sup>

Linked to the assessment of "other matters [that] could contribute to the achievement of outcomes or otherwise meet needs", Welsh Government stated in a briefing on supporting Unaccompanied Children that the needs assessment should address matters such as providing "assistance with the child's asylum claim and the provision of appropriate accommodation".<sup>27</sup>

Additionally, the Code of Practice for Part 6 of the Act includes a section on support for "care leavers who require additional support." The section states that:

*"...claiming asylum can be a complex process, and social workers/PAs<sup>2</sup> should work with the young person's legal representative and the dedicated case owner at the UK Border Agency<sup>3</sup> to ensure that the young person understands the process of claiming asylum and the possible outcomes, and to provide them with necessary support".*<sup>28</sup>

Children's Legal Centre Wales has developed guidance for social workers who work with Unaccompanied Children. The guidance includes, amongst other things, information on primary needs (interpretation, safeguarding, accommodation, health and wellbeing, and education and training), as well as information on the age assessment process and responding to suspected trafficking. It also includes guidance for how social workers can help Unaccompanied Children with the asylum-seeking process, such as supporting children with initial and substantive interviews and with obtaining legal advice. The guidance states that the "local authority must support the child to obtain legal advice".<sup>29</sup>

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<sup>2</sup> Personal Advisers. Personal Advisers are appointed to offer advice, support, and information to care leavers, supporting them to move towards independence.

<sup>3</sup> The UK Border Agency has been replaced by UK Visas and Immigration (UKVI), the branch of the Home Office which operates the visa system and decides asylum claims.

As we have seen above, a Guardian can contribute greatly to the needs assessment process and can be a co-ordinating point of contact between the child, the social worker, the legal representative, and the Home Office caseworker. Our Freedom of Information Request identified that work with Unaccompanied Children seeking asylum adds significantly to social worker caseloads in Wales. Despite this, more than half of children are not receiving the support that they need to understand the process of claiming asylum and to access legal support ([see Section 3.4](#)). A Guardianship Service would provide dedicated support that would meet this need and that would complement and relieve pressure on social workers in Wales.

### 3. A national Guardianship Service in context

*"I managed to survive [the asylum process] but I know that not all young people make it through. I have known people that have committed suicide because of the pressure. Most importantly, the fear of going back to their country."*

Member, Youth-Led Commission, The Children's Society

#### 3.1 The Illegal Migration Act

The UN Committee on the Rights of the Child in its Concluding Observations 2023 stated that if the Illegal Migration Bill was passed it would violate children's rights under the UNCRC and the 1951 Refugee Convention and urged the UK Government to bring the Bill in line with the State party's obligations under international human rights law.<sup>30</sup> Now in law, the Illegal Migration Act is a serious threat to the rights of Unaccompanied Children.

Children's Legal Centre Wales, Bevan Foundation, and The Children's Society submitted a joint briefing paper in response to the call for evidence from several Senedd Committees in advance of the 2023 Senedd vote on a Legislative Consent Motion in respect of the then Illegal Migration Bill<sup>31,4</sup> This paper sets out in detail the threat to children's rights posed by the Illegal Migration Act.

The legislation creates conflicting duties on the part of the Home Secretary and local authorities in respect of 18-year-old care leavers who have been accommodated as Unaccompanied Children. In future it may render impossible local authority support for unaccompanied care leavers. The effect that this will have on Unaccompanied Children as they near their eighteenth birthdays cannot be underestimated.

As we have noted, hundreds of children have gone missing asylum hotels.<sup>5</sup> The pressure to abscond and the risks of grooming and radicalisation will grow significantly when adulthood, and therefore prospective detention and

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<sup>4</sup> The Senedd withheld consent to the Illegal Migration Bill on June 20<sup>th</sup> 2023  
<https://record.assembly.wales/Plenary/13381#A80494>

<sup>5</sup> In December 2023, the Home Office's practice of routinely accommodating Unaccompanied Children in hotels was ruled unlawful by the High Court. Hotels must not be used to accommodate children apart from for very short periods in true 'emergency situations and must not be a substitute for local authority care. See: <https://www.ecpat.org.uk/News/ecpat-uk-wins-legal-challenge>

deportation, is pending.<sup>6</sup> Guardians have a vital role to play in ensuring that children's rights are protected, and in reassuring and guiding Unaccompanied Children and care leavers where there are legal options to remain in the UK. We explore this further in [Section 4.3](#).

It is vital that Unaccompanied Children facing detention and deportation have continued advocacy and support beyond their time in local authority care. A Guardianship Service could provide this continuity of support into adulthood and help to protect the rights of young people facing detention, deportation, or removal into Home Office accommodation.

Sections 57 and 58 of the Act relate to the National Age Assessment Board and provide for scientific methods of age assessment, which may include scanning, X-raying, or measuring parts of the body, checking teeth, DNA sampling, and physical examination. The right of appeal against age assessment is removed. These provisions of the Act are not yet in force, but in September 2023 the UK government laid draft regulations before Parliament that, if passed, will authorise the new use of x-rays and magnetic resonance imaging (MRI)<sup>32</sup>. No impact assessment has been produced regarding these regulations.

The evaluation of the Scottish scheme ([see Section 3.3](#)) found that Guardians play an important role in protecting children subject to age assessment. Guardians will advocate strongly for children and their independence from local authorities means that they will not be subject to potential future measures under the Act that can require local authorities to share information with the Home Office.

## 3.2 Existing services for Unaccompanied Children in Wales

Section 48 of the Modern Slavery Act 2015 makes provision for Independent Child Trafficking Advocates in England and Wales, referred to as Independent Child Trafficking Guardians since 2019.<sup>33</sup> The Independent Child Trafficking Guardianship Service in England and Wales is commissioned by the Home Office and delivered by Barnardo's.<sup>34</sup> It offers advice, guidance and support for children (under age 18

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<sup>6</sup> An Unaccompanied child in Northern Ireland has secured High Court permission to challenge the Illegal Migration Act. It was argued that the legislation could provide Unaccompanied Children with an incentive to run away in a bid to avoid removal once they turn 18 creating opportunities for them to be exploited by traffickers. The Act has been argued to be in breach of the Windsor Framework and the European Convention on Human Rights.

<https://www.msn.com/en-us/news/world/teenage-asylum-seeker-secures-high-court-permission-to-challenge-illegal-migration-laws/ar-BB1idaoV>

years) who have been exploited through trafficking and Modern Slavery. The service also provides support and guidance for professionals working with young people who are victims of trafficking and Modern Slavery. The service is currently operational in Wales and in several regions in England.<sup>35</sup>

Consequently, all children identified as potentially trafficked should be referred into the service and the service will then allocate the case for direct support to the child or for support via the Regional Practice Co-ordinator.

The UK Government committed to rolling out the Independent Child Trafficking Guardians Service nationally, however, it has only been rolled out to two-thirds of all local authorities and there is increasing and high demand for the service.<sup>36</sup> There is no confirmed timeline for full national rollout, even though Guardianship for trafficked children has been enshrined in law in England and Wales for eight years. This leaves significant numbers of trafficked children without specialist support.

Of great significance, the Guardianship Service is only for children identified as potential victims of modern slavery and trafficking and not all separated migrant children, as is the case in Scotland. We believe that it is urgent that all Unaccompanied Children are provided with protection and support, and that a universal Guardianship Service would be more effective in identifying and preventing trafficking and exploitation.

### 3.3 The Scottish Guardianship Service

The Scottish Guardianship Service is of enormous benefit to young people, protecting vulnerable and isolated children in a turbulent and often hostile environment. Legal representatives, too, speak highly of the Service. JustRight Scotland, which, among other services, offers legal representation and advocacy for Unaccompanied Children in Scotland, has worked closely with the Scottish Guardianship Service since 2010. Guardians have had a major impact on JustRight Scotland's work with Unaccompanied Children, undertaking varied roles from supporting children through the asylum process, to ensuring that confused and traumatised children attend appointments on time.

*The Guardians help lawyers effectively give advice and take instructions, they help build bonds of trust, and they can be invaluable in helping young people evidence their cases and talk about their experiences. More than that, they provide vital advocacy in the best interests of the child, without fear or favour. I often reflect on the differences between the experiences of my young people who*

*have a Guardian and those that don't. Sadly, the chasm is huge and we see that the risks of harm, exploitation, re-trafficking or simply falling through the cracks are much higher for those who don't have a Guardian in their lives.*

Andy Sirel, JustRight Scotland

Beyond the asylum system, Guardians ensure that children understand and can exercise their rights, explaining processes and services, and advocating for them where necessary. Guardians are independent of government, local authorities, and other statutory services. They sit outside of the legal system and have no political allegiance. This independence ensures that they can always put children first.

An evaluation of the Scottish Guardianship Service in 2022<sup>37</sup> found that the Service has a major impact in helping children to navigate the asylum system, in orienting them in their new environment, in improving the quality of information given to children from other professionals, and in making interactions with children more child-focused and child-friendly. Guardians are “key in supporting children’s access to immigration lawyers and facilitating appointments with them” and they help children to gather and collate facts and evidence in support of their asylum claim.

Crucially, Guardians in Scotland working in the Service are trained to or working towards OISC Level 2, a qualification which gives them a sound understanding of asylum law and which enables them to effectively support the legal process, as well as giving quality and accurate advice themselves. A similar service in Wales would have an enormous impact on children access to immigration justice, which is under severe threat from the urgent shortage of qualified immigration advisors and the near collapse of immigration legal aid (see Section [3.5](#)).

The evaluation of the Scottish Guardianship Service found that Guardians were even able to affect the implementation of the asylum process, speeding up or slowing down parts of the process, and advocating for decisions to be made without interview, where this was in the interests of the child concerned. Ultimately, the Scottish Guardianship service has resulted in an increase in positive asylum decisions, demonstrating its value to Unaccompanied Children in Scotland.

### 3.4 Local authorities

To better understand what support is currently available to Unaccompanied Children and young people in Wales, particularly at a local level, we submitted a Freedom of Information (FOI) request to all 22 local authorities in Wales. In the FOI request, we asked for information on support that is available for Unaccompanied

Children living in each local authority area to help with understanding and engaging with the process of seeking asylum. By this we mean:

- Helping the child to obtain legal advice and representation.
- Keeping the child informed of legal and other proceedings.
- Liaising with lawyers, social workers, healthcare professionals, police and Home Office officials on behalf of the child.
- Working with young people to help them develop statements to support their asylum claims.
- Attending Home Office appointments with the child.
- Providing children with holistic support to enable integration, continued advice and emotional support.

We also asked in our FOI request how many Unaccompanied Children are looked after or supported by each local authority, as well as the number of Unaccompanied Children looked after or supported by their local authority who received support for seeking asylum between 2020 and 2023. By 'support', we mean the type of support that we described above.

We received 21 responses from 22 local authorities. Responses show that 591 Unaccompanied Children are looked after or supported by local authorities in Wales, with 240 children and young people coming to the care of Welsh local authorities via the National Transfer Scheme.

Based on responses to our FOI request, most local authorities currently provide support to Unaccompanied Children who are navigating the asylum process. Social workers know the children with whom they work, and it is important for these children that social workers continue to support them as they engage with the process of seeking asylum. However, only 257 Unaccompanied Children, or 43% of Unaccompanied Children, received support specifically for engaging with the process of seeking asylum.

Although we welcome the support with the process of seeking asylum that is given by local authorities to Unaccompanied Children, information from local authorities shows that the majority of Unaccompanied Children in Wales have not accessed and are not accessing this support.

This shortfall might be due to several reasons, such as social workers' workloads or lack of legal advice provision in a given area. We should also acknowledge that it might be the case that some of these children will already have been granted

refugee status and will no longer require this form of support. However, it is a cause for concern that less than half of all Unaccompanied Children in Wales are receiving support from their local authority to engage with the asylum process. This does not meet the requirements of the Code of Practice for Part 6 of the Social Services and Well-being (Wales) Act.

Where support to seek asylum is provided by local authorities, it places a significant responsibility on social workers. According to information received from our FOI request, social services professionals either lead in the provision of support, or are solely responsible for supporting Unaccompanied Children with seeking asylum in between a third and almost a half of local authority areas in Wales. By 'social services professionals', in this instance we mean social workers and personal advisors, either working alone or together.

Additionally, FOI responses show that in 38% of local authority areas in Wales, social workers are the only professionals involved in helping Unaccompanied Children and to obtain legal advice and representation, and in 33% of local authority areas in Wales, social workers are the only professionals involved in liaising with lawyers, healthcare professionals, police and Home Office officials on behalf of the child.

It is useful to consider this in the wider context of the current capacity of social services in Wales. According to a 2023 report prepared by the Children, Young People and Education Committee (the Committee) on Welsh Government's plans to reform children's social care, social services professionals feel that their caseloads are too high. The report states that most social workers have a caseload of around 35 families, and some have over 50. In a recent survey, the British Association of Social Workers asked its members to select the three biggest challenges they faced in the workplace. Of the 80 members working in Wales who responded, 53.75% cited the demands of administrative tasks, 46.25% reported workload, and 79.22% stated they could not complete their work within their contracted hours.<sup>38</sup> We note the Committee's recommendation to introduce legislation "to place a duty on local authorities to calculate maximum caseloads for children's social workers".<sup>39</sup>

Welsh Government should introduce Guardians to lead the work of supporting Unaccompanied Children with the process of seeking asylum. Guardians and social workers would work collaboratively with Unaccompanied Children, but Guardians would take responsibility for the work of supporting these children with understanding and navigating the process of seeking asylum, such as helping them with accessing legal advice and accompanying them to meetings with the



Home Office. We argue that doing this would make social worker's workloads more manageable and would greatly improve support for Unaccompanied Children.

### 3.5 Access to immigration advice and legal services

We asked in our FOI request about working relationships between local authorities and immigration lawyers or legal advice providers. Specifically, we asked whether they work with immigration lawyers or legal advice providers to assist children with their asylum claims. According to information that we received, only 38% of local authorities have working relationships with immigration lawyers or legal advice providers in their local areas, and only 47% of local authorities work with immigration lawyers or legal advice providers, within and without their local areas, to assist Unaccompanied Children with their asylum claims.

This lack of joint working may be partly due to the lack of legal services in Wales, as reflected in Dr Jo Wilding's report *The Adequacy and Availability of Immigration Legal Advice for Forced Migrants in Wales*<sup>40</sup> published in January 2023. Dr Wilding estimates a Primary Legal Aid Deficit in Wales of 2,266. This figure represents the number of cases that fall squarely within the scope of legal aid but for which there is no available representation. It does not include instances where a case has been dropped by a legal representative between application casework and appeal.

Research by the Bevan Foundation in September 2023<sup>41</sup> found that the situation in respect of immigration and asylum legal services has worsened drastically in Wales since January 2023, when the Wilding report was published. Within the past five years, Wales has lost half of its offices providing immigration legal aid services.

Currently, Wales has a total of seven legal aid providers, with eight offices between them, and very little third sector immigration provision. The position in South-East Wales, which was described in Dr Wilding's earlier report as "comparatively well-served" has changed drastically. The withdrawal of the largest legal aid provider in Wales, previously responsible for 47% of all legal aid matter starts in Cardiff, has had a huge impact on remaining providers. Most are now overwhelmed with demand and are currently not able to accept referrals. People, including Unaccompanied Children, are routinely being left without representation at appeal. One contributor to the Bevan Foundation report, an immigration legal representative, stated:

*This is completely unprecedented. There has never been a time when initial asylum applicants, including [Unaccompanied Asylum-Seeking Children], have been unable to find a legal aid solicitor to represent them.*

Recent evidence from asylum support providers is that they are regularly unable to find legal representation for asylum seekers.

We argue that a pan-Wales Guardianship Service would help to address gaps in legal provision and ensure more consistent support for all Unaccompanied Children in Wales while work is done to increase provision. As discussed in [Section 3.4](#), doing so would shift some of the onus from social workers and personal advisors to staff with specialist knowledge and qualifications. This would in turn help to reduce the workload of social workers and personal advisors.

The evaluation of the Scottish Guardianship Service shows the value of Guardians in supporting Unaccompanied Children through the asylum process ([See Section 3.3](#)). Guardians in Scotland are trained to OISC Level 2, giving them an excellent understanding of this complex area of law. While Guardians are no substitute for specialist legal services, a Guardian trained to OISC Level 2 can provide rare advice and guidance within an accessible and consistent relationship. Such knowledge places them in an excellent position to identify quality legal services, help young people to navigate the asylum system, and support young people's engagement with legal representatives. Where there are gaps in legal representation, a Guardian could temporarily prevent a child from 'falling through the cracks'. Ultimately, such a scheme in Wales would improve legal outcomes for Unaccompanied Children.

## 4. What might a Guardianship Service in Wales look like?

A Guardianship Service in Wales must take account of the needs of the children it serves, but also the particular context in Wales. In this section, we have set out some of the key factors that we believe should be included in a national Guardianship Service for Unaccompanied Children. We have not attempted to provide a detailed framework, but rather the fundamental principles on which a service should be built.

### 4.1 Key factors

- **Available to all:** A national service provided across Wales and available to every Unaccompanied Child, in line with calls from UN Committee on the Rights of the Child.
- **Available on arrival:** A Guardian should be appointed to every Unaccompanied Child immediately on arrival in Wales. This will ensure that children's rights are protected from the outset of their life in Wales, that they are supported, and that no Unaccompanied Child is left alone. The service should work closely with the Home Office National Referral Mechanism, National Transfer Scheme, asylum accommodation, and asylum hotels, to ensure that children are quickly identified, supported, and appropriately placed.
- **An independent service:** A Guardianship Service in Wales should be independent of any statutory body. As with Children's Guardians appointed by the Courts, we believe that Guardians for Unaccompanied Children should be independent of the state, local authorities, the Courts, and all other statutory bodies. This would enable Guardians to protect the rights and interests of children without fear or favour.
- **Trained and Expert:** As well as having expertise and experience in working with children, every Guardian in the service should be trained to OISC Level 2 or IAAS equivalent or working towards achieving these qualifications. This will provide huge benefits to children as they navigate their way through the asylum process and will mitigate some of the effects of a serious decline in immigration legal provision in Wales.

- **Integrated and efficient:** The service should work closely and supportively with social workers, legal advisors, Home Office caseworkers, Migrant Help, schools, colleges, hospitals, and third sector agencies working in asylum support and children's wellbeing. Statutory services should be aware of the role and purpose of a Guardian and the benefits that they can bring.
- **Supportive and engaging:** Guardians should provide the following forms of support:
  - Building trust and a supportive relationship with children.
  - Helping the child with orientation and social adjustment.
  - Helping the child to obtain legal advice and representation.
  - Keeping the child informed of legal and other proceedings.
  - Working with young people to help them develop statements to support their asylum claims.
  - Attending Home Office appointments with the child.
  - Liaising with lawyers, social workers, healthcare professionals, police and Home Office officials on behalf of the child.
  - Explaining processes (e.g. legal, care, and education), ensuring that the child understands what is happening to them, the decisions that are being made, and the options that they have.
  - Ensuring that the voices and choices of children are heard and respected.
  - Facilitating the child's attendance at and engagement in meetings.
  - Providing children with holistic support to enable integration, continued advice and emotional support.
  - Making referrals to specialist services (e.g. to address physical or mental health concerns, provide trauma-informed services, cultural services, or socialisation and play appropriate to the child's needs).
- **Lasting and empowering:** The Guardianship Service should remain with an Unaccompanied Child to provide continuous source of support and protection as they grow towards independence and adulthood. The service should remain engaged regardless of whether the child has left care, either voluntarily, or as a result of their immigration status.
- **Protecting rights and justice:** Guardians should be empowered to speak out for the children with whom they work, to protect their interests, and promote and defend their rights.

- **A well-resourced team:** The Guardianship Service should be sufficiently resourced to provide ongoing and comprehensive support to Unaccompanied Children. Access to continuing training, updated resources and information will be essential.
- **Responsive and child-focused:** It is important that Unaccompanied Children and are involved as much as practically possible in the development of a Guardianship Service in Wales, to ensure that the service meets their needs. There are existing projects across the country working with Unaccompanied Children and, which could feed into the development of the service.

## 4.2 Costs

We have not provided a detailed cost analysis of the proposed service. Some work, based on the experience of the Scottish guardianship service and the Nidos<sup>7</sup> guardianship service in the Netherlands, was completed in 2014 by The United Nations Children’s Fund UK (UNICEF UK) and The Children’s Society on the costs and benefits of an England and Wales scheme.<sup>42</sup> For an accurate assessment of costs, this would need to be updated, and costs considered in respect of Wales alone.

The service would need to be provided by a team of Guardians working directly with Unaccompanied Children, service managers, and support staff. Costs that would need to be considered include, but are not limited to, recruitment costs, salaries, office space, and interpretation and translation, the latter of which incurs the largest costs. To provide an indication of cost, Scottish Government provides annual funding to Guardianship Scotland of £1 million for 13 Guardians, whilst funding for 12 additional Guardians is provided externally.

Many Unaccompanied Children who are looked after by Welsh local authorities are placed in England, so travel costs would need to be considered beyond Wales, although we note that in Scotland many of the interactions between Guardians and children take place via video call.

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<sup>7</sup> Nidos is the national independent guardianship institution in the Netherlands providing guardianship for all unaccompanied asylum-seeking children in the Netherlands.  
<https://www.egnetwork.eu/member/nidos/#:~:text=Nidos%20is%20the%20national%20independent,the%20child%20and%20their%20development.>

## 4.3 Benefits

We have mentioned throughout this briefing many of the ways in which Guardianship makes a positive impact on the lives of Unaccompanied Children. The Scottish Guardianship Service gives an exemplary model of how such a service can meet the needs of Unaccompanied Children. We recognise that the costs of a Guardianship Service for all Unaccompanied Children will not be small. However, the benefits that such a service would have in upholding children's rights and improving outcomes for children is enormous. Resulting impacts on social justice, integration, and education, will be positive and lasting.

In addition to the positive impact it would have on the lives of Unaccompanied Children, a Guardianship Service would realise benefits for stakeholders working with Unaccompanied Children. One of these benefits would be time saved by social workers, resulting from working with Guardians. In the joint appraisal by The Children's Society and UNICEF UK referred to in (4.2) above, benefits were identified in key areas because of cooperation between Guardians and social workers. These areas include, but are not limited to, age assessments and disputes (i), and Unaccompanied Children who go missing (ii).

- i) With regard to age assessments, an expected benefit of the interactions between Guardians, social workers and agencies involved in the age assessment process is "clearer and more concise information from, and on behalf of, the child",<sup>43</sup> as well as time saved by social workers and agencies in the undertaking of age assessments. This would also bring with it financial savings. Additionally, the presence and work carried out by a Guardian could reduce the risk of incorrect age assessment determinations, thereby preventing the need for further age assessments.
- ii) When an Unaccompanied Child goes missing, the appropriate procedures are triggered, which involve social workers – for example, for the provision of return home interviews (if they are provided internally by local authority staff). An expected benefit would be that, resulting from the relationships and support provided by Guardians, Unaccompanied Children would experience fewer missing episodes, fewer repeat episodes, and increase the possibility of preventing some Unaccompanied Children from going missing. According to the Children's Society/UNICEF UK appraisal, "it is expected that legal Guardianship would reduce the number of missing children and thus lessen the impact on social workers' time".<sup>44</sup> It is expected that this would also realise financial savings.

Additionally, it is expected that there would be savings in interpreters' time as part of their involvement in age assessments and post-missing episode procedures, which would also mean financial savings.

The 2013 evaluation of the Scottish Guardianship Service pilot notes that “there is clear evidence of Guardians helping young people to navigate the complexities of the asylum process, resulting in clear, timely and often positive outcomes for those who are seeking asylum or have been trafficked”<sup>45</sup> and this is also evidenced in the 2021 evaluation.<sup>46</sup>

Given that Unaccompanied Children are also likely to be looked after by local authorities, the increased likelihood of a positive asylum outcome when a Guardian is involved in the process would accelerate the transition for Unaccompanied Children from care to living with more independence. Fewer challenges and appeals to initial decisions mean that there would be fewer barriers in the way of a smoother process of transitioning from care to living with more independence.

## 5. Conclusion

Although there is some excellent work being done to support Unaccompanied Children Wales, there is not enough support available for all Unaccompanied Children. Specifically lacking is support when navigating the complex process of seeking asylum.

We believe that factors such as workloads, overstretched services and limited working relationships between local authorities and immigration lawyers present barriers to ensuring that all Unaccompanied Children in Wales are offered support to seeking asylum, which has become even more necessary given the lack of legal services and additional challenges presented by legislation such as the Illegal Migration Act.

We urge Welsh Government to introduce a Guardianship Service that would be available for all Unaccompanied Children Wales and help them with navigating the complex process of seeking asylum. The service should be offered to all Unaccompanied Children who are already in Wales and to all Unaccompanied Children on arrival in Wales.

At the time of writing, the Nation of Sanctuary Plan is being refreshed, and Welsh Government have committed to present to the Senedd a social care bill. We argue that these work streams offer an opportunity to introduce a Guardianship Service for all Unaccompanied Children Wales, and by doing so, improve access to vital support needed by some of the most vulnerable members of our society.

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<sup>1</sup> United Nations Convention on the Rights of the Child, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>2</sup> Rights of Children and Young Persons (Wales) Measure 2011  
<https://www.legislation.gov.uk/mwa/2011/2/contents>

<sup>3</sup> Social Services and Well-Being (Wales) Act 2014  
<https://www.legislation.gov.uk/anaw/2014/4/contents/enacted>

<sup>4</sup> Welsh Government Written Statement (2023) Safe and Legal Routes for Asylum Seekers  
<https://www.gov.wales/written-statement-safe-and-legal-routes-asylum-seekers>

<sup>5</sup> Illegal Migration Act 2023 <https://www.legislation.gov.uk/ukpga/2023/37/contents/enacted>



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- <sup>6</sup> Welsh Government (2019) *Nation of Sanctuary – Refugee and Asylum Seeker Plan* [https://www.gov.wales/sites/default/files/publications/2019-03/nation-of-sanctuary-refugee-and-asylum-seeker-plan\\_0.pdf](https://www.gov.wales/sites/default/files/publications/2019-03/nation-of-sanctuary-refugee-and-asylum-seeker-plan_0.pdf)
- <sup>7</sup> Well-Being of Future Generations (Wales) Act 2015 <https://www.legislation.gov.uk/anaw/2015/2/contents/enacted>
- <sup>8</sup> Save the Children Wales (2005) *Uncertain Futures*. (Save the Children: Cardiff) p.70. [https://orca.cardiff.ac.uk/id/eprint/86379/1/uncertain\\_futures\\_-\\_report\\_1.pdf](https://orca.cardiff.ac.uk/id/eprint/86379/1/uncertain_futures_-_report_1.pdf)
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- <sup>11</sup> Save the Children Wales (2008) *The care and protection of young asylum-seeker and trafficked children in Wales: agenda for action* <https://orca.cardiff.ac.uk/id/eprint/86376/1/Agenda%20for%20Action.eng.Dec.08.pdf>
- <sup>12</sup> Welsh Government (2008) *Refugee Inclusion Strategy* [https://ec.europa.eu/migrant-integration/sites/default/files/2009-01/doc1\\_7337\\_501075745.pdf](https://ec.europa.eu/migrant-integration/sites/default/files/2009-01/doc1_7337_501075745.pdf)
- <sup>13</sup> Croke R & Williams J (2015) *Wales UNCRC Monitoring Group to the UN Committee on the Rights of the Child* (Swansea University Press).
- <sup>14</sup> Committee on the Rights of the Child (2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhskHOj6VpDS%2F%2FJgg2Jxb9gncnUyUgbnuttBweOlyfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>
- <sup>15</sup> National Assembly's Equality, Local Government and Communities Committee (2017) *"I used to be someone" Refugees and asylum seekers in Wales* (National Assembly for Wales) <https://senedd.wales/laid%20documents/cr-ld11012/cr-ld11012-e.pdf>
- <sup>16</sup> Welsh Government (2019) *New Refugee and Asylum Seeker Plan for Wales Launched* [Nation of Sanctuary Refugee and Asylum Seeker Plan \(gov.wales\)](https://www.gov.wales)
- <sup>17</sup> Wales UNCRC Monitoring Group (2022) *Report to the UN Committee on the Rights of the Child* <https://www.childreninwales.org.uk/application/files/6416/7533/1287/Wales UNCRC Monitoring Group.pdf>
- <sup>18</sup> United Nations Committee on the Rights of the Child (2023) *Concluding observations on the sixth and seventh periodic report of the United Kingdom of Great Britain and Northern Ireland* [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2F6-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2F6-7&Lang=en)
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- <sup>33</sup> Home Office (2021) *Interim Guidance for Independent Child Trafficking Guardians* <https://www.gov.uk/government/publications/child-trafficking-advocates-early-adopter-sites/interim-guidance-for-independent-child-trafficking-guardians-accessible-version>
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- <sup>35</sup> See: <https://www.barnardos.org.uk/get-support/services/ictg-cymru>
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<sup>42</sup> UNICEF UK and The Children's Society (2014) *Cost benefit appraisal of legal guardianship for unaccompanied and separate migrant children in England and Wales* [https://www.unicef.org.uk/wp-content/uploads/2014/07/Guardianship-CBA-CHTB-End-Report\\_2014\\_FINAL\\_FOR-CIRCULATION.pdf](https://www.unicef.org.uk/wp-content/uploads/2014/07/Guardianship-CBA-CHTB-End-Report_2014_FINAL_FOR-CIRCULATION.pdf), p.23.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Crawley, H and Kohli, Ravi KS (2013) *"She Endures With Me", an evaluation of the Scottish Guardianship Service pilot*, Swansea University, University of Bedfordshire <https://www.scottishrefugeecouncil.org.uk/wp-content/uploads/2019/10/She-endures-with-me-Final-evaluation-of-the-Scottish-Guardianship-Service-Pilot-PDF.pdf>

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