

Unaccompanied
and Separated
Children and
Refugee Protection
in the U.K.

seeking asylum

alone



united kingdom

Jacqueline Bhabha and Nadine Finch

seeking asylum | alone



united kingdom

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It is part of a larger study into the treatment of separated and trafficked children in need of refugee protection which is entitled *Seeking Asylum Alone*. This study, which investigated the situation in the U.S. and Australia, in addition to the U.K., was directed by Jacqueline Bhabha of Harvard Law School and Mary Crock of the University of Sydney. Research in the U.K. was coordinated by Nadine Finch.

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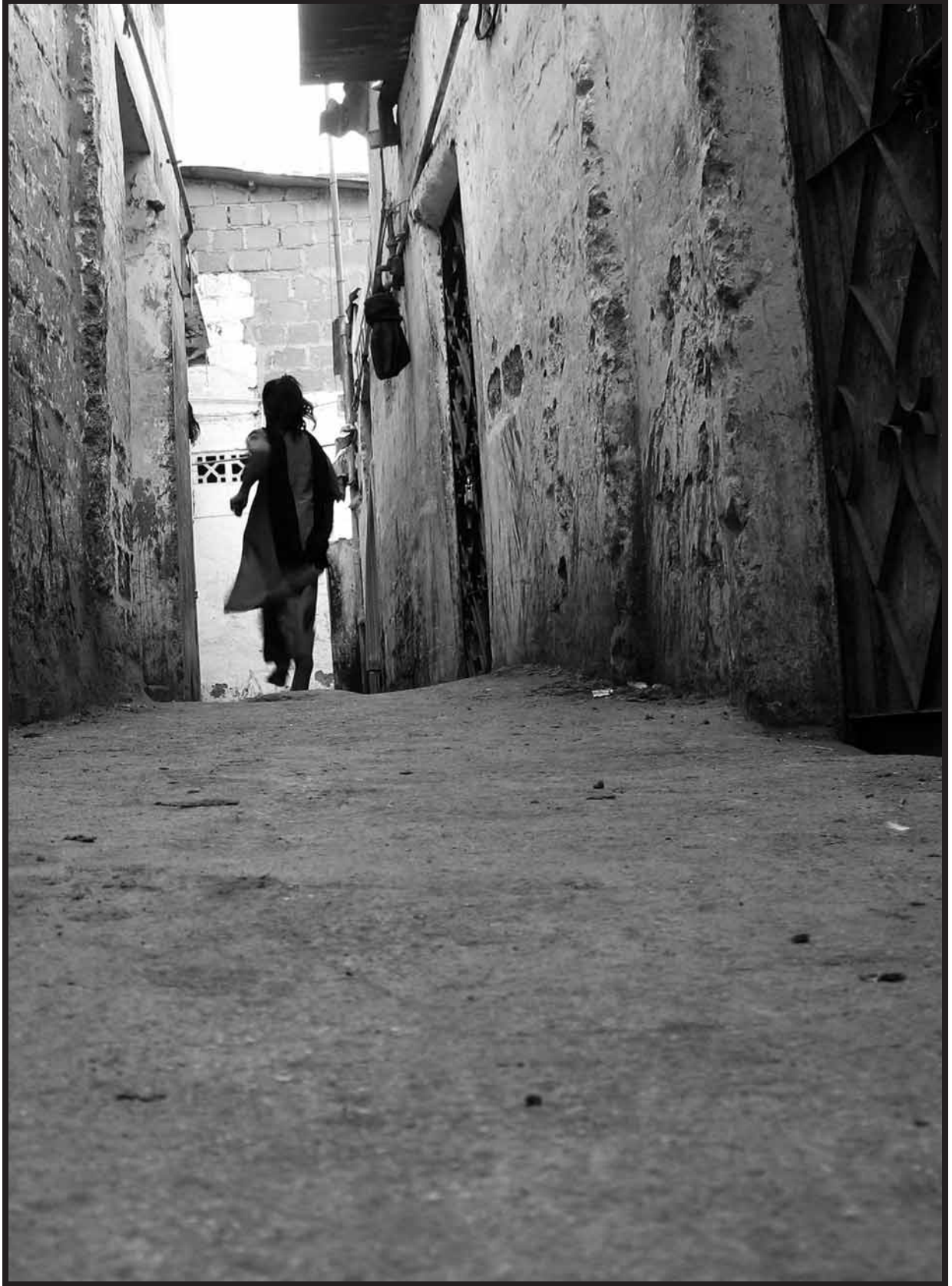
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Introduction

Thousands of unaccompanied or separated children arrive and claim asylum in the U.K. each year. Many of them survive arduous journeys from persecutors and war zones in a search for safety; some flee abusive treatment by family or close associates; others seek escape from human traffickers. This phenomenon presents a challenge to the Government and highlights its ambivalent attitude to international human rights law.

It requires government officials to temper the exclusionary and hostile stance that pervades the immigration control system with a concern for the best interests of the child migrants. It places rigid border control in tension with a rights respecting attitude that prioritizes the protection of the individual. On paper the U.K. has signed up to this latter approach, as an active member of the international community. Both the Refugee Convention¹ and the European Convention on Human Rights² have been incorporated into domestic law. The U.K. has ratified the United Nations Convention on the Rights of the Child³ and is presently

consulting on the formulation of a U.K. Action Plan against Human Trafficking.⁴

U.K. norm setting activity is not restricted to general international treaties. A number of very specific pieces of guidance have been produced by government bodies recommending good practice in relation to the determination of applications from unaccompanied or separated children. The Immigration Service has provided immigration officers with a manual entitled Best Practice: Unaccompanied Minors: Unaccompanied asylum and non-asylum seeking children⁵ and later Guidance on Children

Arriving in the U.K.⁶ The Immigration and Nationality Directorate has produced a chapter in its Operational Processes Manual on “Processing Applications from Children.”⁷ It also authored an Asylum Policy Instruction on Children in April 2006. In addition to these steps, the Asylum and Immigration Tribunal has issued guidance on best practice at asylum appeals brought by unaccompanied or separated children⁸ and the Tribunal also circulated guidelines⁹ produced by the Immigration Law Practitioners’ Association to all immigration judges.

Despite this plethora of guidance only 2% of unaccompanied or separated children were granted asylum when they applied in 2004 and only about 12% of unaccompanied or separated children succeeded when they appealed against an initial refusal to grant them refugee status.

According to a number of research reports and policy documents produced over the last two years, the U.K. authorities have failed to provide adequate support and protection to unaccompanied or separated children. For example, in 2004, the Greater London Authority reported¹⁰ that unaccompanied or separated children are not receiving adequate levels of accommodation and support. Save the Children U.K. has criticized the detention of children wrongly believed to be adults¹¹ and the Refugee Council has published research showing that many unaccompanied or separated children are still not being provided with appropriate support by their local authority.¹² The Immigration Law Practitioners’ Association, a leading non-governmental organization specializing in immigration matters, has commented on some of the inadequacies of the present asylum determination process for children.¹³

Because of this serious situation, a range of non-governmental agencies have actively lobbied government and developed policy on unaccompa-

nied or separated children. These include Amnesty International, Barnardo’s, the British Association for Adoption and Fostering, the Children’s Legal Centre, the Children’s Society, the Medical Foundation for the Care of Victims of Torture, the Refugee Council, and Save the Children.¹⁴

Their focus has tended to be the gap between the Government’s stated policies and its practice in individual cases and future planning. This gap was also very apparent in the course of our research. It emerged not only from our interviews with children, legal representatives, and government and non-government organizations, but also from our analysis of a three month sample of the written determinations of appeals lodged by unaccompanied or separated children.

A significant and worrying protection deficit emerges from the research. At times this is caused by inadequate legal representation or by the inability of immigration judges to place appeals by unaccompanied or separated children in an appropriate legal framework. A more fundamental causal factor is the failure by the Secretary of State for the Home Department, the primary decision maker, to establish an appropriate framework for initial decision making. Our research reveals no evidence of any government inquiry into the general causes of migration by unaccompanied or separated children who apply for asylum in the U.K. There is a failure to appreciate that unaccompanied or separated children may be subjected to persecution for the same reasons as co-national adults, as where, for example, children hold and act on strong political views. But there is also a myopic attitude to the many circumstances that result in child specific persecution, such as child soldiering, female circumcision or forced marriage. These inadequacies continue despite government statistics, collected by the Home Office and reported to its own Unaccompanied Asylum Seeking Children’s Stakeholder Group,¹⁵ which



indicate that a greater percentage of unaccompanied or separated children than adults arrive from certain countries of origin. These data should prompt analysis and have an impact on policy. The Immigration and Nationality Directorate's own Country Information and Policy Unit should ask why more children than adults are fleeing from particular countries, by expanding its sources of information to include such bodies as the Committee on the Rights of the Child, Anti-Slavery International, and UNICEF. Instead its information deficit failure leads decision makers to be unaware of practices or events which are the basis for the fear being expressed by many unaccompanied or separated child asylum seekers.

In addition to these evidentiary problems, our research revealed a fundamental legal issue: many immigration officers and case workers simply did not accept that child trafficking or the forcible recruitment of child soldiers can give rise to a right to international protection under the Refugee Convention.

The U.K. has yet to follow the guidance provided by the Committee on the Rights of the Child in its General Comment No. 6 (2005). This states:

When assessing refugee claims of unaccompanied or separated children, States shall take into account the development of, and formative relationships between international human rights and refugee law.... In particular, the refugee definition of the 1951 Refugee Convention must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds.

The U.K. authorities' failure to create and develop an appropriate legal framework may be attributable to two factors. The first is the "culture of disbelief" shared by all levels of decision makers in relation to asylum seekers, particularly — it would appear — unaccompanied or separated children who apply for asylum. The second is the Government's characterization of asylum seekers as a "problem" to be dealt with by seeking ways to minimize the flow of applicants rather than as a group of particularly vulnerable migrants.

The "culture of disbelief" has a number of different facets, some of which are interlinked. There is firstly a widely held assumption that children are appendages of adults who do not attract persecution in their own right. An unaccompanied or separated child who applies for asylum is thus presumed to have done so at the instigation of an adult, to gain preferment rather than because of a real need for protection. Our research revealed that decision mak-

ers often believe that although a parent might be in danger of persecution for political views, the only harm facing the child (and thus the reason for the child's travel abroad) was disruption to their education. Secondly, there is a mistaken belief that societies in general will protect their youngest members and afford them privileged rather than abusive treatment. This leads decision makers to reject accounts of torture and gross ill treatment as incredible. Thirdly, there is a failure to comprehend the fact that political, economic and social instability, pervasive in many regions of the world today, inevitably separates children from their families and places them at risk of a wide range of types of persecution. This lack of comprehension leads to an assumption that child asylum seekers have a family hidden away awaiting them when they choose to return home.

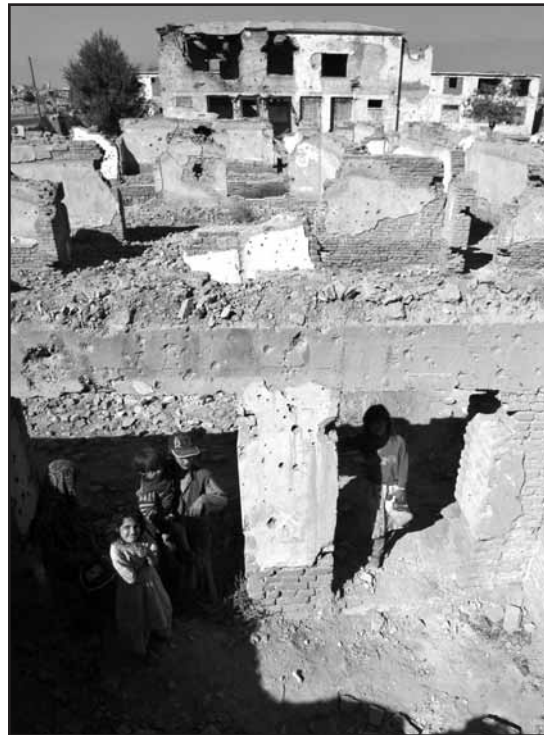
The impact of this culture of disbelief is presently attenuated in part by the fact that unaccompanied or separated children are cared for within the general and long established U.K. child protection framework.

Therefore, as long as their age is not disputed, asylum seeking children can expect to be accommodated by a local authority and have access to educational, health, and other services during the initial asylum determination process and whilst they bring any subsequent asylum or human rights¹⁶ appeal. Until very recently they could also expect to be granted discretionary leave to remain in the U.K. until they became 18.

However, the U.K. Government is now actively exploring the feasibility of returning unaccompanied or separated children whose applications for asylum have been refused and who have exhausted any appeal rights to their countries of origin.

The countries now being looked at are Angola, the Democratic Republic of Congo, and Vietnam and the government is currently exploring mechanisms to ascertain the adequacy of reception and care arrangements for returned children in these countries. Since Angola and the Democratic Republic of Congo do not have a child protection infrastructure or local social services departments and Vietnam is known to be a source country for child trafficking, it is doubtful whether the standards applied to these child care provisions will be sufficiently high to conform to international human rights standards for children.

The Government is also consulting on an Unaccompanied Asylum Seeking Children [UASC] Reform Programme. One proposal is to “develop assessment and placement services in selected partner local authorities operating as regional resources... which would offer the prospect of allocating more UASC away from high cost areas in London and the



South East.”¹⁷ These proposals would exacerbate the social exclusion of unaccompanied or separated children, depriving them of access to their communities of origin and to the most appropriate psychiatric, medical, and legal expertise, all of which are heavily concentrated in London and the South East.

These developments reflect the Government’s belief that if it reduces the quality of support offered to asylum seekers it will reduce the number of individuals who apply. This view is not supported by its own research which indicates that the level of support provided in the U.K. is not a “pull” factor and that asylum seekers generally choose the U.K. as a destination because of personal ties, because of the U.K.’s reputation as a safe, tolerant, and democratic country, or simply because an agent has brought them to the U.K.¹⁸ The proposed relegation of unaccompanied and separated children to under serviced parts of the country also reflects the impunity which the Immigration and Nationality Directorate enjoys. This is partly a result of the exclusion of immigration issues from the protections afforded by the UN Convention on the Rights of the Child. The U.K. has entered a reservation to this treaty, which states:

The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time.

It is also a consequence of the Immigration and Nationality Directorate’s exemption from several other general duties owed by government departments towards children. The Government’s defence of this approach is illustrated by the following comment by Margaret Hodge, MP then a Minister in the Department for Education and Skills, which is

the department ultimately responsible for the welfare of children:

*[W]e had to be absolutely clear that the primacy in this issue has to be immigration control and immigration policy. If we had given, for example, the duty to co-operate and the duty to safeguard to the Immigration Service, I think that we would have opened a loophole which would have enabled asylum-seeking families and unaccompanied asylum-seeking children to use those particular duties to override government controls and the asylum-seeking controls. That is the difficulty and we had to face up to it. I think that we took the right route, which is that the primacy is on maintaining a fair and just immigration system but, within that, we have always to have regard to the well-being and safety of children.*¹⁹

Overall our research has revealed a very complex situation in the U.K. for unaccompanied or separated children seeking asylum. On paper we have found procedures designed to assist children to articulate their claims for asylum and to provide them with support whilst they do so, but we have found no appropriate legal framework for considering children’s asylum applications. Regrettably, despite its rhetoric and expert input, the Government has been unprepared to treat this vulnerable population as children first and asylum seekers second. Moreover there are a number of proposals on the table which, if accepted, will further reduce the protection children are offered. At the same time, however, it has been reassuring to find a very strong and well informed lobby on behalf of unaccompanied and separated child asylum seekers within civil society.

This research has been completed during a time in which asylum has become an increasingly political issue.²⁰ Both the Government and the main opposition party have sought to exploit the ignorance and

fear of certain groups in society to win votes. They have done so by entering into a bidding war to see who can propose the most stringent measures to “control” immigration and by portraying asylum seekers as potential “terrorists.” Home Office Immigration Minister Des Brown stated in 2004 that even though year on year statistics demonstrate a continuing and dramatic decline in asylum claims, there was no room for complacency and there would be no let up in the Government’s drive to reduce unfounded asylum claims and increase removals of those whose claims have failed.²¹ This suggests an official intention to further reduce the number of asylum seekers irrespective of their need for international protection.

In the current political climate, there is likely to be reluctance on the part of government to proposed improvements in any part of the asylum determination process, even for unaccompanied or separated children. Government officials are likely to argue that any such change will attract even more “bogus” asylum seekers claiming to be children. A number of people interviewed for the research believe that because of the prevailing culture of disbelief within the Home Office any attempt to devise better procedures for children will result in them being placed under even greater scrutiny. However, we conclude that this is not a sufficient reason to desist from a reformist agenda. Moreover, as a result of the current hostility within government, many professionals have become active advocates for unaccompanied and separated children, having recognized the discrimination that they face. Traditional children’s charities and non-governmental organizations have established programmes to address the unmet needs of unaccompanied or separated children. So, though the overall political climate is not auspicious, the very virulence of the debate has opened up the space for a vigorous debate on the needs and rights of unaccompanied or separated children.



1.1 Research Objectives

The primary objectives of this piece of research were to establish:

1. Whether the asylum determination process operating in the United Kingdom assisted or hindered unaccompanied or separated children trying to obtain the international protection they are entitled to under the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol;
2. Whether the process complied with domestic best practice and regional and international human rights standards;
3. If the determination process did hinder unaccompanied or separated children from obtaining protection, how far international law norms were being breached and what had caused those breaches;
4. Whether there were changes to domestic legislation, policy, or practice which would ensure that international law was complied with; and
5. If unaccompanied or separated children had been assisted in obtaining protection, which policies and procedures had been instrumental in ensuring that they were protected.

1.2 Research Methodology

The research for this report began in January 2004 with a review of the relevant international and regional conventions, domestic legislation, and the policies and practices of the relevant U.K. government departments. Statistical data was also made available by the Home Office and a number of non-governmental organizations which were working with or researching into unaccompanied or separated children in the U.K.²² In addition, information was obtained from the minutes of various meetings or correspondence between the Home Office and/or government and non-governmental organizations²³ and meetings with civil servants and local government officers. This provided an overview of the areas within the asylum determination process which were causing concern to either the Home Office itself or to those representing or caring for unaccompanied or separated children. Often the same areas were identified as being problematic by a number of different sources, albeit for different reasons.

The U.K. coordinator for this research project communicated with these non-governmental organizations, civil servants, and local government officers throughout the next two years, both in her capacity as a practising immigration and asylum barrister and as a participant in various meetings on the key issues emerging in relation to unaccompanied or separated children. This gave her access to many working documents related to proposed changes to the manner in which unaccompanied or separated children's applications for asylum were going to be determined and other changes which were proposed in relation to the U.K.'s response to their other protection needs.

In 2004 one of the researchers conducted formal interviews with unaccompanied or separated children themselves, and one of the others interviewed their legal representatives, employees of

local authorities with the responsibility for looking after unaccompanied or separated children, representatives from non-governmental organizations working with these children, and civil servants from the Immigration and Nationality Directorate of the Home Office and the Department of Constitutional Affairs, in order to assess whether the U.K.'s legal commitments and its stated policies and procedures were being adhered to in practice. The vast majority of the data collected related to England and Scotland and therefore this Report does not purport to reflect any variations which might have occurred in Wales or Northern Ireland. Save the Children have produced a good report on the situation for children seeking asylum in Wales, including unaccompanied or separated children,²⁴ which should be referred to for data in relation to the situation there.

During the initial stages of the research, two adjudicators known to have a particular interest in unaccompanied or separated children were interviewed. The Chief Adjudicator was asked to supply any data which the Immigration Appellate Authority had collected on the number of unaccompanied or separated children who had appealed against any refusal to grant them asylum and the outcome of any such appeals. He was also asked to put forward the names of a selection of adjudicators who could be interviewed as part of the research process. The Chief Adjudicator's response²⁵ was to state that he did "not think it appropriate to put forward names of adjudicators who may be prepared to be interviewed about [unaccompanied or separated children]. Interviewing in this way should I think happen only via a structured research project which has gone through the approval procedures which are in place within the Department of Constitutional Affairs for looking into judicial decision making." He also asserted that there would be "very significant work involved in extracting closed files and taking copies of determinations from those files even assuming

that unaccompanied minor children files can be easily identified.” He proposed that the researchers have an informal discussion with a regional adjudicator who had taken a particular interest in unaccompanied or separated children. However, despite a number of attempts to fix a time to meet no meeting was ever arranged.

This was both a disappointing and a surprising response. The research project was aware that a number of adjudicators had valuable information and comments to make about the experiences of unaccompanied and separated children at appeal hearings. It was also aware that a member of staff working in Immigration Appellate Authority’s²⁶ Legal and Research Unit had already collected together all the determinations of appeals by unaccompanied or separated children promulgated since November 2003. More importantly perhaps it was aware that there were no official statistics on either the number of unaccompanied or separated children who appealed against an initial decision to refuse them asylum, or the number of unaccompanied or separated children who succeeded in such an appeal. This meant that it was difficult if not impossible to assess the final outcome of applications for asylum from unaccompanied or separated children.

It was reluctantly decided that it would not be possible to apply and process an application of the sort referred to by the Chief Adjudicator within the time frame for the research. Moreover there was insufficient funding to employ another researcher to undertake further structured interviews with adjudicators at a later stage of the project. Instead it was decided to ask the Department of Constitutional Affairs to allow the research project access to all the determinations which had been collected together by the Legal and Research Unit.

By the time permission had been granted by the Department of Constitutional Affairs this included all determinations made in relation to appeals by

unaccompanied or separated children between November 2003 and November 2004. Determinations by non asylum seeking children were then put to one side and a manual count was undertaken to ascertain how many unaccompanied or separated asylum seeking children had appealed during that period and how many had had their appeals allowed. The determinations which were promulgated in February, May, and November 2004 were then looked at in greater detail.

The preliminary results of the research were written up in June 2005. They were later revised in January and February 2006 to take into account a number of policy developments in relation to unaccompanied or separated children.

1.3 Structure of the Report

The Report has been structured to give an insight into the different stages involved in making and determining an asylum application from an unaccompanied or separated child in the U.K. Where statistical data is available it has been included. Where it is not, information has been obtained from any available reports and comments made by those directly involved in the asylum determination process. At each stage the stated policies and procedures have been compared to the actual experiences of unaccompanied or separated children and those representing them.

Certain facets of the asylum determination process have inevitably attracted greater attention. These are areas which present the greatest obstacles to fair decision making on behalf of children, or areas where the U.K. Government is seeking to reduce the level of protection made available to them.

The Report has also sought to highlight the human rights obligations which are most relevant to each stage of the asylum determination process and

comment on the U.K. Government's compliance or otherwise with these obligations. The recommendations which arise from the results of our research are summarised at the end of each chapter.

Endnotes

- 1 In so far as s2 of Asylum and Immigration Appeals Act 1993 stated that it would be unlawful for immigration rules to be made which were inconsistent with the Refugee Convention.
- 2 On the coming into force of the Human Rights Act 1998 on 2 October 2000.
- 3 On 15 January 1992.
- 4 Home Office/Scottish Executive. *Tackling Human Trafficking — Consultation on Proposals for a UK Action Plan*. January 2006.
- 5 U.K. Immigration Service. 1 January 2004.
- 6 U.K. Immigration Service. *Border Control Policy Implementation*. 1 September 2005.
- 7 *Processing Applications from Children*. C5: "Special Types of Cases," 30 August 2005.
- 8 *Unaccompanied Children*. Chief Adjudicator's Guidance Note No. 8.
- 9 *Working with children and young people subject to immigration control: Guidelines for best practice*. November 2004.
- 10 *Offering more than they borrow: Refugee children in London*. March 2004.
- 11 Save the Children. *No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards*. 2005.
- 12 Refugee Council. *Ringling the Changes : The impact of guidance on the use of Sections 17 and 20 of the Children Act 1989 to support unaccompanied asylum-seeking children*. January 2005.
- 13 ILPA. *Does Every Child Matter? Policy and practice affecting children and young people subject to UK immigration control*. 2006.
- 14 Collectively with other NGOs these NGOs operate together as the Refugee Children's Consortium. ILPA is also a member of the Consortium and UNICEF UK and UNHCR have observer status.
- 15 A group comprised of representatives from the IND, the Department of Education and Skills, the Legal Services Commission, local authorities, and NGOs, which is chaired by a representative from the IND.
- 16 Relying on their rights under the European Convention on Human Rights.
- 17 Unaccompanied Asylum Seeking Children Reform Programme. Bulletin Issue 1. 2005/6.
- 18 Robinson, Vaughan, and Segrott, Jeremy. *Understanding the decision-making of asylum-seekers*. Research, Development and Statistics Directorate of the Home Office. 2002.
- 19 Reply from Margaret Hodge MP, quoted in *Every Child Matters*. Report of the Education and Skills Committee's Inquiry. 5 April 2005. Para 207.
- 20 See for example the U.K. Government's White Paper *Controlling our borders: making migration work for Britain, the Government's five year strategy for asylum and immigration* Cm 6472. February 2005.
- 21 Home Office Press Release. *Asylum Statistics: year on year fall continues*. Ref 354/2004. 16 November 2004.
- 22 See acknowledgements and text of this report.
- 23 The U.K. Government has established a number of user or stakeholder groups in connection with various aspects of its immigration and asylum processes and client groups, which bring together civil servants and representatives of NGOs in order to disseminate information and consult in the broadest of senses. It also often announces policy changes in correspondence to certain key non-governmental organizations. The Immigration Law Practitioners' Association (ILPA) and the members of the Refugee Children's Consortium (RCC) are two of the key players in this process.
- 24 Save the Children. *Uncertain Futures: Children Seeking Asylum in Wales*. 2005.
- 25 In a letter dated 7 July 2004.
- 26 Known as the Asylum and Immigration Tribunal since May 2005.



Unaccompanied or Separated Children Arriving in the United Kingdom

2.1 Definitions Used in the United Kingdom

The Immigration and Nationality Directorate and local authorities in the U.K. usually describe unaccompanied or separated children as unaccompanied minor asylum seeking children (UASCs) or simply unaccompanied minors.

This terminology does not adequately reflect the circumstances of many of these children, often forcibly separated from parents or carers by events beyond their control, such as the imprisonment or murder of a parent, the destruction of a whole community, or the act of being trafficked.

To reflect this and the fact that the term “separated” is used widely in other jurisdictions, unaccompanied minor asylum seeking children have been referred to as unaccompanied or separated children throughout this report. This also enables the report to address, or at least begin to address, the situation of children who arrive with adults who are not their parents or legal or

customary primary caregivers as the result of being trafficked to or smuggled into the U.K. This approach also ensures that children who are potentially asylum seekers as well as victims of child trafficking or children placed in abusive private fostering placements are not overlooked.

The terminology being used by the U.K. Government in official documents is inconsistent. The Asylum Seekers (Reception Conditions) Regulations 2005¹ state that “an unaccompanied minor means a person below the age of eighteen who arrives in the United Kingdom unaccompanied by an adult responsible for him whether by law or custom and makes a claim for



asylum.” This description is very similar to the definition of a separated child used by the Separated Children In Europe Programme and can include the unaccompanied and separated children referred to in this Report.

However, at other times, the official definition is more restrictive and relates more to the need to maintain strict domestic immigration controls than the need to meet any international obligation to protect unaccompanied or separated children. In its guidance on Processing Applications from Children² the Immigration and Nationality Directorate defined an unaccompanied child as:

a person, who at the time of making the asylum application:

- *is under eighteen years of age, or who in the absence of any documentary evidence appears to be under that age and who is*
- *claiming asylum in their own right; and is*
- *without adult family members or guardians to turn to in this country.*

It then added that “although children may not be with their parents we would not consider them to be unaccompanied if they are being cared for by an adult who is responsible for them.”

The Immigration Service adopted a similar definition which stated that an unaccompanied child was “a person who is under 18 and is neither accompanied by a suitable adult nor has a suitable adult sponsor within the United Kingdom.”³ These definitions are not satisfactory because they do not require the relevant adults to have legal or customary responsibility for the child in question nor do they specify the criteria according to which their “suitability” is to be judged.

These definitional defects leave unaccompanied or separated children in a legal vacuum and also potentially expose them to abuse from adults.

Even if they are well cared for by the accompanying adult, the unaccompanied or separated children cannot usually benefit from the adult’s citizenship or settled status in the United Kingdom as they do not qualify as a dependant. Therefore, if their application for asylum fails, they still face possible removal to their country of origin alone. At the same time, these children do not benefit from the policy of granting unaccompanied or separated children a period of discretionary leave if their application for asylum is refused. At times it appears as if they are being prevented from claiming asylum on the erroneous basis that they are now part of a new “family.”⁴ There is a further questionable presumption on the part of the Immigration and Nationality Directorate that the existence of a substitute “parent” in the U.K. fully compensates for the absence of a parent from the child’s country of origin. In relation to the determination of the child’s asylum claim this is potentially very damaging. If the child’s birth family had been present they would have been

able to assist the unaccompanied or separated child to provide an account of past persecution and also assist the Secretary of State for the Home Department to understand the reason the child feared future persecution. They would also have had the emotional support to deal more successfully with the stresses inherent in the asylum determination process itself.

Some local authorities do take action to protect children from such potentially abusive situations. For example, Sheffield City Council's Asylum Team have adopted a written procedure⁵ for checking that adults offering to care for unaccompanied or separated children are related to them as claimed and that the unaccompanied or separated child would be safe in their care. Unaccompanied or separated children are not even placed in the care of relatives until a full fostering assessment designed to establish their suitability had been carried out.



Compliance With International Standards

- **1.** The UN Committee on the Rights of the Child's General Comment No. 6 (2005) on Treatment of unaccompanied and separated children outside their country of origin defines unaccompanied children as children "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." (III, 7)

Recommendations

- **1.** The definition of an unaccompanied or separated child used by the Immigration Service and the Immigration and Nationality Directorate should be uniform and should accurately reflect the legal significance of a child being separated from his or her parents or legal or customary caregivers.
- **2.** Any child who is not accompanied by a parent or a legal or customary caregiver should be treated as an unaccompanied or separated child when applying for asylum and any policies relating to discretionary leave for unaccompanied or separated children should be applied even if he or she is living with other relatives or adults.

2.2 Statistical Data

An unremarked upon fact about U.K. asylum flows is that a significant minority of those claiming asylum in the U.K. are unaccompanied or separated children.⁶

In 2002, 7.3% of new asylum applications were from unaccompanied or separated children. In 2003, this number decreased to 6.4%, but in

2004 it rose to 8.8%. This was at a time when the overall number of applications for asylum made in the U.K. was falling.

Most of the following statistics were collected and published by the Research, Development and Statistics Directorate of the Home Office. Some of the more detailed information for 2002–2004 was derived from statistics presented by the Immigration and Nationality Directorate at meetings of the Unaccompanied Minor Asylum Seeking Children's Stakeholder Group.⁷ These statistics exclude unaccompanied or separated children who had been age disputed unless they were specifically referred to.

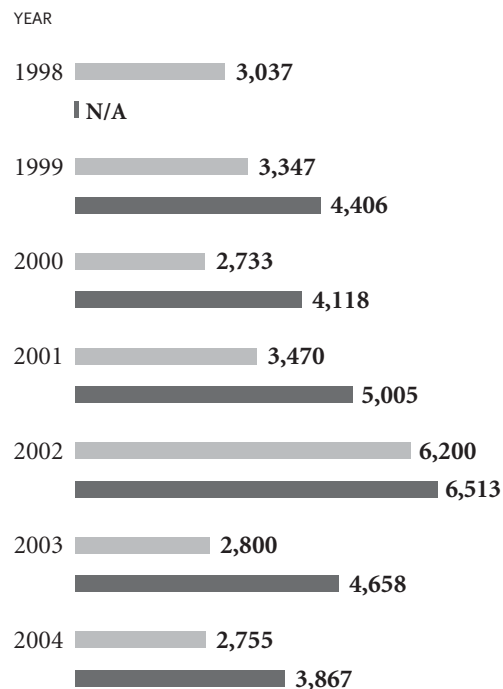
The quality of these statistics and the fact that they addressed the need to distinguish between different age groups and between gender greatly assisted our research and should be seen as a model of good practice.

As can be seen from the annual figures for applications from unaccompanied or separated children up until 2002, the statistics collected and published by the Home Office were incomplete. The fact that it was not collecting statistics from local enforcement offices and for postal applications⁸ probably led to a significant under estimation of numbers, as other statistics⁹ indicate that a large percentage of unaccompanied or separated children applied for asylum after arriving in the U.K. rather than at a port of entry. The figures for the years before 2002 can be corrected in part by reference to the statistics collected by the Refugee Council's Children's Panel during the same period. These seem to be broadly accurate as in 2002, the first year for which the Home Office had comprehensive statistics, the figures produced by the Panel were very close to the official figures.¹⁰

Applications for Asylum in the U.K. by Unaccompanied and Separated Children¹¹

■ Applications for Asylum in the U.K. by Unaccompanied and Separated Children *

■ Refugee Council Referrals **



* Statistics for 1998 to 2001 include applications at Home Office and ports of entry. Statistics for 2002 to 2004 include Asylum Screening Units, ports of entry, most local enforcement offices, and postal applications.

** Statistics provided by the Refugee Council's Children's Panel.

The figures for 2003 and 2004 show a significant variation between the statistics being released by the Home Office and the numbers of applications being recorded by the Refugee Council. To a large extent

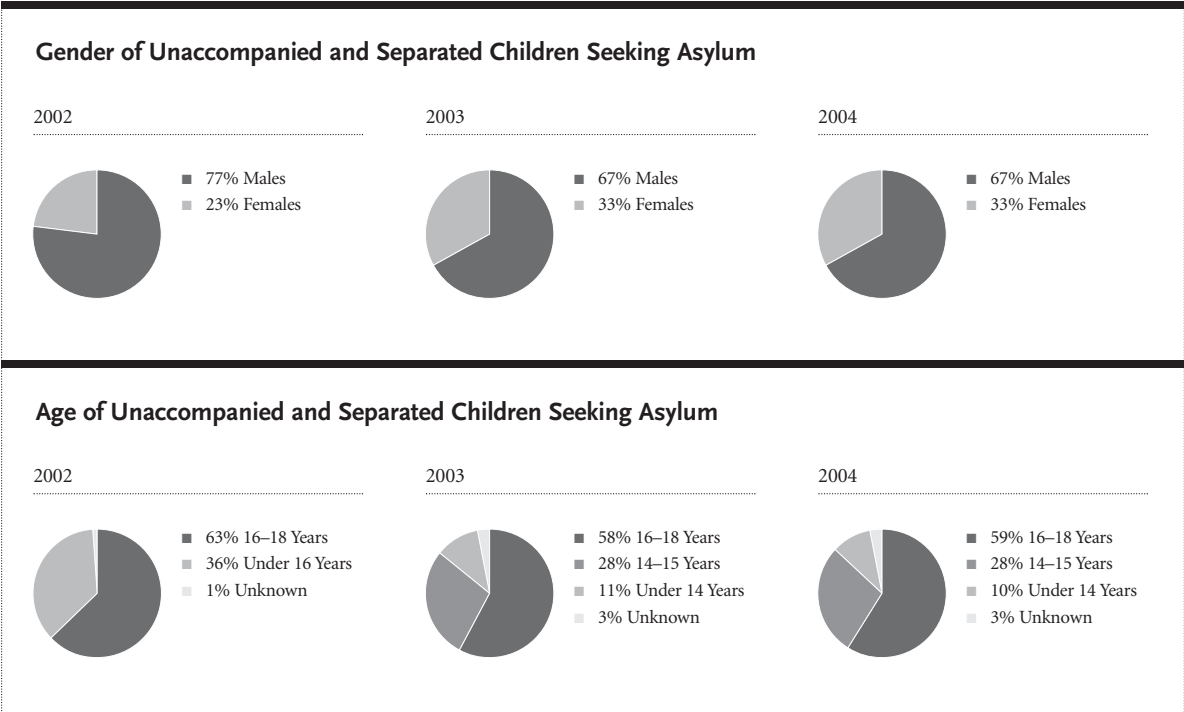
this can be accounted for by the fact that the Home Office did not include age disputed children in its statistics whereas the Refugee Council did. Furthermore, at that time the Research, Development and Statistics Directorate did not adjust its statistics to reflect the number of age disputes which were subsequently resolved in favour of the unaccompanied or separated child. It only started to do this in 2005.

Anecdotal evidence from non-governmental organizations, social workers, and legal representatives suggests that there were a number of other unaccompanied or separated children who had been trafficked into the U.K. but did not come to the attention of the authorities. This hidden population is a serious cause for concern as it is likely to include some of the most serious cases of abuse and deprivation.

The percentage of unaccompanied or separated children who were 16 or over varied between 58%

and 63% in 2002 to 2004. This is a much lower percentage than would be predicted by the “institutional wisdom” repeated by some immigration officers and local authority social workers, according to whom unaccompanied or separated children were sent to the U.K. as they approached 18 to benefit from higher education and employment opportunities. Home Office statistics for 2003 and 2004 reveal that just under 30% of unaccompanied or separated children were 14 or 15 years old and a significant 10–11% were under 14. Anecdotal information gathered from practitioners working with this population suggests that many of the latter group are well below 14.

Unaccompanied or separated children as young as six and eight years old were instructing solicitors about applications for asylum and even appearing in the Asylum and Immigration Tribunal as appellants.



2.3 Countries of Origin

Unaccompanied or separated children arrive in the U.K. from a wide variety of countries of origin in Asia, Africa, the former Soviet Union, and Europe. The statistics¹² indicate that the majority arrive from countries experiencing armed conflict or serious repression of minority groups or political opponents. The presence in the top 10 countries of origin of nations such as Iraq, Afghanistan, and Somalia tends to rebut the claim that applications by unaccompanied or separated children are largely unfounded. Their provenances demonstrated that unaccompanied or separated children have similar international protection needs to those of adults.

The presence of countries such as Vietnam and Uganda also indicates the need for further research and analysis to explain why much larger percentages of unaccompanied or separated children than adults arrive from these countries. The differences between adult and child asylum claims from Afghanistan also raises questions.

The variations between the percentage of adult and child asylum seekers in the total pool as against

the relative percentages from certain countries suggests that in some countries there are additional factors which place children in far greater need of international protection than adults. For example, the higher percentage of Afghan boys applying for asylum whilst the Taliban were in power can be explained by the fact that the Taliban abducted young boys to fight in their army. A high percentage of children may well have continued to apply for asylum after the Taliban were overthrown, because they remain at greater risk as easier targets for revenge and retribution. This finding has implications for proposals to return children to countries recently emerging from war or other armed conflict.

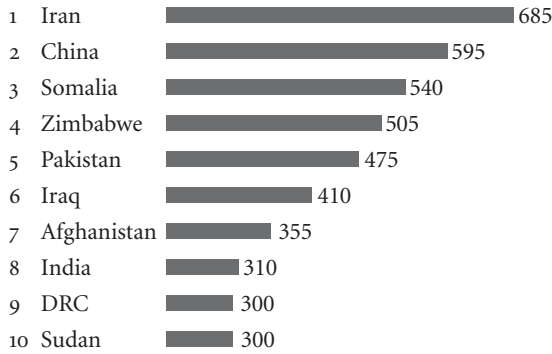
A heightened incidence of applications from unaccompanied or separated children relative to adults from specific countries may also be taken as evidence of the existence of other forms of child specific persecution. Thus the numerical data presented above may reflect a fear of child traffickers in Vietnam, female circumcision in a number of African countries, or forced conscription as a child soldier in Uganda. Certainly, these differentials are a stark reminder that unaccompanied or separated

Top Ten Countries of Origin of Unaccompanied and Separated Children Seeking Asylum in the U.K.

2002	2003	2004 Jan to Mar	2004 Apr to Jun	2004 Jul to Sep	2004 Oct to Dec
1 Iraq	1 Somalia	1 Somalia	1 Afghanistan	1 Iran	1 Iran
2 Federal Republic of Yugoslavia	2 Afghanistan	2 Afghanistan	2 Somalia	2 Afghanistan	2 Afghanistan
3 Afghanistan	3 Iraq	3 Vietnam	3 Vietnam	3 Somalia	3 Iraq
4 Somalia	4 Serbia & Montenegro	4 Turkey	4 Iran	4 Eritrea	4 Somalia
5 Albania	5 Albania	5 Eritrea	5 DRC	5 Vietnam	5 Vietnam
6 China	6 China	6 Uganda	6 Iraq	6 Iraq	6 Eritrea
7 Eritrea	7 Uganda	7 DRC	7 China	7 DRC	7 DRC
8 Angola	8 Eritrea	8 Iran	8 Eritrea	8 China	8 Romania
9 Vietnam	9 Vietnam	9 Ethiopia	9 Uganda	9 Ethiopia	9 Ethiopia
10 Moldova	10 Angola	10 Serbia & Montenegro	10 Ethiopia	10 Albania	10 China

Top Ten Countries of Origin, April to June 2004

All Asylum Seekers



Unaccompanied Children



Top Ten Countries of Origin

October to December 2004

All Asylum Seekers

- 1 Iran
- 2 China
- 3 Iraq
- 4 Somalia
- 5 Zimbabwe
- 6 DRC
- 7 Eritrea
- 8 Sudan
- 9 Pakistan
- 10 Afghanistan

Unaccompanied Children

- 1 Iran
- 2 Afghanistan
- 3 Iraq
- 4 Somalia
- 5 Eritrea
- 6 Vietnam
- 7 DRC
- 8 Romania
- 9 Ethiopia
- 10 China

children cannot just be subsumed into the wider class of asylum seekers without further thought. Rather they indicate that asylum applications from unaccompanied or separated children may not be adequately determined by simply using the legal and evidentiary framework developed to assess claims from adults even if they were from the same country.

The fact that the top 10 countries of origin for female unaccompanied or separated children¹³ vary greatly from those for asylum seekers as a class further underlined these points.

As can be seen from the table below, in 2002 and 2003, 9 out of the 10 countries were in Africa. In addition, girls accounted for more than 50% of the asylum applicants in these countries whereas the gender distribution of unaccompanied or separated children for all the countries of origin was 23% female and 77% male in 2002 and 33% female and 67% male in 2003. This radical difference suggests both child and gender specific needs for international protection. And indeed child trafficking for the purpose of prostitution or domestic slavery, female circumcision, and forced marriage are known forms of specially targeted persecution in these countries.¹⁴

Top Ten Countries of Origin

Female Unaccompanied or Separated Child Asylum Seekers

2002

- 1 Burundi
- 2 Congo
- 3 DRC
- 4 Eritrea
- 5 Ethiopia
- 6 Nigeria
- 7 Rwanda
- 8 Uganda
- 9 Vietnam
- 10 Zimbabwe

2003

- 1 Angola
- 2 Burundi
- 3 Cameroon
- 4 DRC
- 5 Eritrea
- 6 Ethiopia
- 7 Kenya
- 8 Rwanda
- 9 Uganda
- 10 Vietnam

Recommendations

- **1.** If the U.K. is going to seriously address its child protection responsibilities, improved record keeping is a priority. This should include detailed records of numbers of applications, types of outcomes, and appeals by unaccompanied and separated children.
- **2.** Asylum applications from unaccompanied or separated children may require a legal and factual framework that takes into account child specific data and argument.

2.4 Entering the United Kingdom: Juxtaposed Controls

To make an application for asylum an unaccompanied or separated child has to be able to reach the U.K. Over the past few years a growing set of barriers have been erected to prevent asylum seekers from doing this. Under a system of juxtaposed controls¹⁵ immigration officers are placed at ports and Eurostar stations in France and Belgium in order to check the immigration status of those wishing to travel to the U.K. Airline Liaison Officers also operate at various airports playing a similar role. If a traveller is not entitled to enter the U.K. under the Immigration Rules, they are turned back at that point. There are no statistics on the numbers of individuals refused leave to travel to the U.K. or whether any of those refused are unaccompanied or separated children. This lacuna clearly breaches the recommendation contained in paragraph 20 of the UN Committee on the Rights of the Child's General Comment No. 6 (2005) which states:

A determination of what is in the best interests of the child requires a clear and comprehensive assessment



of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.

Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process.

2.5 Access to Asylum

Once an unaccompanied or separated child makes an application for asylum, the claim is processed and in theory every child becomes the responsibility of a local authority social services department.

In practice, however, our research indicates that many unaccompanied or separated children entering the U.K. every year and in need of the international protection offered by the Refugee Convention are not coming into contact with the authorities and have no access to the means to claim asylum.

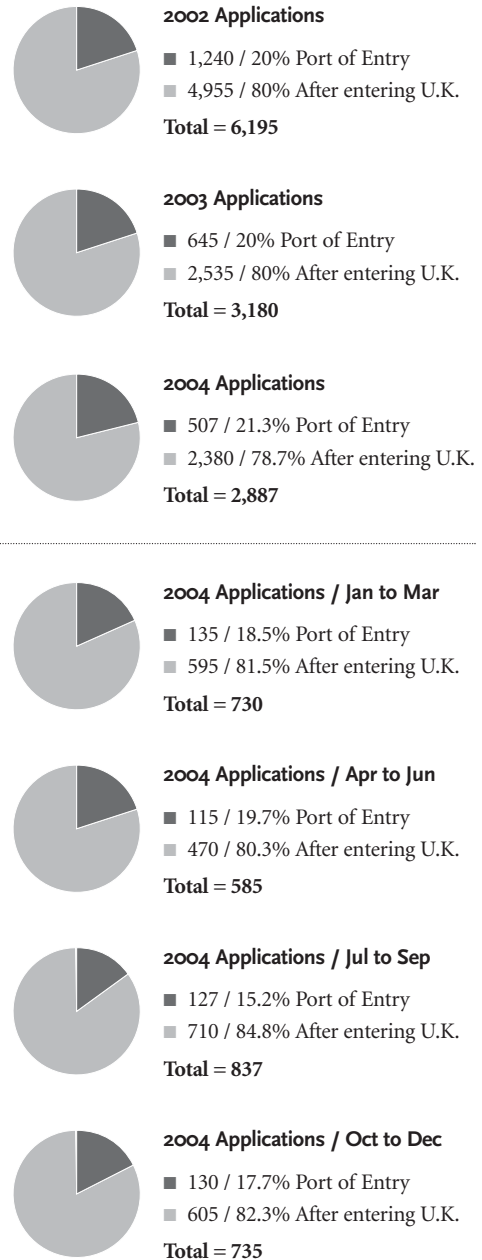
These include children trafficked into the U.K. for various forms of exploitation and those brought in under private fostering arrangements which may mask exploitative and abusive situations. In many ways the U.K. Immigration Service responds to this problematic situation in a positive way, recognizing that it must both enforce the immigration controls contained in the Immigration Act 1971 and subsequent legislation and at the same time identify situations which give rise to child protection concerns. However, regrettably, the rapid increase in the number of children being age disputed has had a negative effect on this positive approach. Furthermore, even though there is no published national data on the number of children trafficked into the U.K. or placed in an exploitative private fostering arrangement, the statistics on unaccompanied or separated children show that it is relatively easy for such a child to be smuggled into the U.K. without making contact with the U.K. Immigration Service at a port of entry.

Note: Place of Application for Asylum by Unaccompanied and Separated Children Chart right

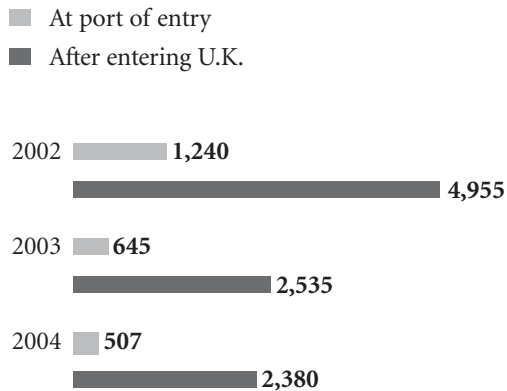
The Home Office is constantly revising its statistics as the late reporting of applications by unaccompanied or separated children is a recognized fact. Its own data cleansing exercises can also mean that totals change when for instance queries are resolved about whether an unaccompanied or separated child had claimed asylum at a port of entry or in the U.K. At times the Home Office also finds alternative sources of data which then have to be added to existing statistics. This means that there can be a variation in overall statistics over time and in relation to different fields.

2.6 Methods of Entry

Place of Application for Asylum by Unaccompanied and Separated Children



Place of Application for Asylum by Unaccompanied and Separated Children



The accounts given by unaccompanied or separated children reveal that some of those who applied after entry had entered clandestinely, having been smuggled into the U.K. hidden in the back of a lorry. More often though the children say they have been brought in by an agent who has presented a false passport on their behalf or pretended that they are the child listed in the agent's passport. One small piece of research undertaken by the University of Kent into age disputed unaccompanied or separated children who came to the attention of Kent Social Services in the Dover¹⁶ area also revealed a distinct gender imbalance in relation to those smuggled in clandestinely in the back of lorries.

The research showed that between February and May 2003, whilst 39 age disputed children claimed asylum on arrival at the port, 150 were discovered to have entered clandestinely.¹⁷ Of the 39 who applied for asylum on entry 72% were male and 28% were female (which is broadly consistent with the usual gender breakdown revealed in statistics collected by the Home Office) but all of those who entered clandestinely were male.

There was no comparable age differential. Some of the boys who entered in the back of a lorry were as young as seven, although the majority were aged between 16 and 18.

Interviews with practitioners in different parts of England and Scotland¹⁸ yield explanations for the disparity in numbers between claims for asylum made at a port and after entry. First, an unaccompanied or separated child is very unlikely to be able to meet the criteria for lawful entry to the U.K. under the Immigration Rules¹⁹ as a student or visitor or in a work related category. Secondly, unaccompanied or separated children find it more difficult to obtain their own travel documents. In some countries, a child requires authorization from one or both parents before a passport is issued, an impossible requirement where parents have already been killed or imprisoned.

In other countries, travel documents are only available if a person has the sort of political or economic influence likely to be beyond a child's reach. Therefore, the majority of unaccompanied or separated children are reliant on others, usually adult relatives or friends of the family, to contact an agent to smuggle them into the U.K.

"I don't think I have ever had a child arrive at a port. Most of mine have come [into the U.K.] with someone who then disappears."²⁰





A small minority are brought into the U.K. by their own parents or relatives and then abandoned after passing through immigration control whilst the adult in question travels back to their country of origin or elsewhere.²¹ This can occur when parents believe they will be arrested for political activities in the near future and want to protect their child from any consequent persecution.

These children eventually find their way or are directed to an Asylum Screening Unit or local enforcement office where they make an application. Meanwhile, the agent/smuggler will have disappeared and will not therefore be available to give evidence about the child's risk of persecution. The agents are paid simply to get the unaccompanied or separated child into the U.K. and through the initial port formalities; disappearing thereafter is the most effective way of protecting their future smuggling activities. This behaviour is consistent with children's account of abandonment in a public place such as a railway station or community centre connected with the child's country of origin. Children are also abandoned in areas with a high proportion of their co-nationals, or close to an Asylum Screening Unit²² itself. In such circumstances, the child has to rely on the advice of well meaning adults.

"The people who brought me here had documents. They took me to the mosque that night and then the next day, the people at the mosque put me on a train to Croydon."²³

In an apparent attempt to conceal the routes and methods used to smuggle the unaccompanied or separated child to the U.K., agents frequently tell children to lie about how they arrived. In some cases this has led to adverse credibility findings being made against the unaccompanied or separated child.

"Stories [unaccompanied or separated children] tell us about why they came here [may be] patently ridiculous. Accounts they give appear to have been given to them. For example kids claim to have slept at the railway station overnight when it is locked at night. Others claim to have arrived at the local airport when the immigration officers are very tight and not a lot of black kids arrive there."²⁴

The research revealed that it is also likely that a significant number of unaccompanied or separated children are trafficked into the U.K. either clandestinely in lorries or cars or by being passed off as the trafficker's own children at sea, or more usually, airports. These children are usually²⁵ not told to apply for asylum or given any opportunity to do so. Instead they are conveyed to the place of exploitation. The one exception is a group of Nigerian girls trafficked into the U.K. in transit for Italy by a trafficking gang whose modus operandi was to instruct them to claim asylum and then once they were safely in the U.K. abduct them from the care of the local authority accommodating them. Since trafficked unaccompanied or separated children usually enter the U.K. clandestinely, it is very difficult for anyone in a position of authority to identify them.

2.7 Private Fostering Arrangements

The situation is further complicated by the fact that there are also a large, but unquantified, number of unaccompanied or separated children being brought into the U.K. allegedly to be looked after by distant relatives or family friends in order to obtain better educational and eventually employment opportunities. Since there is no provision in the Immigration Rules for children to enter and remain in the U.K. for such purposes, unaccompanied or separated children can only be granted leave to remain as a relative's dependant if they can demonstrate "serious and compelling family or other considerations which make exclusion of the unaccompanied or separated child undesirable," and if suitable arrangements have been made for the child's care.²⁶ In practice, leave is refused unless the child has been orphaned or has no one capable of caring for them in their country of origin. A minority of unaccompanied or separated children are granted leave to enter and remain as school students²⁷ but this only happens if they are going to attend a private fee paying school. Another small minority are granted leave to enter and remain on the basis that they are going to be adopted in the U.K.²⁸ The restrictions on this latter form of immigration leave are considerable: leave is only granted if it can be shown that there has been a genuine transfer of parental responsibility and the child has lost or broken ties with the country of origin. The prospective adopters have to have obtained a positive home study report from a local authority or a designated adoption agency and a certificate of suitability from the Secretary of State for Education and Skills.²⁹

A significant number of unaccompanied or separated children are brought in as short term visitors³⁰ but with the intention that they will stay much longer. Since the maximum period of time



a visitor can remain in the U.K. is six months, unaccompanied or separated children who remain beyond this period become overstayers liable to administrative removal³¹ if their presence is discovered. They also run the risk of being deemed to be illegal entrants if it was revealed that they always intended to remain longer than the six months initially applied for. A condition of such leave is that the visitor genuinely intends only to remain for the period stated in the application and does not intend to study at a school funded by the U.K. Government. As an illegal entrant the unaccompanied or separated child is also liable to removal under Schedule 2 to the Immigration Act 1971.

Many of the placements with relatives or family friends are intended to and do benefit the unaccompanied or separated children involved. They are also the extension of a practice which is widespread in

certain cultures and particularly in West Africa. Children are sent to live with distant relatives or family friends at a young age to obtain educational or social advantages. In return they have to contribute housework. However, the export of this practice to the U.K. has led to a distortion of this tradition in a significant number of individual cases. The expense involved in employing domestic servants, and particularly nannies, in the U.K. has led to the “sponsors” relying heavily on the unaccompanied or separated child to do all of the housework and much of the child care. The difference in culture between the family settled in the U.K. and the new arrival has on occasion lead to conflict and excessive punishment. The greater geographic isolation of the unaccompanied or separated child from the family of origin increases the child’s vulnerability to exploitation. What was once an accepted cultural practice has become exploitative domestic servitude.³²

There is an established system which should have monitored such placements: whenever a child under 16 lives with a person who is not a parent, close relative³³ or a person with parental responsibility³⁴ for more than 28 days, a private fostering arrangement is deemed to exist. Local authorities are then under a duty³⁵ to satisfy themselves that the child’s welfare is satisfactorily safeguarded and promoted. However, this duty can only be exercised if the local authority is notified that a child is being privately fostered. If a family is aware that the unaccompanied or separated child they are privately fostering does not have leave to remain in the U.K. they are unlikely to inform anyone in authority of the unaccompanied or separated child’s presence. The British Association for Adoption and Fostering (BAAF) and other non-governmental organizations in the U.K. have campaigned without success to persuade the U.K. Government to introduce a mandatory registration scheme as they recognise the weakness of the present voluntary notification requirement.

Some local authorities have adopted special procedures to address this problem. For example, Sheffield City Council has instituted a protocol to check whether these children have in fact been trafficked to the U.K. for exploitation.³⁶

Compliance With International Standards

- 1. Paragraph 20 of the UN Committee on the Rights of the Child’s General Comment No. 6 (2005) states: “A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.” Access to the territory is a prerequisite to this initial assessment process.

Recommendations

- 1. A mandatory registration scheme for privately fostered children should be introduced, to ensure local authority oversight of private foster placements.





Endnotes

- 1 SI 2005/7. Para 6(3)(a).
- 2 *Processing Applications from Children*. C5, “Special Types of Cases.” Para 5.2.
- 3 U.K. Immigration Service. *Best Practice: Unaccompanied Minors*. 1 January 2004.
- 4 Interview with Sally Thompson, a partner at Luqmani Thompson Solicitors in London. 2004.
- 5 *Unaccompanied Asylum Seeking Children: Collecting Information from Relatives*.
- 6 For example, in 2002, 6,200 of 84,130 asylum seekers were unaccompanied or separated children. In 2003, 2,800 out of 49,405 were unaccompanied or separated children, and in 2004, 2,726 out of 33,390 were unaccompanied or separated children.
- 7 A group comprising civil servants and representatives from local authorities and non-governmental organizations working with separated children which is convened by the Home Office.
- 8 It is no longer possible to apply for asylum by post. All applicants now have to attend to be screened.
- 9 Statistics published by the Research, Development and Statistics Directorate of the Home Office show that in 2002–2004 only between 21.5% and 25.4% of unaccompanied children applied for asylum on arrival in the U.K.
- 10 There was only a discrepancy of 313 between the statistics published by the Home Office and those collected by the Refugee Council.
- 11 The Home Office reconciles its figures in the context of information it subsequently receives, and therefore, figures given for past years are varied up or down. It is also possible that some of the referrals recorded by the Refugee Council were later found to be for adults.
- 12 Statistics published by the Home Office’s Research, Development and Statistics Directorate.
- 13 Figures presented to the Unaccompanied Asylum Seeking Children’s Stakeholder Group for UASC nationalities, where females account for more than 50% of applicants, and from which the U.K. has received more than 10 female applications.
- 14 See for instance U.S. State Department Country Reports on Trafficking and the U.K.’s Country Information and Policy Unit’s country reports.

- 15 See the Channel Tunnel (International Arrangements) Order 1993 SI 1993/1813 and the Channel Tunnel (Miscellaneous Provisions) Order 1994 SI 1994/1405 and the Nationality, Immigration and Asylum (Juxtaposed Controls) Order 2003 SI 2003/2818.
- 16 The children who were being referred to Kent Social Services at the time of this research were either children who had applied for asylum at the point at which they entered the U.K. at the port of Dover, or those who were later found in lorries or arrested after alighting from lorries after these lorries went through immigration controls at Dover but were still in Kent. Therefore it did not include children who were smuggled in with agents and subsequently applied for asylum.
- 17 Charles Watters, European Centre for Migration and Social Care, Sociology and Social Research, University of Kent. "Avenues of Access and the Parameters of Care: Reflections on Reception Procedures for Unaccompanied Asylum Seeking Children at a Port of Entry," in *The Asylum Seeking Child in Europe*. Ed. Hans E. Anderson, Henry Ascher, Ulla Bjornberg, Marita Eastmond and Lotta Mellander. Göteborg University, 2005.
- 18 Contact was made with practitioners in Wales and Northern Ireland, but no substantive interviews were able to be carried out with them due to their unavailability. However, there were relatively few unaccompanied or separated children in these two countries.
- 19 Immigration Rules HC 395.
- 20 Interview with Liz Barratt, a solicitor at Bindman & Partners, London. 2004.
- 21 In these cases the unaccompanied or separated children were usually told by the parent that he or she would be returning to collect them later. Whether this was the true intention of the parent was never clear to the child when subsequently the parent did not return.
- 22 There is presently an ASC in Croydon and another in Liverpool.
- 23 Child from Chad who was interviewed in depth for this research and who was subsequently granted refugee status.
- 24 Interview with Katherine Henderson, head of the

- Immigration and Asylum Department at Browell Smith Solicitors in Newcastle. 2004.
- 25 Based on the experiences of a small number of barristers and solicitors who regularly represented trafficked children.
- 26 Immigration Rules HC 395, para 297(i)(f).
- 27 Immigration Rules HC 395, para 57.
- 28 Immigration Rules HC 395, para 316A.
- 29 The government department responsible for inter-country adoption.
- 30 Immigration Rules HC 395, para 40.
- 31 Immigration and Asylum Act 1999, s10.
- 32 This could constitute a breach of Article 4 of the European Convention on Human Rights and create a situation where the child might even seek protection under the Refugee Convention.
- 33 Which s105 of the Children Act 1989 defines as a grandparent, brother, sister, uncle or aunt, or step-parent.
- 34 Individuals who are not the parent of a child can obtain parental responsibility by applying for a residence order under s10 of the Children Act 1989, or by becoming his or her guardian under s5 of the Children Act 1989.
- 35 Arising from s67 of the Children Act 1989.
- 36 Sheffield City Council. *Private Fostering Placements*.





National Legal Framework

3.1 The Legislative Framework

The U.K. has ratified both the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. It has also incorporated these international treaties into domestic law by stating that “nothing in the Immigration Rules (within the meaning of the 1971 [Immigration] Act) shall lay down any practice which would be contrary to the [Refugee] Convention.”¹

In addition, paragraph 328 of these Rules² confirms that every asylum claim will be determined in accordance with the Refugee Convention.³ When considering the meaning of the Refugee Convention, domestic courts also take into account the guidance contained in the UNHCR’s Handbook on Procedures and Criteria for Determining Refugee Status.⁴

In most cases, section 77 of the Nationality, Immigration and Asylum Act 2002 prohibits the removal of an asylum seeking child from the U.K. whilst his or

her asylum application is being determined. That is the case unless the unaccompanied or separated child is the responsibility of another Member State of the European Union because the child has previously claimed asylum there and does not have a parent who is already legally present in the U.K.⁵ The Secretary of State for the Home Department can also return unaccompanied or separated children who arrive via the U.S., Canada, Norway, and Switzerland or certify that asylum claims from a number of countries⁶ are clearly

unfounded, thus depriving this subset of asylum seekers of a right of appeal to the Asylum and Immigration Tribunal before they are removed from the U.K.⁷

If no third country issues arises, the application for asylum triggers one of a number of immigration decisions depending on whether the unaccompanied or separated child applies for leave to enter the U.K. as a refugee at a port of entry, has applied for leave to vary existing leave to remain (for example as a visitor) on the basis that he or she should be recognized as a refugee, or has entered the U.K. illegally and has sought to rely on the Refugee Convention to avoid removal. If any of these immigration decisions are negative, the unaccompanied or separated child is then entitled to an appeal.⁸

The Immigration Rules⁹ explicitly acknowledge the right of unaccompanied or separated children to apply for asylum and state that in view of their potential vulnerability, particular priority and care should be given to handling their cases.¹⁰

3.2 The Policy Framework

As a complement to legislation and the Immigration Rules, the Immigration and Nationality Directorate within the Home Office have also adopted a number of policies relating to the manner in which asylum applications from unaccompanied or separated children should be assessed and determined. These act as guidance for its own case workers and also for those representing unaccompanied or separated children. Unfortunately, throughout the time frame of the present research, policy in relation to unaccompanied or separated children has been under review. This has meant that some policy changes have occurred during the research period. Some new policies have only been

available in draft form.¹¹ The Immigration and Nationality Directorate used to publish an Unaccompanied Asylum Seeking Children Information Note, which summarized these policies and acted as guidance for its case workers. This has been superseded by a chapter in its Operational Processes Manual.¹² It also published Asylum Policy Instructions for its case workers. This document has been under review during the period of our research and references made to it in this Report are to the draft version made available to some non-governmental organizations in April 2005.¹³ The Immigration Service also published guidance entitled Best Practice: Unaccompanied Minors¹⁴ for immigration officers at ports of entry and enforcement offices. A new version of this document was made available in 2006.¹⁵

In addition to this domestic legislation, the U.K. is bound by two European Union Directives, the Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers¹⁶ and the Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees.¹⁷ Article 18.1 of the Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers states that the best interests of the children shall be a [but not *the*] primary consideration for Member States when implementing the provisions of the Directive.

The U.K. has also ratified the United Nations Convention on the Rights of the Child, but the relevance of this ratification is severely limited in relation to the asylum determination process for unaccompanied or separated children as the U.K. has entered a reservation to the Convention which states that:

The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom,

and to the acquisition and possession of citizenship, as it may deem necessary from time to time.

Despite this reservation, the Court of Appeal has referred to and relied on the Convention on the Rights of the Child in cases where it was asserted that a child's rights under the European Convention on Human Rights have been breached. In the recent case of *ID & Others v. The Home Office*¹⁸ (a case involving the detention of children with their parents in an immigration removal centre) Lord Justice Brooke relied on Article 37(b) of the Convention on the Rights of the Child and held that he was under a duty to interpret the European Convention on Human Rights in the light of other obligations in international law, including treaty obligations.¹⁹

The UN Committee on the Rights of the Child has characterized the broad nature of the reservation as one of its principal subjects of concern regarding the U.K.'s compliance with the Convention. It has questioned the compatibility of the reservation with the aims and purpose of the Convention itself,²⁰ finding it to be in direct contradiction to Article 2 which states that the Convention should apply to all children without discrimination of any kind and irrespective of their race, national, or ethnic origin. In 2002, the Committee recommended that the cir-



cumstances of children be addressed in the ongoing reform of the immigration and asylum systems to bring them into line with the principles and provisions of the Convention.²¹ This had not been done by May 2006.

The Children Act 1989 places a number of duties on local authorities to protect and provide support to children in need in the U.K. and these duties are owed to all children present in the U.K. irrespective of their immigration status or nationality. The Act does not impose any duties on the Immigration Service or the Immigration and Nationality Directorate but it plays an important part in defining unaccompanied or separated children's right to accommodation and financial support whilst their applications for asylum are being determined. It is also relevant if any child protection concerns, for example in relation to child trafficking, arise whilst an unaccompanied or separated child is in the U.K. Section 1 of the 1989 Act imposes a more stringent duty than that of the Convention on the Rights of the Child, because it requires the child's welfare to be the paramount (and not merely a primary) consideration when a decision is made in a family court in relation to an unaccompanied or separated child's welfare. However, section 1 of the Act does not apply to decisions made by the Immigration and Nationality Directorate in relation to unaccompanied or separated children.

Unaccompanied or separated children are also excluded from new protective measures introduced by the Children Act 2004. Section 11 of that Act imposes a duty on public bodies who come into contact with any child to "ensure that their functions [are] discharged having regard to the need to safeguard and promote the welfare of [that child]." However, the Immigration Service, the Immigration and Nationality Directorate, and Immigration Removal Centres are excluded from this duty. The Government successfully opposed amendments to the Children

Bill in Parliament which would have extended this duty to immigration officers at ports of entry and to Immigration Removal Centres. Section 10 of the Act also introduced Local Safeguarding Children Boards, which include representatives from local authorities, the police, the probation service, the National Health Service, and the prison service amongst others. The purpose of these boards is to coordinate services in order to safeguard the welfare of children within that area. The Government again successfully opposed amendments, which would have added representatives from local Immigration Removal Centres or the Immigration Service at ports of entry to these boards. This means that these boards do not have to take into account the needs of unaccompanied or separated children when making plans to safeguard the welfare of children in their areas. The fact that eight Chief Inspectors²² who reported on a regular basis to the Government on the safeguarding measures introduced by the Children Act 2004 have all addressed the needs of unaccompanied or separated in their reports²³ is an indication of their grave anxiety about the exclusion of the Immigration and Nationality Directorate from these duties and of their awareness that this absence jeopardized their own ability to fulfil their new duties. Some local authorities are also now questioning the legality of sharing confidential information about an unaccompanied or separated child with the Immigration Service or the Immigration and Nationality Directorate when they were not under a duty to act in the child's best interest. This is particularly the case in two sets of circumstances: (a) where they are asked by Government to evict failed asylum seeking families from local authority accommodation or (b) when they may be asked in the future to take part in a decision making process which may result in an unaccompanied or separated child being returned to their country of origin against the child's best interests.



Part 1 of the Children Act 2004 also establishes a Children's Commissioner for England, to advise the Secretary of State for Skills and Education²⁴ on issues relating to children. One of the Commissioner's duties is to ensure that the UN Convention on the Rights of the Child is taken into account. However, the Act explicitly states that this is subject to the U.K.'s reservation to the Convention. Despite this, the first Commissioner, who was appointed in 2005,²⁵ has taken a very proactive role in relation to children who are subject to immigration control and many of the issues concerning unaccompanied or separated children appear in his future work plans. To date he has been particularly concerned about the detention of children in Immigration Removal Centres but he has also appointed a policy adviser on children subject to immigration control to assist him. The Children's Commissioner for Scotland who took up her post at an earlier date has already publicly stated that she is opposed to the detention

of children (with their parents) in Dungavel Immigration Removal Centre, which is situated in Scotland. She also stated that she intends to look at the way in which asylum seeking children whose claims have failed are removed from the U.K.²⁶ She is able to do this more easily than her English counterpart as her powers derive from different legislation particular to Scotland which more closely mirrors the contents of the Convention on the Rights of the Child.²⁷

Endnotes

- 1 Asylum and Immigration Appeals Act 1993, s2.
- 2 Immigration Rules HC 395.
- 3 There is also a Gateway Protection Programme within which the U.K. has agreed to accept 500 genuinely deserving refugees each year from a pool of referrals from the UNHCR. To date only 86 such refugees have been accepted. Unaccompanied or separated children are not eligible for this programme.
- 4 See dicta in *Robinson v. Secretary of State for the Home Department* [1997] Imm AR 568.
- 5 Article 6 of Dublin II, Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. 2003/343/EC.
- 6 Albania, Bulgaria, Serbia and Montenegro, Jamaica, Macedonia, Moldova, Romania, Bolivia, Brazil, Ecuador, Sri Lanka, South Africa, Ukraine, India.
- 7 Nationality, Immigration and Asylum Act 2002, s94.
- 8 Nationality, Immigration and Asylum Act 2002, s82, 84.
- 9 HC 395 made under s3 of the Immigration Act 1971.
- 10 Para 350 of HC 395.
- 11 When this is the case, this is made clear in the relevant footnotes. It has also meant that it was not always possible to measure the practice of the IND against the policy in operation at the time of the decision or action being discussed. The new policies, however, were not radically different to previous ones in most areas.
- 12 *Processing Applications from Children*, Third Edition. C5, "Special Types of Cases." 30 August 2005.
- 13 The IND finally issued the new Asylum Policy Instruction on Children in April 2006.
- 14 Produced by the OASIS (Asylum Team) Asylum Screening Unit (ASU). 1 January 2004.
- 15 U.K. Immigration Service, Border Control Policy Implementation. *Children Arriving in the UK*. 1 September 2005.
- 16 2003/9/EC, which had to be implemented in the U.K. by 6 February 2005.
- 17 2004/83/EC. Incorporated into U.K. law on 9 October 2006.
- 18 [2005] EWCA Civ 38.
- 19 See *T and V v. United Kingdom* (2000) 30 EHRR 121 at para 76.
- 20 Committee on the Rights of the Child. Consideration of report submitted by the United Kingdom of Great Britain and Northern Ireland. UN Doc CRC/C/15/Add.34, Eighth Session, 1995.
- 21 Committee on the Rights of the Child. Concluding Observations: United Kingdom of Great Britain and Northern Ireland. 9 October 2002.
- 22 These are Her Majesty's Chief Inspectors of Schools, Court Administration, Probation, the Constabulary, Prisons and the Crown Prosecution Service, the Chief Executive of the Commission for Social Care Inspection, and the Chief Executive of the Healthcare Commission.
- 23 *Safeguarding Children*. The Second Joint Chief Inspectors' Report on Arrangements to Safeguard Children. July 2005.
- 24 The Department for Education and Skills is now the lead government department for all policy relating to children, having taken over this role from the Department of Health.
- 25 Al Aynsley-Green, who had previously been a consultant paediatrician, took up his post on 1 July 2005.
- 26 *Scottish Commissioner to Investigate Treatment of Asylum Seeking Children*. Community Care. 27 January 2005.
- 27 The Commissioner for Children and Young People (Scotland) Act 2003.



Monitoring Entry to Provide Protection

4.1 Role of the Immigration Service

The U.K. Immigration Service is the only statutory body with the ability on the ground to monitor what happens when unaccompanied or separated children come to the U.K. However, the research reveals that in practice the Immigration Service is being asked to undertake a number of different and not altogether compatible roles.

Its primary statutory role is to ensure that unaccompanied or separated children who arrive in the U.K. are only permitted to enter if they can meet the requirements of the Immigration Rules or have made an application for asylum. It also has a significant role in combating human trafficking.¹ In addition it has accepted a de facto duty of care² to any unaccompanied or separated child in its physical custody for questioning until the child is collected by a carer or a social services department. This complexity of roles

mirrors the bifurcated reality facing unaccompanied or separated children, subject to immigration controls limiting their rights of entry but also in need of protection by reason of their age and possible claims under the Refugee Convention.

The standards which the U.K. Immigration Service³ sets for its immigration officers are high and are contained in Best Practice guidelines for immigration officers at ports of entry.⁴ They stipulate that when an immigration officer becomes aware of the presence

of someone who might be an unaccompanied or separated child they should be given immediate attention if possible.⁵ Where an unaccompanied or separated child claims to be joining an adult already in the U.K., and the child is of an age to be able to answer questions, an immigration officer ascertains the child's name and date of birth and whether the child is joining relatives or family friends. A Warning Index Computerised Check is carried out to check the suitability of the adult carer.⁶ If the checks do not reveal anything negative, and the child is travelling as part of an organised group or is going to be a student at a bona fide establishment, leave to enter is likely to be granted at this point. Otherwise the adult sponsor is asked to attend an interview and provide proof of identity.⁷ Checks are also made with the local Criminal Intelligence Division, INDIS (local intelligence records) and the Police National Computer.⁸

If the adult is deemed unfit to care for the child, the Immigration Service contact the local social services department and ask it to accommodate the unaccompanied or separated child.⁹ If social services decline to do so and the Immigration Service is still concerned about the child, it contacts the Child Protection Officer at the local police station, who applies for a police protection order¹⁰ in relation to the child. This leads to the involvement of the local family court which can direct that social services undertake an assessment of the risk entailed in allowing the child to go to live with the adult in question.¹¹

Meanwhile if at any time the unaccompanied or separated child discloses any information which relates to a criminal activity, such as child abuse or child trafficking, any interview is terminated and the police contacted. Similarly if a child indicates that he or she wishes to claim asylum, an asylum screening interview is arranged as soon as possible.



In order to prepare immigration officers for their new and enhanced role, the Government made an undertaking in September 2003, to provide them with more training so that they could more easily identify children at risk when they arrived at ports of entry.¹² A three day “Interviewing Minors” training course was devised by the Immigration and Nationality Directorate College and training commenced on 3 November 2003. Recognizing signs that a child may have been trafficked was said to be an important aspect of this course.¹³ The aim was to train 10% of operational staff at each port of entry with no less than four officers being trained in the smaller ports. By March 2004 approximately 200 immigration officers were due to be trained and further courses were planned for 2004–2006 with a target of 600 trained staff by March 2005. Staff who have been through this training have formed “Minors Teams” at the port and have dealt with unaccompanied or separated minors arriving at that port, working closely with social services, the police, and child protection officers. Dover East and Heathrow Terminal Two were the first ports to establish such teams. Initially other ports just had a nominated officer responsible for matters relating to unaccompanied or separated children.

The establishment of these Minors Teams and the Best Practice guidance are clearly very positive moves but comments made by children dealt with by the Immigration Service still remain negative in part. In striving to meet a number of potentially conflicting objectives, the Service appears not to be prioritizing the best interests of the child above immigration control imperatives. The Best Practice guidance describes the Service's role as follows:

- To minimise welfare risks to unaccompanied minors seeking entry to the U.K.
- To define the Immigration Service's duty of care to unaccompanied minors by explaining the role of Social Services
- To assist in developing robust controls on the travel to the U.K. of unaccompanied minors by increasing sponsor checks and testing the credibility of the applicant whenever possible. 80% of unaccompanied asylum seeking children claim asylum in country. **The new measures should contribute to the departmental business aim of reducing asylum intake.**

This last objective raises questions about the Immigration Service's assertion that it owes a duty of care to unaccompanied or separated children and its claimed compliance with wider policies relating to the child asylum claims. As is discussed later in this Report, unaccompanied or separated children are not expected to participate in an interview about the substance of their application for asylum: their screening interviews are only supposed to deal with issues of identity and establish the routes they took to the U.K. Children are also not supposed to be examined at their port of entry about the credibility of their account of persecution or their reasons for needing international protection. However, the requirement of "reducing asylum intake" clearly encourages such questioning and distracts immi-

gration officers from their duty to identify possible victims of trafficking, since such identifications potentially increase rather than decrease the number of recognized refugees.

4.2 Amendment of the Immigration Rules

This contradictory approach was also adopted when the Immigration Rules were amended in 12 February 2006 to introduce new paragraphs 46A to F, which impose new and additional requirements for visitors who are under 18. Unaccompanied children wishing to visit the U.K. now have to demonstrate that suitable arrangements have been made for their travel to and reception and care in the U.K. and that they have a parent or guardian in their home country or country of habitual residence who is ultimately responsible for their care. In addition, if a child is a visa national¹⁴ the child's parent or guardian will have to inform the entry clearance officer whether the child will be travelling to the U.K. alone or with a nominated adult. The unaccompanied or separated child's entry clearance document (now called a vignette) is endorsed with that adult's name and details and is not valid for travel with anyone else. The Home Office has indicated that the new Rules were brought in to ensure that:

[Unaccompanied or separated] children cannot enter the U.K. in the company of an adult who is either unrelated or with whom they have little connection. By doing this they can evade the extra scrutiny of the reception and care arrangements awaiting the child in the U.K. which is given to children who travel unaccompanied. Some instances can be well intentioned but highly irregular, but in others the child is used to facilitate fraud, and can endure serious physical harm.¹⁵

It is clear that the Rules are a positive development to meet legitimate child protection objectives. They are also a response to growing concerns about the number of unaccompanied or separated children trafficked into the U.K. for the purpose of benefit fraud or sexual or domestic exploitation or who were being sent to private foster placements which were both illegal and potentially abusive.

However, the Rules also assist the Government with its plans to remove children from the U.K. when their asylum claims have been unsuccessful. As the Home Office explains:

The changes will create an official and accessible record which is not there at the moment. These measures are aimed at tackling some of the problems associated with unaccompanied minors arriving in the United Kingdom, chief of which is the lack of information about their circumstances in their home country. They will contribute to the ability to act, where necessary, when individual children come to attention after arrival for welfare or other reasons.... The records which this provision will allow us to keep will be a deterrent to abuse, as all of those involved in the child's travel will be traceable.

This policy may be of benefit in reuniting unaccompanied or separated children with their families at a later stage in the asylum determination process, but the large amount of additional information about the child's origins does not necessarily contribute to this goal, particularly when families are displaced and uprooted. Whether or not the new Rules will be helpful or detrimental to the welfare of children will depend upon future practice. The research revealed concern on the part of a number of non-governmental organizations that the imperative of reducing the number of asylum seekers coming to the U.K. might take precedence and the risk of returning a child to a named family member may

not be fully explored. There is also some concern that the new Rules will place considerable barriers in the way of families seeking to send their children abroad to safety as visitors. In times of crisis they may well not be able to comply with the new requirements and therefore will have to rely on illegal methods of entry and place their children in the hands of smugglers who may turn out to be traffickers.

4.3 Tackling Child Trafficking

The Home Office has recognized that collection of data and research is an essential prerequisite to the successful identification of trafficked children and other children at risk of harm. In 2003 it took part in an operation entitled Operation Paladin Child¹⁶ at Heathrow Airport. This operation was led by the Metropolitan Police and funded by Reflex.¹⁷ It was supported by the Immigration Service, the London Borough of Hillingdon, and the National Society for the Prevention of Cruelty to Children (NSPCC).

During the period of Operation Paladin Child, which was from 26 August to 23 November 2003, 1,904 unaccompanied or separated children arrived at Heathrow Airport from non European Union countries. Of these, 166 claimed asylum and were not assessed further. Another 1,738 stated that they were going to join adults who were not their parents.¹⁸

Five hundred and fifty one children were "risk assessed in" for further evaluation. A significant minority were from Nigeria, South Africa, and Ghana, countries where there was already evidence that children were being trafficked into Europe for sexual exploitation in prostitution and pornography.¹⁹ In addition, as many of the children appeared to be visiting adults with whom they had had little prior contact, there was concern²⁰ that exploitative private fostering arrangements were being made.²¹



“They are brought into [the U.K.] to look after children of African couples living in this country. Back home it is the culture to use children for domestic work. But here they don’t go to school, they have to work all day and they are then at risk from abuse.”²²

The potential risk factors which were established by Operation Paladin and used to profile potential victims of abuse included giving an address or the name of an adult already known to the police or the Immigration Service, having no fixed return date, or being under 16 and proposing to stay for over 28 days. The children and the adult or adults they were planning to join were interviewed in depth by the local social services department. Three children were found to be at risk of significant harm and were placed on Child Protection Registers. Thirty one were accommodated by the London Borough of Hillingdon on the basis that they were in need of accommodation and that there was no one in the

United Kingdom with parental responsibility for them. Many other families were provided with parenting advice. In addition, 28 children were initially thought to have gone missing. Fourteen of these children were subsequently located by the police, having left the country, or having claimed asylum. The largest minority amongst the group who disappeared were Nigerian.²³ In addition two other missing children who were American citizens were believed to have been Nigerian originally.²⁴

The research did not identify widespread trafficking of children but those conducting the research were sufficiently concerned about their findings to conclude that they should develop a new set of risk indicators for use by the Immigration Service and create a multi-agency Heathrow Safeguarding Team with dedicated arrival desks for unaccompanied or separated children. This team became operational on 17 October 2005 and involved members from the Metropolitan Police, the Immigration and Nationality Directorate, the Department for Education and Skills, the London Borough of Hillingdon, the NSPCC, and the Foreign and Commonwealth Office.

The Immigration Service already had the power to fingerprint children on arrival²⁵ (although as a matter of policy children under five were not fingerprinted²⁶). When the power to fingerprint children was first introduced in 1999 it attracted a large amount of criticism from lawyers and human rights activists. Later in the light of an increased awareness of the existence of child trafficking, practitioners have urged the Immigration Service (and local authorities) to obtain biometric details of unaccompanied or separated children at the earliest possible stage to make it easier to identify them if they are trafficked within the U.K. or Europe at a later time.²⁷ Some practitioners also favour children being photographed as soon as they make contact with social services for the same reasons, as this is the only way that the police and EUROPOL can effectively trace children

subsequently abducted by their former traffickers.

Good inter-agency practice has developed in some areas. An Interagency Protocol²⁸ has been agreed between Kent Social Services, the Immigration Service, Kent Police, and Migrant Helpline to identify and protect unaccompanied or separated children arriving in Kent. Social workers from West Sussex Social Services Department have worked with the police and the Immigration Service at Gatwick Airport (which is in Sussex) to develop a “trafficking profile” to assist immigration officers to identify and protect children being trafficked through that airport.²⁹ West Sussex Social Services also accommodated unaccompanied and separated children suspected of being trafficked in “safe houses” whilst further enquiries were being conducted.³⁰

Very little research has yet been done into the scale of child trafficking into and through the U.K. and the research that has been done has been hampered by the hidden nature of the trade. However, it became clear at a conference held in London on 10 March 2006 that individual police officers, social workers, lawyers, and non-governmental organizations are aware of a significant number of children trafficked into their own local areas.³¹ Evidence was also presented that children, once trafficked in, are moved around to service demand in various parts of the country, although the exact picture is unclear, with individual cases emerging in such diverse places as West Sussex, Newcastle, and Glasgow.³² One of the effects of the counter trafficking measures taken at Heathrow and Gatwick airports and Dover in the South of England seems to have been displacement of trafficking activity to other parts of the U.K. Child trafficking seemed to be concentrated in localities with existing histories of “serious organised crime”, such as Nottingham.

Despite official concern and diligent efforts to address the problem, the treatment afforded to trafficked children and the shame they feel have impeded

effective intervention. The research reveals that the very act of being trafficked and the abuse it involves isolates children from the community around them and discourages them from seeking assistance from the authorities. So does the fact that many of the trafficked children do not have leave to remain in the U.K. and are afraid of being punished if they seek protection from the authorities. Many of the children are also threatened with severe retribution against themselves or their families if they try to seek assistance.

‘A’ was a 15-year-old Albanian girl who was tricked into a bigamous marriage and brought to England. She was forced to work on the streets by her “husband,” who used to hit her with his mobile phone charger and tell her that he would cut her up into pieces and throw the pieces in a forest if she did not comply with his orders. She stated that she thought people knew that she was a prostitute and were disgusted. She went on to state “I hated myself, I wanted to be dead. I thought I was at the lowest level of society.”³³

Available data suggest that the number of unaccompanied or separated children being trafficked into and through the U.K. is significant and that the trafficking operations are diverse and sophisticated. The Asylum Seekers and Reception Team in Nottingham City Council’s Social Services Department believes it has worked with around 50 children brought to the U.K. for exploitation.³⁴ The police in Nottingham have also found five African children between the ages of 14 and 18 (four girls and one boy) who appear to have been trafficked in for prostitution and have involved Interpol to launch an international enquiry.³⁵ Lawyers in Newcastle³⁶ have noticed an increasing number of Nigerian and other West African girls arriving there and suspect that some at least of them had been trafficked. Newcastle’s

Family Support Team has also identified a number of trafficked children. Professionals working in East Anglia report³⁷ unaccompanied or separated Vietnamese girls have arrived at Stanstead Airport and later disappeared whilst being cared for by Cambridge or Essex social services departments. During the Christmas period of 2005, social workers in Norwich believed that a number of Chinese unaccompanied or separated children who arrived at Norwich Airport had been trafficked and were destined for prostitution in Kings Lynn. However, neither the police nor social services were able to assist them as they were immediately put back on the plane by the Immigration Service. South Yorkshire Police led an investigation into the trafficking of a 15-year-old Lithuanian girl to the U.K. for sexual exploitation. In March 2005, three men were found guilty of trafficking her into and within the U.K.³⁸

In the U.K., as in other European Union states, the police have noted the involvement of Balkan and East European organized crime groups in human trafficking for sexual exploitation, with Albanians playing a major role.³⁹ This conclusion is echoed by

the lawyers and social workers for those who had been trafficked. There is also evidence of Nigerian, Chinese, and Vietnamese trafficking rings. These rings tend to have their own distinctive methods of controlling the unaccompanied or separated children they have trafficked. Albanian rings rely on extreme violence and threats of further violence; Nigerian rings rely on initiation ceremonies and the unaccompanied or separated children's animistic beliefs. The traffickers often abduct unaccompanied or separated children who are socially isolated or who have already been separated from their family. Many think they are being transported to seek protection and are shocked by the outcome of their trips.

“N” was 12 when she left home in Romania to escape from an abusive father. She asked a family friend for help. He took her to Serbia and sold her. She was prostituted there and then in Macedonia, Albania, and Italy before being resold and brought to the U.K. Once in the U.K. she was able to escape and seek assistance from a social services department.⁴⁰



“G” was a 16-year-old Christian girl from the north of Nigeria. She was denied access to secondary school and assaulted because she would not convert to Islam. Her parents contacted an agent and paid him to bring her to the U.K. to claim asylum. However, the agent subsequently sold her into prostitution in the U.K.⁴¹

In 2004, social workers in Glasgow discovered a number of very young West African unaccompanied or separated children who appeared to be domestic slaves in households⁴² in the city. When they visited some addresses they found children hidden under beds or in cupboards.⁴³ Manchester City Council’s Asylum Support Team estimates that two or three unaccompanied or separated children go missing each year.⁴⁴ When they do the team contacts the police to investigate the possibility of child trafficking.

Research⁴⁵ conducted in London boroughs from January to December 2003 revealed that 17 boroughs were looking after unaccompanied or separated children who had been trafficked. Details were provided for 35 of these children but there were an additional 15 trafficked children for whom no data was available. Of these 13 had been trafficked for the purpose of child prostitution, 14 for domestic servitude, one for both prostitution and domestic servitude, three in order to claim addi-



tional welfare benefits, and four for forced labour in restaurants or street selling. Information provided by other areas similarly suggests that unaccompanied or separated children are being trafficked for a variety of purposes which include child prostitution, domestic slavery, benefit fraud, forced labour, and even — it has been suggested — ritual killings.

“Xia” was just 12 when she was brought into the U.K. and placed with a family in South London. She was forced to sleep in their garage and had to work from 6 a.m. to late at night doing all their laundry, cleaning, preparing meals, and caring for the children whilst they were in the house. She was not allowed to go out and was only given leftovers to eat. Her plight was only discovered when a neighbour reported her concern to social services. By then she had acted as a domestic slave for two and a half years and was severely traumatized.⁴⁶

“Mabama”, who was Nigerian, was just 11 when her mother “sold” her to a man who took her to Dublin to act as a servant for his wife. She was never allowed to leave the house and had to do all the household chores and look after a child of five and a baby of six months. When she tried to contact the police, she was sent to London and placed in another household where again she was exploited as a domestic slave. She was later permitted to attend school and they contacted social services because of concerns over cuts and bruises on her body. It was later discovered that the woman whose house she was living in used to beat her with electrical flex and a large wooden spoon. Social services also discovered that this woman had paid Mabama’s mother for her “services.”⁴⁷

A National Action Plan to combat trafficking in the U.K. has still not been instituted. However the Government launched a consultation process on such

a plan in January 2006 requesting responses by 5 April 2006. In the forward to this consultation, Paul Goggins, MP, Home Office Parliamentary Under Secretary of State states:

Human trafficking is a truly appalling crime where people are treated as commodities and traded for profit. It is big business, often controlled by organized crime groups who seek the maximum return for their investment at the expense of the health and wellbeing of their victims.

Despite this expression of human rights concern for victims, the draft proposals included in the consultation document are heavily biased towards border control and crime reduction. Moreover, the positive steps taken so far to combat child trafficking have been taken by the police and Crown Prosecution Service as opposed to the Immigration and Nationality Directorate. The latter is still wedded to the belief that the provision of any form of leave to the victims of trafficking, including unaccompanied or separated children, will act as a “pull factor” to “bogus” asylum seekers and therefore will not cooperate with other agencies by offering any new form of status to victims of trafficking, even though this would also encourage them to act as witnesses and enable their traffickers to be prosecuted. Therefore the U.K. has opted out of the European Union Directive on Short Term Residence Permits Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings Who Co-operate with the Competent Authorities. The U.K. has also failed to sign and ratify the Council of Europe Convention on Action Against Trafficking in Human Beings,⁴⁸ because it provides victims of trafficking with short reflection periods and renewable residence permits.

In 2000, the U.K. set up Reflex, a multi-agency task force⁴⁹ to combat organized immigration

crime. One of its three key objectives is to target human trafficking. It also established a network of Immigration Liaison Officers in 23 key source and transit countries in Europe. The Home Office also developed a Crime Reduction Toolkit on the Trafficking of People to inform police, immigration officers, and others of the issues related to human trafficking and what steps they should take to combat the trade. Many of the partners in Reflex understand that victim protection is essential to the prosecution of the organized international gangs but have not been able to convince the Immigration and Nationality Directorate of this fact.⁵⁰

Compliance With International Standards

- **1.** Article 35 of the Convention on the Rights of the Child compels states to take specific national, bilateral, and multilateral measures to prevent “the abduction of, the sale of or traffic in children for any purpose and in any form.” Articles 32 and 34 prohibit the economic and sexual exploitation of children within a state’s territory.
- **2.** Paragraph 23 of the Committee on the Rights of the Child’s General Comment No. 6 (2005) recognizes that unaccompanied or separated children are vulnerable to trafficking for purposes of sexual or other exploitation. At paragraph 24 it states that practical measures should be taken at all levels to protect children from trafficking, which includes priority procedures for child victims of trafficking and the prompt appointment of a guardian.
- **3.** The European Union has adopted a Directive on Short Term Residence Permits Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings Who Co-operate with the Competent Authorities.

- **4.** Article 4 of the European Convention on Human Rights prohibits the use of any form of slavery and forced labour.
- **5.** Article 10.3 of the Council of Europe’s Convention on Action Against Trafficking in Human Beings states that “when the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.”
- **6.** Article 10.4 of the Council of Europe’s Convention on Action Against Trafficking in Human Beings states that “as soon as an unaccompanied child is identified as a victim, each Party shall provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child.”
- **7.** The Separated Children in Europe Programme⁵¹ states that the treatment of trafficked children by immigration officers, police, social workers, and other practitioners should be governed by child protection principles that should prevail over immigration or crime prevention priorities.
- **8.** It also states⁵² that immigration authorities should put in place procedures to identify separated children and to refer such children to the appropriate child welfare authorities. Where an adult accompanies a child, the nature of the relationship between the adult and the child should be established. Since many separated children enter a country without being identified as “separated” at ports of entry, organizations and professionals should share information in order to identify separated children and ensure they are given appropriate protection.



Recommendations

- **1.** A specialist team should be established at each port of entry to identify and combat child trafficking.
- **2.** Immigration officers and staff working within the Immigration and Asylum Directorate should all receive training to assist them in identifying unaccompanied or separated children who are being trafficked and in advising children of their entitlement to protection under the Refugee Convention and the European Convention on Human Rights. Immigration personnel should also be trained to recognise the potential impact of any directives or conventions to combat trafficking which the U.K. may subsequently opt into or ratify.

- **3.** The Department for Education and Skills should appoint a senior civil servant to coordinate research into, and schemes to combat, trafficking within the department.
- **4.** The Department for Education and Skills should establish a national training programme to alert social workers to the incidence of child trafficking for the purposes of sexual, domestic, and labour exploitation and the needs of the children who have been trafficked for these purposes.
- **5.** The Department for Education and Skills should provide funding for local authorities to accommodate unaccompanied or separated children who have been trafficked to the U.K. and who are not entitled to protection under the Refugee Convention where it would not be in their best interests to be returned to their countries of origin.
- **6.** The Legal Services Commission should work with Anti Slavery International and the Immigration Law Practitioners' Association to develop training for legal practitioners to enable them to identify children who have been victims of trafficking.
- **7.** The U.K. should introduce legislation to provide indefinite leave to remain for unaccompanied or separated children who do not qualify for protection under the Refugee Convention but whose experience of being trafficked means that it is not in their best interest to expect them to return to their countries of origin.

Endnotes

- 1 See the chapter on trafficking in *Guidance: Children Arriving in the UK*, U.K. Immigration Service Border Control Implementation. 5 September 2005.
- 2 U.K. Immigration Service. *Best Practice: Unaccompanied Minors: Unaccompanied asylum and non-asylum seeking children* 1 January 2004. Para 5.1.
- 3 Which is the part of the Home Office responsible for checking whether a person has or should be granted leave to enter the U.K. and also undertaking the initial screening of anyone who claims asylum at a port of entry.
- 4 U.K. Immigration Service. *Best Practice: Unaccompanied Minors: Unaccompanied asylum and non-asylum seeking children*. 1 January 2004.
- 5 Ibid, Endnote 4, para 10.1.
- 6 Ibid, Endnote 4, para 10.3.
- 7 Ibid, Endnote 4, para 9.1.
- 8 Ibid, Endnote 4, para 9.2.
- 9 Using its powers under s20 of the Children Act 1989.
- 10 Under s46 of the Children Act 1989. This power can be exercised when a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm.
- 11 Under s47 of the Children Act 1989.
- 12 Her Majesty's Government. *Every Child Matters*. Green Paper, Cm 5860. Para 2.51.
- 13 Home Office. Consultation on *Tackling Human Trafficking — Consultation on Proposals for a UK Action Plan*. January 2006. Page 17.
- 14 These are nationals of the 105 countries now listed in Appendix 1 to the Immigration Rules HC 395 who require prior entry clearance before they can travel to the U.K.
- 15 Letter from the Managed Migration Strategy and Review Directorate of the Home Office to the ILPA. 6 February 2006.
- 16 *Paladin Child: The Safeguarding Children Strand of Maxim funded by Reflex: A Partnership Study of Child Migration to the UK via London Heathrow*. Reflex, 2004.

- 17 A multi-agency task force established to coordinate intelligence and law enforcement activity to combat human trafficking in general and liaison officers seconded to host governments in key source and transit countries.
- 18 Of these, 871 were male and 862 were female so no gender disparity arose.
- 19 Somerset, Carron. *What the Professionals Know: The Trafficking of Children into and through the United Kingdom for Sexual Purposes*. End Child Prostitution, Pornography and Trafficking (ECPAT), November 2001. See also: Home Office Crime Reduction Unit. *Trafficking of People Toolkit*. Research indicates that children are also being trafficked into the U.K. from Eastern Europe, China, Ethiopia, Afghanistan, Bangladesh, Iraq, Kosovo, Thailand, and Vietnam. See *End Child Exploitation — Stop the Traffic*. UNICEF, July 2003.
- 20 BAAF estimate that there are around 8,000–10,000 privately fostered children in the U.K.
- 21 A phenomenon believed by AFRUCA, BAAF, UNICEF UK, and Anti-Slavery International to be fairly widespread in some communities in the U.K.
- 22 Debbie Ariyo of Africans Unite Against Child Abuse, on BBC “Five Live.” 15 February 2004.
- 23 This was thought to be significant, as it was known that at least two large Nigerian trafficking rings were trafficking child prostitutes through the U.K. on the way to Italy, and that younger Nigerian children were also being used as domestic slaves within the U.K.
- 24 In a separate piece of research, the Metropolitan Police discovered that between July and September 2001, about 300 boys between four and seven had gone missing from school records. One boy was Caribbean. All the others were African. The police were able to trace only two of these children despite undertaking enquiries in their purported countries of origin. The research was undertaken during an operation to find the identity of a Nigerian boy believed to have been killed for ritualistic purposes in London. Police and child welfare experts believe the missing children had been trafficked to the U.K. for benefit fraud or as domestic slaves. Article in *The Independent*, 14 May 2005.



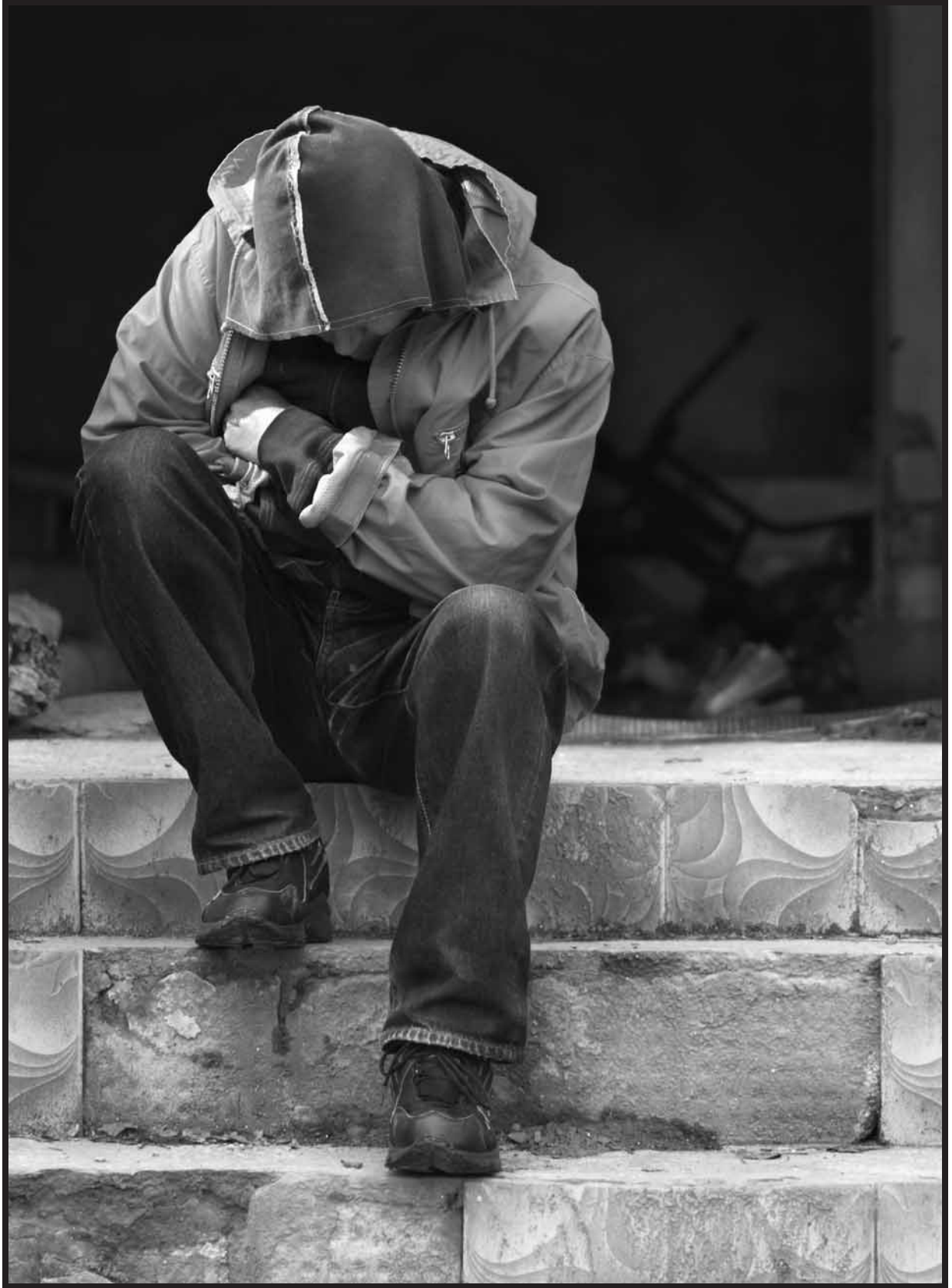
- 25 Immigration and Asylum Act 1999, s141.
- 26 Immigration and Nationality Directorate. *Unaccompanied Asylum Seeking Children Information Note (Draft)*. 2004. Para 2.3.
- 27 The U.K. is known to be a transit country for children being trafficked for prostitution or sexual exploitation in Holland and Italy.
- 28 Kent Social Services Department. *Interagency Protocol Vulnerable Children and Young People Arriving in Dover*. July 2002.
- 29 Operation Newbridge. Much of the work was pioneered by Lyn Chitty, a senior social worker with West Sussex, and arose from the fact that a large number of girls from West Africa, the majority of them from Nigeria, were claiming asylum on arrival at Gatwick, being accommodated by West Sussex Social Services Department, and then disappearing shortly afterwards. Once she and others gained the trust of the girls coming in, they discovered that they had been told to claim asylum and then telephone a number in the U.K. in order to be picked up. They had usually been subjected to a ritualistic initiation involving the killing of chickens or other birds or animals, and had been told that if they told the authorities about what was happening to them, they too would be killed by the spirits. Some of them had a pattern of small scars over parts of their body which had been caused by a very sharp blade during their initiation. In the course of her work with these girls and with the police, Lyn Chitty discovered that many of them were en route to Italy as underage

street prostitutes. West Sussex ran safe houses for the children it had rescued for some years, but these were closed in 2004 as the number of “trafficked” children arriving at Gatwick dropped dramatically in response to the work being done to counter trafficking there. It has been estimated that the investment on which a trafficker expects to see a return is at least £15,000 for each Nigerian girl, and this is the amount he will expect her to make before he is prepared to release her from prostitution (see Somerset, *Ibid*, Endnote 19).

- 30 Interview with Kate Phillips, Assistant Social Worker, Child Asylum Team, West Sussex County Council. Unfortunately these safe houses were subsequently closed down.
- 31 “Trafficking for Sexual and Labour Exploitation.” A conference organized by Garden Court Chambers and supported by the ILPA.
- 32 *Stop the traffic! End Child Exploitation*. UNICEF UK, 2003.
- 33 “Trafficking Victim Tells of Torment.” BBC News. 30 July 2003.
- 34 Information provided by its team leader, Richard Knight. 2004.



- 35 “Child Prostitutes’ Trafficked into UK.” BBC News. 16 May 2003.
- 36 Interview with Katherine Henderson, head of the Immigration and Asylum Department of Browell Smith in Newcastle. 2004.
- 37 At a meeting of the Steering Group of the Refugee and Asylum Seeking Children’s Project based at the Children’s Legal Centre at the University of Essex. 7 February 2006.
- 38 Home Office. *Tackling Human Trafficking: Consultation on Proposals for a UK Action Plan*. January 2006.
- 39 Home Office. *Trafficking of People: Crime Reduction Toolkit*. 2004.
- 40 Case history provided by UNICEF UK.
- 41 Example from U.K. Coordinator’s case load.
- 42 Such treatment was held to be a breach of Article 4 of the European Convention on Human Rights in *Silliadin v. France*. Application No. 73316/01.
- 43 Interview with Clare Tudor, Immigration Advisory Service, Glasgow. 2004.
- 44 Interview with Bill Davies, head of Asylum Support Team at Manchester City Council. 2004.
- 45 Somerset, Carron. *Cause for Concern: London Social Services and Child Trafficking*. ECPAT UK, March 2004.
- 46 Example from U.K. Coordinator’s case load.
- 47 Example from U.K. Coordinator’s case load.
- 48 Council of Europe Treaty Series No. 197.
- 49 Its members include the Home Office, the Immigration Service, the National Criminal Intelligence Service, the security and intelligence services, the Foreign and Commonwealth Office, and key police forces with support from the Association of Chief Police Officers (ACPO) and its Scottish equivalent ACPOS.
- 50 This became obvious during discussions at the conference organized by Garden Court Chambers and supported by ILPA on “Trafficking for Sexual and Labour Exploitation” on 10 March 2006.
- 51 *Statement of Good Practice*, Third Edition. 2004. C2.
- 52 *Ibid*, Endnote 51, C4.



Age Disputes: A Barrier to Entering a Child Specific Asylum Determination Process

A very significant number of unaccompanied or separated children are denied access to a child appropriate asylum determination process and to social services accommodation because their age is disputed by an Immigration Officer or an Immigration and Nationality Directorate case worker during the initial screening process.

This sometimes occurs because the child travelled on a passport with an adult's date of birth, even though the case worker accepts that the passport in question was false. More usually it occurs because the officer simply thinks the child looks like an adult. If this assessment is wrong the unaccompanied or separated child is not only denied entry to the age appropriate asylum determination process but also the child's credibility is put in doubt, with obvious adverse consequences for the child's chances of being granted asylum. **There is also some anecdotal evidence that age disputed children are more likely to be detained than adults** because of

doubts about their reliability and the likelihood of their absconding raised by the dispute over age.¹

The number of unaccompanied or separated children whose ages were disputed increased rapidly between 2001 and 2004. This increase seemed to be consistent across the U.K. According to a case worker at Stockport Law Centre² the local social services department had reported that a growing number of unaccompanied or separated children were having their stated ages disputed. This perception was echoed by a solicitor³ in London. In addition, six of the nine children interviewed in depth about their experiences

of the asylum determination process had initially had their ages disputed.⁴ The Refugee Council which keeps a record of every unaccompanied or separated child referred to it by the Home Office, whether their age has been disputed or not, noticed the same increase. Its figures show that in 2001, 11% of unaccompanied or separated children had their ages disputed. This rose to 28% in 2002 before decreasing slightly to 25% in 2003. **It then rose to 37% in 2004, when 1,456 of 3,867 referrals were age disputed.** This trend was confirmed when the Home Office released its first annual figures on age disputes in 2005. These showed that according to its records 2,345 individuals were age disputed in 2004 whilst 2,990 were accepted to be minors. **However aggregating the two sets of figures it would appear that as many as 43% of those who applied for asylum as an unaccompanied or separated child initially had their age disputed in 2004.** Research undertaken by Cambridgeshire County Council in 2003 and 2004 indicated that about 50% of those age disputed turned out to be minors and were therefore being denied the additional protection they were entitled to during the asylum determination process.

Both local authority employees and those working for non-governmental agencies reported being told at times by individual Immigration and Nationality Directorate officers that 85% or more of the applications for asylum made by unaccompanied or separated children were manifestly unfounded. Clearly there was a climate of extreme scepticism within the Directorate towards this population of asylum seekers, in part because of age related claims. This attitude was also apparent in the White Paper issued in February 2002⁵ which addressed the “need to identify children in genuine need at the earliest possible stage, to sift out adults posing as children and to deter those seeking to abuse the system.” The White Paper went on to note that Home Office staff were “already taking steps to challenge older appli-

cants and divert them to the adult asylum process so that adults posing as children do not become a problem for local authorities.”⁶

Local authorities were properly concerned about placing individuals who might be adults claiming to be children in foster care or a residential home alongside minors and there was evidence (including from Cambridge Social Services Department referred to below) that some adults did indeed pose as children at times.⁷ However, there was also a substantial amount of other evidence of children being wrongfully excluded from an age appropriate asylum determination process and being placed in physical or psychological jeopardy by being housed with adults either in detention or by the National Asylum Support Service (NASS).⁸

“Y” was a 16-year-old boy from Chad. He claimed asylum on a Friday and the Asylum Screening Unit in Croydon told him that they did not believe that he was a child. It referred him to the Refugee Council’s Children’s Panel in Brixton. The Panel referred him on to the local social services department, who had closed their offices by the time he arrived there. He returned to the Refugee Council to discover that it too was closed. He spent the weekend living on the street.⁹



5.1 Policy and Procedures for Determining Age

There is written policy on how to assess the age of an unaccompanied or separated child but the terminology is imprecise and open to individual interpretation. Up until 30 August 2005, Immigration Officers were just advised:

*[W]hen an unaccompanied [or separated] child applies for asylum at a port of entry or a local enforcement office but his or her appearance strongly suggests... that he or she is over eighteen years old, it is the Immigration Service's policy to treat him or her as an adult until there is credible documentary evidence or a full age assessment from a local authority social services department to demonstrate that he or she is the age he or she claims to be.*¹⁰

They were also advised that this policy must be applied robustly. In borderline cases, the unaccompanied or separated child was supposed to be given the benefit of the doubt. However there is little evidence that this ever happened. The guidance¹¹ was later somewhat strengthened and the instructions were that “a claimant *must* be given the benefit of the doubt with regards to their age unless their physical appearance *strongly* suggests that they are aged eighteen or over” (emphasis added). However, the Refugee Council’s Children’s Panel has not reported any decrease in the number of unaccompanied or separated children being age disputed since that new guidance.

A significant number of unaccompanied or separated children and legal representatives report a persistent refusal by the Immigration Service and Immigration and Nationality Directorate to accept documentary evidence of age. It does not seek expert assistance to verify or challenge contested documents. Since August 2005 the Home Office has

accepted as sufficient proof of age an original and genuine passport, travel document, or national identity card showing a claimant as under 18 at the time of the application.¹² However, photocopies or faxed copies of these documents are not accepted. This change in policy is helpful but problems still arise as the Immigration and Nationality Directorate usually retain the original document submitted and only return a photocopy to the child. This can make it difficult for the child or legal representative to challenge subsequent assertions that the original document was not genuine.

It is also Home Office policy to accept an original and genuine birth certificate as sufficient proof of age.¹³ However, there is no evidence that this happened in practice and the Process Manual notes that “caution should be exercised because birth certificates in some countries are readily obtainable and these documents may not necessarily have been legitimately issued or obtained.” Immigration officers are advised to consult the relevant Country Report for country specific guidance on birth certificates.

“An Albanian age disputed child at Oakington Reception Centre was told that the original of his birth certificate was not being accepted because Albanian documents were often forgeries.”¹⁴

“Y” had fled from Chad after being imprisoned on account of his father’s political involvement with an opposition party. He claimed asylum on the day of his arrival. He reported becoming very upset when immigration staff were rude and kept laughing at him when he showed them his birth certificate and said that he was 16.¹⁵

According to an interviewed solicitor,¹⁶ the London Asylum Screening Unit’s approach to age assessment was very troubling. She had heard stories of case workers calling over their colleagues and standing

as a group around the claimant laughing. Another solicitor¹⁷ remarked that in Newcastle case workers make a snap decision on age based on the child's appearance without additional evidence.

If social services have a duty officer at a port of entry or at an Asylum Screening Unit *immediately* available to age assess a child in a borderline case, the immigration officer would seek the duty officer's advice, but it is not the Immigration Service's policy or practice to seek advice from social services otherwise.¹⁸ Instead of reaching snap judgements, immigration officers should give such children the benefit of the doubt in the first instance and then make arrangements for their transfer to specialist locations for a holistic age assessment.¹⁹

Social workers are available at the Asylum Screening Unit in Croydon and at the port at Dover. Duty social workers are also available at Heathrow airport but they are often given less than an hour from the age disputed child's time of arrival to make an assessment. At this stage unaccompanied or separated children are usually still traumatized by their journey and their pre-departure experiences, a state which potentially undermines the accuracy of any assessment.²⁰ At Heathrow, the London Borough of Hillingdon has tried to counter these disadvantages by sending two social workers to undertake the assessment and by explaining the role of its social services department and its social workers to the unaccompanied child, using its own trained and independent interpreters.²¹ This is a positive and commendable procedure, but age assessments are by their very nature complex and immediate post-journey assessments undertaken by a social worker are not necessarily more accurate than those made by an immigration officer. As a result many unaccompanied or separated children subsequently successfully challenge the accuracy of their assessments by bringing a claim for judicial review in the High Court.

If an unaccompanied or separated child's age is

disputed, the child is treated as an adult and referred to NASS for accommodation and given a Statement of Evidence Form to return within 14 days. As an additional safeguard the child is given a letter stating that his or her age has been disputed, and advised how to contact social services to challenge the decision.²² The Immigration and Nationality Directorate is also obliged to inform the Refugee Council's Children's Panel within 24 hours of arrival of every age disputed person.²³ The Panel refers those it believes to be children to a solicitor in order to challenge the decision by way of a claim for judicial review in the High Court. It also refers the 'child' to the relevant local social services department to carry out a full age assessment. Up until recently it was Immigration and Nationality Directorate policy to accept an age assessment, which had been made by a professional social worker employed by a local authority.²⁴ However, in November 2005 this policy was amended and in cases of age disputes between a local authority and the Immigration and Nationality Directorate (for example, over the authenticity of an identity document or a possible impersonation) the Asylum Policy Unit within the Immigration and Nationality Directorate is asked to seek a formal reconciliation of the two views. Where this is not possible a third party is asked to adjudicate.²⁵

In many cases it takes some time to overturn an inaccurate age assessment and in the intervening period the unaccompanied or separated child lives in emergency accommodation provided by NASS, often sharing a room with traumatised adult asylum seekers. Age disputed unaccompanied or separated children have to submit an adult Statement of Evidence Form within 14 days and can be interviewed about their asylum applications as if they were adults.

"T" was an asylum seeker from Rwanda who was brought to the U.K. by a member of staff from Care International. She claimed asylum the day

after her arrival but her age was disputed, even though she was in possession of her ID card with her date of birth. She had to wait at the Asylum Screening Unit from 8 am to 7.30 p.m. that initial day and then return for a second interview which she described as more intimidating, which lasted for six hours. Four days later she was given a third interview. She was subsequently granted discretionary leave to remain in the U.K. until her 18th birthday.²⁶

5.2 The Kent Model

Kent operates a much more sustainable alternative model for assessing age which ensures that the best interests of any unaccompanied or separated child are taken into account. Regrettably, despite its acknowledged success, this model has not been replicated elsewhere for financial reasons. An unaccompanied or separated child who arrives at Dover is granted temporary admission to and accommodated by Kent Social Services for an initial one week, or even one month, period in order for a detailed age assessment to be undertaken by social workers. The person is then brought back to Dover for an interview, with a social worker acting as the “responsible adult.” If Kent Social Services has assessed the person to be over 18, he or she is returned to the adult asylum determination process. If Kent accepts that the person is under 18, he or she is accommodated and given a Child’s Statement of Evidence Form to complete within 28 days. The benefits of this model are obvious. Age disputed children are not placed in adult accommodation or detained in an Immigration Removal Centre or reception centre where they may be in danger of physical, emotional, or sexual abuse whilst their age is determined. Equally the benefits to the local authority are clear in that they minimize

the risk that an adult posing as a child is being placed with other children whether in a foster family or a residential setting. This approach also ensures local authority compliance with its duty under section 17 of the Children Act 1989 to ascertain whether the individual in question is a child in need requiring assistance and accommodation.

This approach to age disputes was originally run as a pilot project by the Immigration Service at Dover and Kent Social Services in 2003 and was the subject of research carried out by the University of Kent.²⁷ During this period all age disputed children who presented themselves as unaccompanied minor asylum seekers on entry at Dover were referred to Kent Social Services for a full age assessment. Those who entered clandestinely, for example in the back of a lorry, and were then discovered by immigration officers were not referred and were used as the control group. The sample was very small as during this period only 39 age disputed children applied for asylum on entry at Dover and 150 were discovered to have entered clandestinely, and the pilot project has never been formally evaluated by the Immigration and Nationality Directorate. However, researchers from the University of Kent did interview some of the age disputed children from this sample and also talked with the Immigration Service and the local authority. The two agencies agreed that the pilot had improved their ability to cooperate and brought their practice more into line with international conventions and guidelines for the treatment of unaccompanied asylum seeking children. The research concluded that the sample was too limited to lead to any definitive conclusions but that it provided evidence of a potentially more efficient and humane mechanism for assessing age.

The views expressed by the age disputed children themselves were more negative. They had no real understanding of why they were being assessed and perceived the adults they came into contact

with as being hostile. Nor did they understand why they were being moved to different types of accommodation and being asked to meet with a number of different people from different agencies. When they were brought back for a screening interview at the end of the process, they did not understand the role the social worker played in that interview. The seven day assessment was clearly rigorous and led to social workers concluding in 9 of the 39 cases that the individual in question was an adult.

There was also a surprisingly high rate of absconding of 20% amongst those who were referred for the seven day assessment as opposed to 8% of those who were not referred. This may well have reflected the fact that the children did not understand the process they were being put through and perceived it to be negative.²⁸ However, since 2003, Kent Social Services has introduced a large amount of positive measures to improve its ability to conduct these age assessments and also to provide appropriate services for the large number of unaccompanied or separated children it now accommodates. Its age assessment procedures are now better understood by the children involved and the rate of absconding has dropped.

5.3 Local Authority Age Assessment

There was less agreement amongst unaccompanied or separated children and their legal representatives about the accuracy of age assessments carried out by some other local authorities.

“L” was a female asylum seeker from Guinea who fled after being imprisoned and tortured with her mother and brother on account of her father’s political activities. The Asylum Screening Unit disputed her age and her local authority told her that

it would not support her until she obtained medical confirmation of her age and the Immigration and Nationality Directorate accepted that she was a minor. She commented, “Social services treated me like a dog — they didn’t ask me any questions at the beginning because they wouldn’t bother with it because the Home Office said I was not under 18. They just told me to go away. I was so sad. They need to treat people as humans and give them food and shelter.”²⁹

“There is still significant ignorance amongst social services departments about the procedures to adopt when a child has been age disputed by the Immigration and Nationality Directorate. Many still think they have to accept its view. The pro-forma can also be used in a poor way by inexperienced social workers. Generally the skills involved in assessing age [accurately] are very thin on the ground within most social services departments.”³⁰

Age assessments carried out by local authorities are merely a part of the wider assessment required as a result of their duty under section 17 of the Children Act 1989 to safeguard and promote the welfare of any child in their geographic area. The local authority discloses the part of its assessment related to the age dispute to the Immigration and Nationality Directorate if and only if its age assessment would necessitate the revoking of any leave previously granted to the age disputed unaccompanied or separated child by the Immigration and Nationality Directorate.³¹ An age assessment is sometimes carried out even if the Immigration and Nationality Directorate has accepted that the person is a minor and on occasion local authorities have subsequently decided that the person was in fact an adult and informed the Immigration and Nationality Directorate that it had made a mistake. The situation is further complicated by the fact that unaccompanied

or separated children are sometimes moved from one local authority area to another and if age disputed in the first may have applied in the second for a further age assessment. It has now been agreed³² that the second local authority can rely on the age assessment carried out by the first and refer the age disputed child back to the initial local authority for any re-assessment of their age unless there is some relevant new evidence. In the latter case, the second local authority is responsible for carrying out a fresh age assessment.

5.4 Best Practice: A Holistic Approach

It is best practice at present for social services departments to carry out age assessments using an eight page pro forma³³ developed by the London Borough of Hillingdon in conjunction with Refugee Council, Save the Children, the Refugee Arrivals Project, and other local authority practitioners. The pro forma is designed to ensure that the social worker undertaking the assessment does not just rely only on the child's physical appearance, the Home Office's opinion, or any documents pro-



duced. A holistic approach is recommended which takes into account the unaccompanied or separated child's demeanour, ability to interact with adults, cultural background, social history and family composition, life experiences, and educational history. Medical evidence of age is also said to be useful, as are the views of other adults with whom the child has had contact, such as foster carers, residential workers, teachers, Refugee Council Panel Advisers, interpreters, and legal representatives.

This approach received judicial approval in the case of *R (On the Application of B) v. London Borough of Merton*,³⁴ where it was also stressed that social services must take into account the ability of the age disputed unaccompanied or separated child to provide such information³⁵ as there are cases where a child is too traumatized to provide an accurate and coherent account of his or her past.

This holistic approach is consistent with recommendations made by the Royal College of Paediatricians and Child Health³⁶ which state:

*[A]n age determination is extremely difficult to do with certainty, and no single approach to this can be relied on. Moreover, for young people aged 15–18, it is even less possible to be certain about age... age determination is an inexact science and the margin of error can sometimes be as much as 5 years either side [and] estimates of a child's physical age from his or her dental development are [only] accurate to within + or – 2 years for 95% of the population.*³⁷

In other countries age is medically determined by the use of wrist x-rays but this is not permitted in the U.K. The Royal College of Radiologists has advised its members that a request from an immigration officer to have a radiograph to confirm chronological age would be unjustified both on grounds of accuracy and also because of the risks attached to using ionizing radiation for non-clinical

purposes.³⁸ The Immigration and Nationality Directorate has also advised its case workers that they must not commission x-rays nor accept x-ray evidence submitted by legal representatives.³⁹

The few medical experts who practise in this area now adopt a holistic approach⁴⁰ and examine the unaccompanied or separated child for physical and dental signs of development but also assess their social and psychological maturity. The Immigration Appellate Authority and the High Court give great weight to such medical reports despite the difficulties in assessing age from purely medical data and in most cases, if there is a difference of opinion between a local authority social worker and a consultant paediatrician they refer to the evidence of the latter. In the case of *The Queen on the Application of C v. London Borough of Enfield*,⁴¹ the High Court held that an age assessment by a social worker which failed to take into account an age assessment by a consultant paediatrician with experience in conducting such assessments was unlawful. In the later case of *The Queen on the Application of I & Another v. Secretary of State for the Home Department*⁴² Mr Justice Owen found that the report of an experienced consultant paediatrician derived further authority from his extensive specialist expertise and most importantly that unlike social workers he was qualified to undertake dental examinations, giving an estimate of age accurate to within +/- two years.

The fact that the High Court has preferred the opinion of a consultant paediatrician serves as a safeguard if an unaccompanied or separated child is wrongly assessed to be an adult by a local authority. It is also a necessary protection as many social workers are not trained to undertake such specialist assessments and there is a tendency for some to develop their own pseudo psychological approach or misconstrue advice given in the connection with the pro forma. Furthermore, there is no scientific basis for the pro forma which has been adopted by

local authorities and its methodology has yet to be assessed or validated. In addition, unlike paediatric and dental assessments, no “margin of error” has been established.

An age disputed boy who came to the interview with a rucksack and a small teddy bear was found to be an adult because he had “tried too hard to appear to be a minor.”⁴³

A social worker having been advised that in some countries in Africa children were taught not to look adults in the eye, concluded that an African child could not be a minor as he did look her in the eye.⁴⁴

Several practitioners expressed concern about local authorities’ vested interest in the outcome of age assessments and the possible impact on their objectivity. Local authorities become financially responsible⁴⁵ for unaccompanied or separated children until they became 21 or even 24 if they remain in further or higher education. Therefore, many practitioners and non-governmental organizations would prefer to see age assessments carried out by an independent panel of experts drawn from a variety of professionals with relevant training and experience.

Courts in both London⁴⁶ and the Republic of Ireland⁴⁷ have agreed that age assessments must be conducted in a manner that accords with the principles of constitutional justice and fair procedures. In particular, applicants must be informed of the purposes of the assessment, of any reasons for being disbelieved, and of any available remedies. It has also been decided that the Family Division of the High Court can determine an unaccompanied or separated child’s age in wardship proceedings even where a local authority has already made an assessment, because the local authority is not exercising any statutory powers in so doing.⁴⁸



Compliance With International Standards

- **1.** Article 18(1) of the EU Directive laying down minimum standards for the reception of asylum seekers requires the Immigration Service and the Immigration and Nationality Directorate to take the best interests of an unaccompanied child into account.
- **2.** Paragraph 31 of the Committee on the Rights of the Child's General Comment No. 6 (2005) states that age assessments should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child- and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, s/he should be treated as such.
- **3.** The Separated Children in Europe Programme⁴⁹ states that in cases of doubt there should be a

presumption that someone claiming to be less than 18 years of age, will provisionally be treated as such. It notes that age assessment is not an exact science and that a considerable margin of error is called for and that children should be given the benefit of the doubt.

Recommendations

- **1.** Where an unaccompanied or separated child's age is in dispute he or she should be provided with accommodation by the appropriate social services department for a seven to 28 day period in order for a holistic age assessment to be carried out.
- **2.** No age disputed child should be detained in an immigration removal or reception centre.
- **3.** No age disputed child's application should be subjected to the Fast Track⁵⁰ or Super Fast Track⁵¹ asylum determination procedures or any similar accelerated process.
- **4.** No age disputed child should be denied an in country right of appeal.
- **5.** A legal guardian should be appointed for every age disputed child.
- **6.** No steps should be taken to determine the age disputed child's asylum application until the question of his or her age has been finally resolved.
- **7.** Independent panels comprised of suitably qualified professionals should be established to determine age where this is in dispute.
- **8.** Any members of the Immigration Service, the Immigration and Nationality Directorate,

or local authority social services departments who may come into contact with unaccompanied or separated or age disputed children should undergo comprehensive training in the need for a holistic assessment of age by an independent panel of experts.

- 9. Original identity documents should not be retained by the Immigration and Nationality Directorate but should be returned to the unaccompanied or separated child or his or her legal representatives.

Endnotes

- 1 Comment by Lisa Nandy, the Children's Society, 2005.
- 2 Interview with Samar Tasselli, a case worker at Stockport Law Centre. 2004.
- 3 Interview with Liz Barratt, a solicitor at Bindman & Partners. 2004.
- 4 The high number of age disputes in this sample may well have arisen because they were young people who had remained in touch with organizations such as the Refugee Council, which may indicate that they had encountered problems when applying for asylum and had needed ongoing support.
- 5 Home Office. *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*. CM 5387 February 2002. Para 4.55.
- 6 Ibid, Endnote 5, para 4.56.
- 7 For example, Bill Davies, head of the Asylum Support Team at Manchester City Council, reported an incident where a 20 year old was placed with children.
- 8 The NASS provides accommodation and financial support to adult asylum seekers and their dependants, often on run-down estates on the edges of towns and far from London and the South East where the bulk of recent migrants live.
- 9 One of the unaccompanied or separated children interviewed in depth for our research.
- 10 U.K. Immigration Service. *Best Practice: Unaccompanied Minors: Unaccompanied asylum and non-asylum seeking children*. 1 January 2004. Para 1.1.
- 11 Home Office. *Disputed Age Cases Asylum Process Manual*. C5: "Special Types of Cases." 30 August 2005. Para 2.
- 12 Ibid, Endnote 11, para 3.1.
- 13 Ibid, Endnote 11, para 3.2.
- 14 Interview with Heather Violet, a team leader for the Immigration Advisory Service at Oakington Reception Centre. 2004.
- 15 One of the unaccompanied or separated children interviewed in depth for our research.
- 16 Interview with Samantha Day, a solicitor at Luqmani Thompson. 2004.
- 17 Interview with Katherine Henderson, head of the Immigration and Asylum Department at Browell Smith. 2004.
- 18 U.K. Immigration Service OASIS (Asylum Team). *Best Practice: Unaccompanied Minors*. 1 January 2004. Para 1.2.
- 19 This could be done following the model adopted in Kent which is discussed below.
- 20 See *R (On the Application of A) v. Secretary of State for the Home Department* CO/2858/2004 (an application for permission to claim judicial review which was subsequently settled by consent).
- 21 Information supplied by Karen Goodman, Service Manager, London Borough of Hillingdon, at a seminar on "The Hillingdon Decision and its Repercussions," organized by the London Borough of Hillingdon and Two Garden Court Chambers on 21 April 2005.
- 22 Ibid, Endnote 11, para 5.2.
- 23 U.K. Immigration Service. *Best Practice: Unaccompanied Minors: Unaccompanied asylum and non-asylum seeking children*. Para 5.4.
- 24 Ibid, Endnote 23, para 1.3; and see also Ibid, Endnote 11, para 3.4.
- 25 *Age Assessment Joint Working Protocol Between Immigration and Nationality Directorate of the Home Office (IND) and Association of Directors of Social Services (ADSS)*, Version One. 22 November 2005. Para 14b.
- 26 One of the unaccompanied or separated children interviewed in depth for our research.

- 27 Charles Watters. “Avenues of Access and the Parameters of Care: Reflections on Reception Procedures for Unaccompanied Asylum-Seeking Children at a Port of Entry” in *The Asylum-Seeking Child in Europe*. University of Göteborg, 2005.
- 28 There may also be more sinister reasons for this high rate of absconding, as it is known that some traffickers instruct children to claim asylum on entry in order to facilitate their entry, and then collect them after they have entered.
- 29 Statement by one of the unaccompanied or separated children interviewed in depth for our research. Following *R (On the application of B) v. London Borough of Merton* [2003] EWHC 1689 (Admin) local authorities are now obliged to carry out their own age assessment and not just rely upon IND’s view.
- 30 Interview with Adrian Matthews, project manager of the Refugee and Asylum Seeking Children’s Programme at the Children’s Legal Centre at the University of Essex. 2004.
- 31 *Age Assessment Joint Working Protocol between the Immigration and Nationality Directorate of the Home Office and the Association of Directors of Social Services (ADSS)*, Version 1. 22 November 2005.
- 32 Ibid, Endnote 31, para 14b.
- 33 This document is now widely used by local authorities throughout England and is relied on in court proceedings. The Home Office has sent it to some local authorities but it has yet to be officially published by the ADSS or the Home Office.
- 34 [2003] EWHC 1689 (Admin) (in the High Court in London).
- 35 *The Queen on the application of C v. London Borough of Enfield* [2004] EWHC 2297 (Admin) where an age assessment which failed to take into account the fact that the child in question had been found to be unfit to give evidence and to be suffering from post-traumatic stress disorder was found to be unlawful.
- 36 Royal College of Paediatrics and Child Health. *The Health of Refugee Children: Guidelines for Paediatricians*. November 1999. Para 5.6.
- 37 Ibid, Endnote 36, para 5.6.3.
- 38 Ibid, Endnote 36, para 5.6.2.
- 39 *Unaccompanied Children*, Operational Enforcement Manual. C29, para 29.3.
- 40 One such expert is Colin Michie, a consultant paediatrician at Ealing Hospital in London who has conducted over 1,000 such age assessments over the last five years. He adopts the recommended holistic approach and considers a child’s physical, social, and emotional maturity, and examines teeth and skin for signs of aging.
- 41 See *The Queen on the Application of C v. London Borough of Enfield* [2004] EWHC 2297 (Admin) where the High Court held that an age assessment, which failed to take into account an age assessment by a consultant paediatrician with experience of conducting such assessments, was unlawful.
- 42 [2005] EWHC 1025 (Admin).
- 43 One of the U.K. Coordinator’s cases.
- 44 Another of the U.K. Coordinator’s cases.
- 45 Grant aid for local authorities for unaccompanied or separated children who qualify for leaving care support from a local authority after they are 18 is not generous and is not available in all cases. For example, in 2004 the rate was £140 per week but was not available for the any of the first 44 such young people supported.
- 46 *The Queen on the Application of B v. the London Borough of Merton* [2003] 4 All ER 280.
- 47 *Andy Moke v. The Refugee Applications Commissioner* [2005] IEHC 317 (Ireland).
- 48 *E v. London Borough of X* [2005] EWHC 2811 (Fam).
- 49 *Statement of Good Practice*, Third Edition, C8, 2004.
- 50 A procedure where nationals of certain countries are detained at Oakington Reception Centre for around a week whilst an initial decision is reached in relation to their asylum applications.
- 51 A procedure where male asylum seekers from certain countries are detained at an immigration removal centre whilst an initial decision is reached on their asylum applications within five days and an accelerated appeal hearing is then heard within the centre itself.



Detention of Unaccompanied or Separated Children

6.1 Detention in the United Kingdom

To a large extent the U.K. Government has accepted that unaccompanied or separated children should not be detained during any part of the asylum determination process¹ including the Fast Track procedure at Oakington Immigration Reception Centre² or the Super Fast Track procedure at Harmondsworth or Yarls Wood removal centres.³

The Immigration Services' Operational Enforcement Manual⁴ states that “unaccompanied minors must only ever be detained in the most exceptional circumstances⁵ and then only overnight, with appropriate care, whilst alternative arrangements for their safety are made.”⁶

Instead local authority social services departments are under a duty to accommodate them.⁷ However, in practice some unaccompanied or separated children are being detained as a result of incorrect age assessments

and in these circumstances they are liable to detention pending consideration of their asylum applications.⁸ They are, arguably, in a worse position than similarly situated adults who are not usually detained at this initial stage unless they are allocated to a Fast Track or Super Fast Track procedure, or detention is deemed necessary to establish their identity, the basis of their claim, or where there are reasons to believe that they would fail to comply with any conditions attached to a grant of temporary admission or release because the



fact that their age has been disputed casts a doubt about both their identity and their credibility and thus the likelihood of their complying with temporary admission.⁹ The chances of being detained are far higher for age disputed children who are nationals of countries deemed suitable¹⁰ for the Fast Track Process at Oakington Reception Centre. This is partly attributable to the sheer volume of asylum seekers being processed through that centre during any one year.¹¹ The Refugee Council has also had a number of referrals from age disputed unaccompanied or separated children who are being detained because they are not entitled to apply for asylum in the U.K. on account of their having previously applied for asylum in or passed through another European Economic Area (EEA) country. This is of particular concern, as if they are minors they may be entitled to make a claim, despite having passed through another EEA country, if they have a close relative who is already in the U.K.

The Home Office does not produce statistics¹² on the number of age disputed unaccompanied or separated children detained each year, but the Refugee Council's Children's Panel does keep records of the number of these referrals. They show that the vast majority have been detained in Oakington Immigration Reception Centre.¹³ Between November 2002 and October 2003 alone the Panel received 218 refer-

als from age disputed children detained at there.¹⁴ This was far in excess of the referrals it received from Immigration Removal Centres. This trend continued into 2004 and between February 2003 and January 2004 it received the following referrals:¹⁵

IMMIGRATION REMOVAL CENTRE

- Campsfield — 2 referrals
- Dover — 5 referrals
- Harmondsworth — 10 referrals
- Lindholme — 3 referrals
- Oakington — 249 referrals
- Tinsley House — 7 referrals

Between February and September 2004, it received a further 207 referrals from the following centres:

IMMIGRATION REMOVAL CENTRE

- Campsfield — 4 referrals¹⁶
- Dover — 2 referrals
- Harmondsworth — 13 referrals
- Lindholme¹⁷ — 3 referrals
- Oakington — 146 referrals
- Centre not recorded — 39 referrals

Between November 2004 and April 2005, the Children's Panel also received referrals from age disputed unaccompanied or separated children from:

IMMIGRATION REMOVAL CENTRE

- Campsfield — 2 referrals
- Colnbrook — 1 referrals
- Dover — 1 referrals
- Dungavel — 3 referrals
- Harmondsworth — 4 referrals
- Haslar — 2 referrals
- Tinsley House — 3 referrals

At a meeting¹⁸ at the Children's Legal Centre, it was also reported that there had been three age disputed children held at Yarls Wood Removal Centre in 2005.

By June 2003, the Refugee Legal Centre and the Immigration Advisory Service¹⁹ had become very concerned about the particularly high number of age disputed unaccompanied or separated children arriving at Oakington Immigration Reception Centre. They, therefore, asked the Refugee Council to collate its data on referrals from 164 age disputed unaccompanied or separated children between November 2002 and July 2003. This covered the period from November 2002, when the initial list of 10 nationalities considered suitable for the Fast Track process by the Immigration and Nationality Directorate was announced, to July 2003, when an expansion of the list occurred. The percentage of age disputes remained fairly constant: the average percentage of the overall population at Oakington who had been age disputed between February 2003 to July 2003 was 4.5%.

Over that period, 58.5% of those age disputed were from Afghanistan, India, Albania, and Kosovo. More detailed statistics were then produced for the period between May 2003 to July 2003. These showed that most of the age disputed children had given their ages as 15, 16, or 17 and that 40.4% of them were only entitled to a non-suspensive appeal²⁰ and would be removed if their asylum application was refused without an in country right of appeal. The withdrawal of asylum seekers' right of appeal in the U.K. is particularly significant in age disputed cases. It raises the possibility that the Secretary of State for the Home Department may be returning an unaccompanied or separated child to his or her country of origin in breach of the policy not to return children in the absence of adequate care and reception arrangements²¹ without any judicial oversight.

Until November 2003 Cambridgeshire County Council had not instituted formal arrangements for age assessments at Oakington Reception Centre. As

a result the process was often greatly delayed and age disputed children's asylum applications were even on occasion determined (and refused) before the age issue was addressed. In some cases this led to age disputed children being removed from the U.K. before the age dispute was resolved. However, since November 2003, Cambridgeshire County Council has undertaken to provide an age assessment within seven days and the Immigration and Nationality Directorate has undertaken to postpone the asylum decision (though not the applicant's asylum interview) until the outcome of the age assessment is known.

Once Cambridgeshire County Council were assessing age on a regular basis it became easier to estimate the percentage of unaccompanied or separated children at Oakington who had been wrongly assessed as adults by the Immigration Service or the Asylum Screening Units. **Between November 2003 and September 2004, 74 age disputed unaccompanied or separated children were assessed by Cambridgeshire County Council. Of them 35 or 47.3% were found to be under 18.** This trend continued between October 2004 and December 2004 when 24 or 50% of the age disputed unaccompanied or separated children were assessed to be under 18 (19 or 39.6% of these children were 16 or 17 years old and four or 8.3% were 14 or 15, and one child was assessed to be under 14). In January and February 2005, 12 or 42.8% of those assessed were found to be minors (10 or 35.7% were aged 16 or 17 and two or 7.1% were 14 or 15). This did mean that 50% were adults posing as minors.

Between November 2003 and September 2004, 91.3% of age disputed unaccompanied or separated children referred to Cambridgeshire County Council were male and only 8.7% were female. A similar gender disparity occurred between October 2004 and December 2004, with 83.1% of the referrals being male and only 16.9% being female and in January

and February 2005 when 75% of those referred were male and 25% female. The percentage of females being age disputed was lower than the percentage of the total number of unaccompanied or separated child asylum seekers who were female, which was 33% in 2003 and 2004. No clear reason emerges from the data, but the disparity may indicate that the Immigration Service and the Asylum Screening Units were more likely to doubt the ages of male children or that there were a disproportionate amount of male children applying for asylum from the countries most likely to be age disputed. It was certainly true that between November 2003 and September 2004 the data indicated that unaccompanied or separated children from Afghanistan, India, Moldova, Albania, Kosovo, China, and Mongolia were most likely to be age disputed. Between October 2004 and February 2005, the risk of being age disputed was broadly uniform across different nationalities.

Concern was expressed about the fact that between November 2003 and February 2005 there were 66 age disputed unaccompanied or separated children who were referred to Cambridgeshire County Council but were not assessed. This may have been because they were released after the intervention of the Medical Foundation for the Care of Victims of Torture as torture victims²² or moved to



another centre before any assessment could take place. Concern about the numbers of unaccompanied or separated children detained increased over the period of the research and a number of applications for judicial review were lodged challenging the lawfulness of this detention. As a result the Government has announced a change in its policy:²³

where an applicant claims to be under 18, they should be accepted as a minor (for detained fast-track detention purposes) unless:

- 1 *there is credible and clear documentary evidence they are 18 or over;*
- 2 *a full social services assessment, which looked at the child's social history, capabilities and past experiences, is available stating that they are 18 or over; or*
- 3 *their appearance very strongly indicates that they are significantly over 18 and no other credible evidence exists to the contrary (if there is any room for doubt as to whether a person is under 18 they should not be placed in fast-track detention in reliance on this criterion).*

On occasion, age assessments have been undertaken by social services departments at other removal centres though the arrangements have been informal, without a precise time frame or format for the assessment. Where good working relationships exist between removal centre staff and local social services departments, age assessments are carried out more promptly than otherwise, an arbitrary situation resulting from the absence of any statutory duty for immigration staff to liaise with social services.²⁴

Arguments have frequently occurred between different social services departments about which department has the responsibility for accommodating an unaccompanied or separated child assessed to be a minor. As a result, the Association of Directors



of Social Service has agreed to a protocol allocating responsibility for children who have been wrongfully detained.²⁵ Broadly speaking the responsibility falls on the local authority in whose area the Immigration Removal or Reception Centre is situated unless another local authority has previously accepted some responsibility for or carried out an age assessment on the child. Despite this protocol, local authorities continue to dispute responsibility for these children, thus delaying their release from detention.²⁶

The very fact of being in detention has a detrimental effect on an unaccompanied child's ability to pursue the asylum application even if the child has not been allocated to an accelerated determination process. Immigration detainees regularly report great difficulty in obtain good legal representation whilst in detention or in some cases any representation at all.²⁷

“I was crying. This man came up to me because I was sitting down and crying. He asked me where I was from and he was [from the same country]. He asked me about my solicitor. I had his card. He called him and asked him why he had told me not to correct my date of birth. The solicitor put down the phone.”

“After a few days he came with a letter saying he couldn't continue my case. I would find another solicitor. I was just confused. I didn't know what to do. The man said that the solicitor was a wicked man and that I should not have been there. He said I should not cry. He gave me the telephone number for BID [Bail for Immigration Detainees] and said I should tell them what happened.”²⁸ [BID referred him to the Refugee Council's Children's Panel and it arranged an age assessment and he was released.]

When an unaccompanied child is detained the impact is huge. Detention messes you up. It also affects the logistics of collecting evidence and securing legal representation. It creates time scale problems. Also when a person is detained his or her focus is on getting out of detention. So focusing on his or her asylum application does not feel like a top priority.²⁹

Compliance With International Standards

- **1.** UNHCR believes that children seeking asylum should not be kept in detention and that this is particularly important in the case of an unaccompanied child.³⁰
- **2.** Article 37(b) of the Convention on the Rights of the Child states that children should only be detained as a measure of last resort and Article 37(c) states that children should only be placed in

accommodation which is separated from that used to detain adults.

- **3.** The United Nations Committee on the Rights of the Child has expressed particular concern about the detention of child asylum seekers in the U.K. stating that it is incompatible with the Convention.³¹
- **4.** The Separated Children in Europe Programme³² states that separated children should never be detained for immigration reasons.

Recommendations

- **1.** No unaccompanied or separated child should ever be detained in an immigration removal or reception centre.
- **2.** If there is a doubt about a person's age, he or she should be accommodated by the appropriate social services department for a period of between seven and 28 days in accommodation designed for this purpose in order for a holistic age assessment to be carried out.
- **3.** Where social services decide that an age disputed child is an adult but the child does not accept this view and brings a legal challenge, he or she should not be transferred to an immigration removal or reception centre until the question of his or her age has been finally determined by expert evidence or a court.
- **4.** The child's legal guardian or, in the absence of a guardian, the Refugee Council's Children's Panel adviser or the child's social worker or advocate should be informed as soon as a decision to detain the child is made.



6.2 Criminalization of Unaccompanied or Separated Children

It also became clear during the period of the research that a number of unaccompanied or separated children³³ have been either denied access to the asylum determination process or had their access delayed by the introduction of section 2 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.³⁴ This section introduces a new criminal offence of failing to provide a valid document showing identity and nationality without a reasonable excuse when first interviewed by an immigration officer. The offence applies to both adults and unaccompanied or separated children over the age of nine (as 10 is the age of criminal responsibility in the U.K.) and a number of children have been arrested and charged since the section

came into force. Most of these children have been advised to plead guilty (to get a shorter sentence) by criminal solicitors with no knowledge of asylum law, and have, as a result, been sent to young offenders institutions for three or four months. Whilst there very few had any contact with immigration solicitors or were informed of the possibility of claiming asylum. It has not been possible to obtain any official statistics on the number of unaccompanied or separated children charged and convicted, but practitioners believe it is a growing problem.

The relevant law explicitly states³⁵ that relying on an agent's advice will not constitute a defence unless in all the circumstances of the case it would be unreasonable to expect the person involved not to comply. It may be that, following a recent case in the High Court, *K v. Croydon Crown Court*,³⁶ being an unaccompanied or separated child under the influence of an agent will be held to amount to such circumstances. In that case where an unaccompanied or separated child had been charged and convicted of another immigration offence, that of seeking leave to enter by deception, the High Court held that the influence of an agent on an unaccompanied or separated child was a significant factor to be taken into account when assessing whether the child should receive a custodial sentence.



Section 2 itself has been criticized by many human rights bodies as being in breach of Article 31 of the Refugee Convention. The fact that the section places the burden of proof on the accused to show that he or she had a reasonable excuse for not being in possession of an identity document has been criticized by Alvaro Gil-Robles, the Council of Europe Commissioner for Human Rights.³⁷

Th[is] defence ought, rather to constitute [a] central element of the offence and it should be for the prosecution to prove [its] absence. Anything else would be an unwarranted inversion of the principle that individuals are innocent until proved guilty. How, for instance, is a victim of trafficking to show that he, or more likely, she, was forced to destroy [her] documents by untraceable agents?

Endnotes

- 1 The asylum determination process runs from the time an asylum seeker first claims asylum to the point at which refugee status is granted or any appeal rights are exhausted.
- 2 Oakington is a centre used to detain adults and accompanied children for periods of between seven and 10 days in order to consider their applications for asylum using an accelerated determination procedure.
- 3 A five-day process for assessing the initial asylum application with an expedited appeal hearing conducted within the removal centre. The process at Harmondsworth Immigration Removal Centre is for adult men and the process at Yarls Wood Immigration Removal Centre is for adult women.
- 4 IND. *Operational Enforcement Manual*. Para 4.1. The manual can be found on the Directorate's web site.
- 5 U.K. Immigration Service. *Best Practice: Unaccompanied Minors*. 1 January 2004. Para 38.7.3.1. An example is given where Social Services refuse to intervene and the Immigration Service do not believe that it would



be safe to let the child go and live with the adult who has come to meet him or her at the airport. However, in that situation the appropriate action would be to ask the police to apply for a police protection order or to involve the Child Protection Officer from the local Social Services department.

- 6 Ibid, Endnote 5, para 38.7.3, p5.
- 7 Under s20 of the Children Act 1989.
- 8 Under para 16 of Schedule 2 to the Immigration Act 1971, if he or she fell within a category of person deemed to be suitable for detention.
- 9 Home Office. *Operational Instructions Manual*. Para 38.1.
- 10 The list of countries on the Fast Track Suitability List varied from year to year. The list published by the Home Office in November 2004 included: Afghanistan, Albania, Bangladesh, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central

African Republic, Chad, China, Congo (Brazzaville), Djibouti, Ecuador, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea-Bissau, Ivory Coast, India, Jamaica, Kenya, Macedonia, Malaysia, Malawi, Mali, Mauritania, Mauritius, Moldova, Mongolia, Mozambique, Namibia, Niger, Nigeria, Pakistan, Romania, St Lucia, Serbia & Montenegro, Senegal, Somaliland (but not Somalia), South Africa, Sri Lanka, Swaziland, Tanzania, Togo, Trinidad & Tobago, Turkey, Uganda, Ukraine, and Zambia. However, women from Afghanistan, women with one-child policy claims from China, women with claims based on FGM from Ghana, Kenya, and Nigeria, and some Turkish claims were excluded from the process.

- 11 Home Office. *Asylum Statistics 2004*. During 2004, 6,460 asylum seekers were detained at Oakington Reception Centre.
- 12 Despite the fact that the Detention Escorting & Population Management Unit within the Home Office

- maintained a record of all detainees who claimed to be 18. See *Ibid*, Endnote 4, C29 “Unaccompanied Children,” para 29.2.
- 13 There was also at least one instance of an age-disputed unaccompanied or separated child being detained in the high security unit there (interview with Heather Violet, Immigration Advisory Service team leader at Oakington Reception Centre, 2004).
- 14 *Ibid*, Endnote 13.
- 15 Figures provided by the Refugee Council’s Children’s Panel. Some of these age-disputed unaccompanied or separated children may have been moved between centres, so the data may not be completely accurate.
- 16 As the Refugee Council’s Children’s Panel was mainly working in London and the southeast of England, and the Refugee Legal Centre and the Immigration Advisory Service were not based permanently at Campsfield, Dungavel, or Lindholme, it was likely that the referrals from these centres were underestimated.
- 17 This is of particular concern as this removal centre is only supposed to be for men who are more than 21 years old.
- 18 Steering Group Meeting of the Refugee & Asylum Seeking Children’s Project, 10 May 2005.
- 19 The two organizations funded by the government to provide advice and representation to asylum seekers detained at Oakington Reception Centre.
- 20 That is, they were not entitled to appeal against any decision by the Secretary of State for the Home Department to refuse to grant them asylum until they had left the U.K. as a result of his certifying their claims as being clearly unfounded under s94 of the Nationality, Immigration and Asylum Act 2002.
- 21 Home Office. *Disputed Age Cases Asylum Process Manual*. C5: “Special Types of Cases,” 30 August 2005. Para 13.4.1.
- 22 Procedures were in place for those accepted as clients by the Medical Foundation for the Care of Victims of Torture to be released from Oakington Immigration Reception Centre and taken out of the Fast Track asylum determination procedures.
- 23 See letter from the assistant director of Oakington Immigration Reception Centre to Refugee Legal Centre, Annexes 1 to 4, 16 February 2006.
- 24 Information provided by Jane Dykins, head of Children’s Section at the Refugee Council. 2005.
- 25 If a child had previously been the responsibility of another local authority, it will resume responsibility for that child. If no local authority has been involved, the local authority undertaking the age assessment will assume responsibility.
- 26 Information provided by Adrian Matthews, project manager of the Refugee and Asylum Seeking Children’s Project at the Children’s Legal Centre. 2004.
- 27 See reports of inspections of Immigration Removal Centres carried out by Her Majesty’s Inspectorate of Prisons between 2002 and 2005, which identified this as a particular issue of concern.
- 28 Save the Children. *No Place for a Child: Children in UK Immigration Detention: Impacts, alternatives and safeguards*. 2005. See comments from B at p63.
- 29 Interview with Alison Harvey, then Principal Policy and Practice Manager at the Children’s Society. 2004.
- 30 UNHCR. *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*. February 1997. Para 7.6.
- 31 UN Committee on the Rights of the Child. *Concluding Observations on the Second United Kingdom Report*. Para 49.
- 32 Separated Children in Europe Programme. *Statement of Good Practice*, Third Edition. 2004. C1.
- 33 From conversations with legal practitioners representing clients in the criminal courts.
- 34 The Act came into force on 22 September 2004.
- 35 Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s2(7)(b)(iii).
- 36 [2005] EWHC 478 (Admin).
- 37 Gil-Robles, Alvaro. Commissioner for Human Rights. *Report on his visit to the United Kingdom 4th–12th November 2004*. 8 June 2005. Paras 74,75.



Accommodation and Care of Unaccompanied or Separated Children

7.1 Providing Accommodation

Although the Immigration and Nationality Directorate of the Home Office is responsible for deciding whether an unaccompanied or separated child should be granted asylum in the U.K., it has no power to provide the child with accommodation or financial support, whilst the asylum application is being processed and determined.

This is because for the purposes of Part VI of the Immigration and Asylum Act 1999, which established the National Asylum Support Service, an asylum seeker is defined as a person over 18.¹ Neither is the Secretary of State for the Home Department under a duty to provide an unaccompanied or separated child with accommodation or financial support. This duty is reserved to local authority social services departments,² who are under a duty³ to safeguard and promote the welfare of any child in need and within

their geographic jurisdiction irrespective of his or her immigration status.

Therefore when an unaccompanied or separated child arrives alone at a port of entry, a local Immigration Service enforcement office, or an Asylum Screening Unit and makes a claim for asylum, the child is referred to a local authority social services department.⁴ This does not happen if the child is accompanied by an adult who appears willing to care for the child. In this

case, that adult is advised to inform social services that an unaccompanied or separated child is living with them.⁵

If, as is usually the case, the unaccompanied or separated child has nowhere to live and there is no one in the U.K. with parental responsibility for them, the local authority is under a duty to assess the child's needs under section 17 of the Children Act 1989 and to accommodate the child under section 20 of the Children Act 1989.

The Department of Health⁶ has issued Guidance⁷ to local authorities, stating that where an unaccompanied or separated child has no parent or guardian in the U.K., there is a presumption that the child will be accommodated under section 20 of the Children Act 1989. This presumption can only be rebutted if the unaccompanied or separated child states he or she does not wish to be accommodated and the local authority believes the child is sufficiently competent to look after him or herself. This Guidance received judicial approval in the case of *The Queen on the application of Behre & Others v. the London Borough of Hillingdon*⁸ and was also adopted by the Immigration Service.⁹ Once a child is accommodated the local authority has further ongoing duties to safeguard and promote the child's welfare and to provide him or her with the sort of services which a reasonable parent would offer.¹⁰ It is also under a duty to conduct Looked After Reviews on a regular basis to ensure that the child's needs are being met.¹¹

The U.K. Government's acceptance that an unaccompanied or separated child has the same physical, intellectual, emotional, social, and developmental needs as any other child means that it is providing unaccompanied or separated children with a standard of care which exceeds that expected by Article

19.2 of the EU Council Directive laying down minimum standards for the reception of asylum seekers.¹²

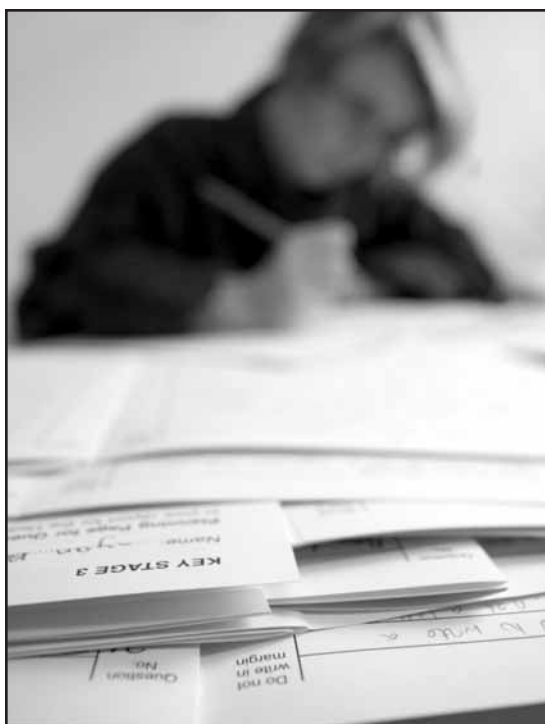
This acceptance is a good example of the very high standards of care usually provided for children in the care of public authorities in the U.K. and an indication of the lobby on the behalf of all children which exists in many social services departments and local authorities. The case of *Behre* itself partly arose from a concern on the part of the London Borough of Hillingdon itself that it was unlawfully discriminating against former unaccompanied or separated children.

Under Article 19.2 Member States can choose to place unaccompanied or separated children

who ha[ve] made an application for asylum...

- (a) with adult relatives;
- (b) with a foster-family;
- (c) in accommodation centres with special provision for minors; or
- (d) in other accommodation suitable for minors.

The terms of the Directive open up the possibility of segregating unaccompanied or separated children from the child protection system to which other children have access by reason of their particular vulnerability as children merely as a result of their particular immigration status. It is clear from those interviewed for the purposes of this research that this would be unacceptable to child care and legal practitioners. Any such provision would also have to comply with other provisions of the EU Directive and, in particular, with Article 17.1 which states that "Member States shall take into account the specific situations of vulnerable persons such as unaccompanied minors...in national legislation implementing provisions relating to material recep-



tion conditions.” Article 18.1 also states that “the best interests of the child shall be a primary consideration for Member States when implementing the provisions [of the Directive] which involve minors.”

Unfortunately towards the end of the research period it became apparent that the U.K. government was reviewing its approach to the accommodation of unaccompanied or separated children. In October 2005, the National Asylum Support Service whose role up until that point had been restricted to administering a grant of money to local authorities accommodating unaccompanied or separated children announced a UASC (unaccompanied asylum seeking child) Reform Programme. The motivations behind this programme are complex. The programme is in part a response to the fact that local authorities close to ports of entry are providing accommodation for the majority of unaccompanied or separated children and that when they became 18 they have ongoing duties to support them if they are in fur-

ther¹³ or higher¹⁴ education. These local authorities therefore, bear a disproportionate financial burden. It is also clear that the level of care provided to unaccompanied or separated children varies significantly between different local authorities.

The reform programme could potentially relieve the majority of local authorities of any responsibility for unaccompanied or separated child asylum seekers. The programme set out to “examine strands of working practice across the end to end movement of UASC through the asylum process, encompassing all Immigration and Nationality Directorate (IND) processes involved”¹⁵ and in particular “commissioning and contracting of services for assessment, accommodation and support,” “early returns and removals,” and “post-18 removals.” The reforms are intended to align support to unaccompanied or separated children with the New Asylum Model process. Within this Model, announced in February 2005,¹⁶ asylum seekers will be assigned to a particular “segment” within the New Asylum Model as soon as they claim asylum and will then be tracked through the asylum determination process by a dedicated case worker up until the point of removal. There is a specific segment for unaccompanied or separated children but the overall objective of the Model for all segments is to speed up the determination process and improve the number of removals at the end of the process.

It is likely that there will be future moves to shorten the appeal process for unaccompanied or separated children. Certainly the proposed removal plans for these children, discussed later in our report, fits neatly within the new tougher strategy for asylum seekers. It is in this removal driven context that new government proposals to place unaccompanied or separated children with selected partner local authorities operating as regional resources need to be understood.

The official justification for these plans are that they benefit unaccompanied or separated children by enabling certain local authorities to develop the necessary expertise to provide good quality and consistent care. However, child care practitioners are concerned that the proposals will undermine the fundamental principle underpinning the Children Act 1989, that every local authority owes a duty to safeguard the welfare of all children in need within their geographic area irrespective of their immigration status. Furthermore, the reforms will make it far easier to remove unaccompanied or separated children by locating them at a small number of specific locations and isolating them from a wider supportive community.

This concern is particularly marked in local authorities with a record of high quality care to unaccompanied or separated children. It is less evident among local authorities who are equivocal about the duties to unaccompanied or separated children, where social workers find it difficult to accept that this group have comparable child protection needs to other children on their case load.¹⁷

Some local authorities are very reluctant to top up the grants provided by central government towards the accommodation and support of unaccompanied or separated children from their own resources. They are therefore reluctant to accommodate them under section 20 and provide them with foster placements or supported hostel placements. Instead they choose to assist them under section 17 of the Children Act 1989 and place them in what amounts to bed and breakfast accommodation.

The detrimental effect that this may have on unaccompanied or separated children is identified in a pilot study of 50 separated children being looked after by Westminster's Social Services Department,¹⁸

which does provide quality support to unaccompanied or separated children.

The study found that unaccompanied or separated children were 18% less likely to suffer symptoms of post traumatic stress disorder associated with past persecution and trauma if they were placed in foster care as opposed to independent or semi-independent accommodation.

This is not surprising as when an unaccompanied or separated child is placed in bed and breakfast or hostel accommodation, the local authorities in question maintain minimal contact with the child. The unaccompanied or separated child might be required to attend social services once a fortnight to collect vouchers or cash to buy food. They also have to find out for themselves where their local school or college is and how to enrol in appropriate courses. They have to find out how to obtain medical assistance. In one case an unaccompanied or separated child with severe psychological problems was placed in a hostel with adults who were abusing drugs



and alcohol.¹⁹ In another, an unaccompanied or separated child was placed with a private landlord who physically assaulted him.²⁰ There are also girls with children of their own left unsupervised in bed and breakfast accommodation.²¹

“You are often dealing with very vulnerable kids. Just sticking them together [in accommodation] isn’t really enough.”²²

“A 14-year-old boy was placed in bed and breakfast accommodation and given TV dinners and luncheon vouchers. He spoke no English and had to fend for himself. Local authorities don’t see their role as protection. They are just servicing [unaccompanied or separated children] during the determination of their claims.”²³

Even where some local authorities acknowledge that they owe a duty under section 20 to accommodate an unaccompanied or separated child, they seek to discharge this duty by placing the unaccompanied or separated child in another local authority’s area where accommodation is cheaper. For example, unaccompanied or separated children accommodated by certain Central London local authorities place children in sea side towns in East Anglia or the South of England. The physical distance between the child and his or her social worker makes meaningful supervision and support very difficult. This has an adverse effect on the child’s ability to comply with the many requirements of the asylum determination process. On a more positive note, Kent County Council, an authority that provides quality support to unaccompanied or separated children but which is supporting many hundreds of such children, has entered into a Safe Case Transfer Scheme with Manchester²⁴ under which responsibility for the unaccompanied or separated children is not delegated by default but rather formally transferred.

The reluctance to accommodate unaccompanied or separated children under section 20 arises in part from the fact that once an unaccompanied or separated child (between the ages of 14 and 18) has been accommodated for a 13-week period, the local authority becomes responsible for providing accommodation and some financial support once the child turns 18. This responsibility can last until 21 or even 24 in certain circumstances, if the young person is still in education or needs accommodation to make the transition into employment.²⁵

This reluctance is very detrimental to a large number of children, who typically have multiple needs. A survey²⁶ conducted in 2000, into the dispersal of families around the U.K., provides some useful comparative data.

It reveals that although asylum seeking and refugee children have multiple needs because of their experiences of separation, loss, and dislocation, many are not in receipt of the same standard of care routinely afforded to indigenous children in need with whom they shared identical rights.

When a child is not only dislocated but also separated from his or her family the child’s needs are even more pronounced and the effect of not meeting those needs can be profound.

“People were so unhelpful. They could see easily that I was someone who needed help, but I was not given any. It was as if everyone wanted me to go back to where I started and not be a problem. It was difficult to get an interpreter. It was difficult to get a hostel. Everything was so much trouble and I felt as if I was giving people a lot of hard work and that is not a nice feeling. If they are there to help people, why make them feel bad about getting that help?”²⁷



Some unaccompanied or separated children have more positive individual experiences but remain critical of general practice.²⁸

“Social services were very responsive and placed me in a shared house with other girls. [But] I think things worked out for me because I’ve made an effort. I’ve been trying to solve my problems. I think I made it smooth for me. It’s not nice the way they treat kids and the way they treat us really stays with us because we’re still so young and we remember when someone has done something horrible to us. They need to be loving and generous.”²⁹

And there are also many examples of good practice. West Sussex County Council generally accommodates all unaccompanied or separated children under section 20 of the Children Act 1989 and provides key workers to accompany them to court and to appointments with legal representatives, their doctors, or the Home Office. Under 16 year olds are placed with foster carers and those between 16 and 18 are placed in supported lodgings.³⁰ Manchester City Council’s

Asylum Support Team has a case load of about 140 unaccompanied or separated children³¹ and treated those under 16 in exactly the same way as it would any other child being accommodated. It carries out full children in need assessments and held regular Looked After Children Reviews. The Team works closely with the Red Cross, Save the Children, and Refugee Action and has developed a good understanding of the needs of unaccompanied or separated children. It always provides an appropriate adult if an unaccompanied or separated child has an appointment with the Immigration and Nationality Directorate in Liverpool and takes an active role in identifying good quality legal representation for them. It also uses four local counselling services for the unaccompanied or separated children in its care. In Glasgow, every unaccompanied or separated child is allocated a social worker within five days and checked on a daily basis. A social worker also accompanies unaccompanied or separated children to appointments with the Immigration Advisory Service, their solicitor, their doctor, or any hospital. In addition, it arranges for them all to start English classes.³²

In Newcastle, members of the Family Support Team act as appropriate adults when unaccompanied or separated children have appointments with their legal representatives or the Immigration Service. They also work closely with the YMCA and Save the Children.³³

A number of these local authorities commented on the absence of guidance from the Department for Education and Skills about the appropriate level of support to give to unaccompanied or separated children. The only official guidance in existence is the Local Authority Circular (LAC)³⁴ advising local authorities to accommodate unaccompanied or separated children under section 20 of the Children Act 1989. This was produced by the Department of Health and does not give any detailed advice. In con-

trast in Northern Ireland³⁵ its Department of Health, Social Services and Public Safety takes a more purposive approach advising health and social workers:

Difficulties can arise in finding suitable accommodation for unaccompanied minors who are an isolated and vulnerable group...service providers should monitor the situation and be in a position to take action under the Children Order³⁶ should this be required. It should be emphasised that in the provision of services, they should be treated as children first and then as asylum seekers and refugees.³⁷

During the research period it became clear that the Department for Education and Skills did not believe it had any particular responsibility for unaccompanied or separated children. Researchers were told that these children were the responsibility of the Home Office and certainly the Department has not undertaken any substantive research into their needs or issued any policy documents in relation to them. On occasion it has sent representatives to meetings about unaccompanied or separated children but it is not actively involved in any discussions about their accommodation, the returns pilot, or their treatment within the asylum determination process.

Compliance With International Standards

- **1.** The UNHCR believes that whether unaccompanied asylum seeking children are in foster homes or elsewhere, they should be under regular supervision and assessment by qualified persons to ensure their physical and psychosocial well-being.³⁸
- **2.** Article 27 of the Convention on the Rights of the Child states that children have the right to a standard of living adequate for their physical, mental, spiritual, moral, and social development.
- **3.** The Separated Children in Europe Programme³⁹ states that separated children should be found suitable care placements as soon as possible after arrival or identification. Care authorities should conduct a careful assessment of their needs. Where children live with or are placed with relatives, these relatives should be assessed for their ability to provide suitable care and undergo police checks, and separated children over 16 years of age should not be treated as “de facto” adults and placed on their own, without adult support, in hostel or reception centre settings.

Recommendations

- **1.** All unaccompanied or separated children should be accommodated under section 20 of the Children Act 1989.
- **2.** A full assessment of each unaccompanied or separated child’s needs should be conducted within seven days of him or her being accommodated in accordance with the Framework for the Assessment of Children in Need and Their Families.
- **3.** An unaccompanied or separated child should never be placed in bed and breakfast accommodation.
- **4.** Particular attention should be paid to the child’s medical, psychological, and emotional needs.
- **5.** A named social worker should be appointed for each unaccompanied or separated child and he or she should liaise closely with the child’s legal guardian when he or she is appointed.
- **6.** The local authority should carry out an initial statutory Looked After Children Reviews after 28

days and a second review after three months and then further reviews every six months.

- **7.** An unaccompanied or separated child should be accompanied by his or her social worker or key worker or legal guardian to every appointment connected with his or her application for asylum whether these are with the Home Office, his or her legal representatives, medical personnel, or others.
- **8.** The Department for Education and Skills should devise guidance for local authorities as to the appropriate level of support to be given to unaccompanied or separated children and implement a programme of training to ensure that all social workers allocated to unaccompanied or separated children are aware of the level of support they are expected to provide.



7.2 Unaccompanied and Separated Children's Psychiatric and Psychological Needs

The needs of unaccompanied or separated children are often not responded to by those caring for them. A pilot study of 50 unaccompanied or separated children in the care of Westminster Social Services Department⁴⁰ revealed that 54% of these children showed symptoms of post traumatic stress disorder. Of these, 34% had experienced serious injury, 40% had experienced armed combat, and 48% had experienced the murder of relatives or friends. Our research highlights a general lack of awareness amongst social workers in other locations regarding the extent of these children's trauma and consequent needs. Unaccompanied or separated children are not generally referred for a psychiatric assessment or offered the opportunity to talk to a counsellor.

These findings are echoed by solicitors representing unaccompanied or separated children who state that a failure to make a psychiatric referral is common even when an initial medical examination has indicated that this is necessary.⁴¹ This failure has a negative impact on the unaccompanied or separated child's ability to disclose the very information which could secure the child's protection under the Refugee Convention.

As one expert in the field put it:

"[Unaccompanied or separated] children may have experienced violence or torture...or may have witnessed members of their family being tortured. Some may have been abducted to become child soldiers and forced to commit violent acts themselves. They will also have suffered multiple loss."



“[Unaccompanied or separated] children react to such experiences in different ways. In order to assess their needs, time and trust are needed. [Unaccompanied or separated] children may feel under pressure to keep secret both information and their feelings. Providing an opportunity for children to talk about their experiences over time and imparting to them a sense of belonging will enable them to develop confidence in their new surroundings.”⁴²

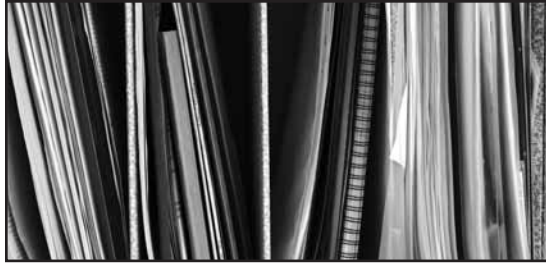
Not only does this failure damage the chances of individual unaccompanied or separated children obtaining protection, it also potentially contravenes Article 18.2 of the Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers⁴³ which states:

Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

This failure to respond has serious consequences: once an unaccompanied or separated child’s psychi-

atric or psychological needs are identified he or she is entitled to free treatment under the National Health Services as an asylum seeker and good practice appears to have been developed in many hospitals and clinics for treating unaccompanied or separated children. However, neither the Department of Health nor the Department for Education and Skills has adopted any National Plan or agreed referral system to ensure that the psychiatric and psychological needs of unaccompanied or separated children are identified in the first place. This means that there is a “post code lottery” with some unaccompanied or separated children being referred for very high quality treatment whilst others receive no treatment at all.

There is also no national strategy to ensure that the good practice which exists is disseminated and shared. The specialist treatment and counselling offered in London at places such as the Tavistock Centre in Swiss Cottage, the Traumatic Stress Clinic in Harley Street, or the Medical Foundation for the Care of Victims of Torture in Islington has been developed as a result of individual initiatives to meet patient and lawyer demand. Many unaccompanied or separated children are not able to access these three centres of excellence as they have very long waiting lists and are all situated in London. Some individual psychiatrists, psychologists, and hospitals are providing very good quality services in other parts of the U.K. but there is no central coordination of the funding and training necessary to ensure that every unaccompanied or separated child in need of rehabilitation services has speedy access to the treatment he or she requires. This finding echoes more general research carried out into the mental health needs of asylum seekers which reveals that services in this area are concentrated in London as a result of grassroots initiatives, and that this leads to severe problems for service providers trying to organize programmes of care for asylum seekers dispersed from London.⁴⁴



Compliance With International Standards

- **1.** Article 39 of the Convention on the Rights of the Child states that states parties shall take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of exploitation, torture, or any other form of cruel, inhuman, or degrading treatment or punishment or armed conflicts.
- **2.** The Separated Children in Europe Programme⁴⁵ states that separated children should have access to health care on an equal basis with national children. Particular attention should be paid to their health needs arising from previous deprivation and from the psychological impact of violence, trauma, and loss as well as the effect of racism and xenophobia that they may have experienced abroad. For many separated children counselling is vital to assist their recovery.

Recommendations

- **1.** The Department of Health in conjunction with the Department for Education and Skills, the Home Office, the Association of Directors of Social Services, and members of the Refugee Children's Consortium⁴⁶ should draw up a national plan of action to ensure that the U.K. meets its obligations under Article 18.2 of the Council Directive laying down minimum standards for the reception of asylum seekers and

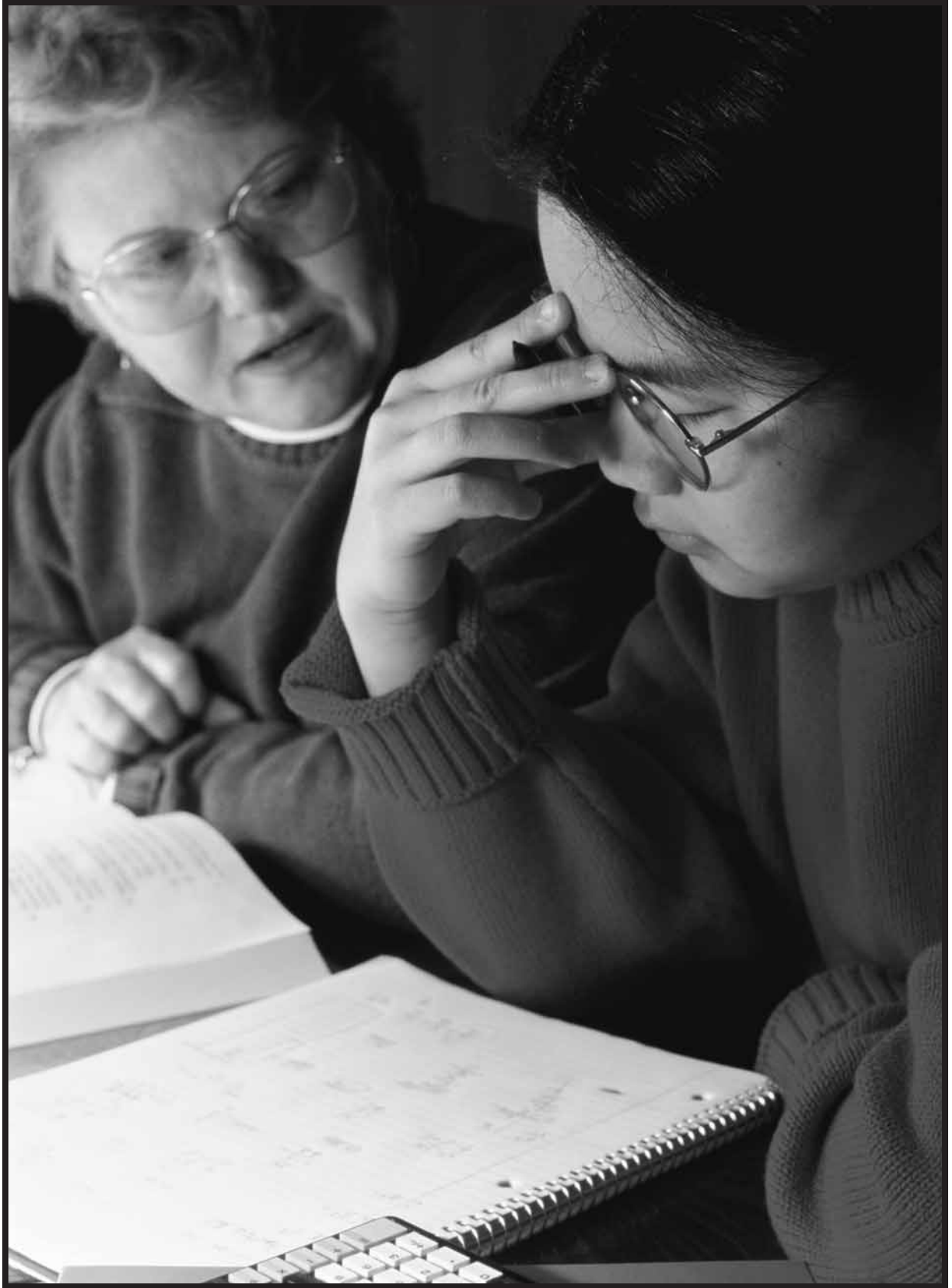
provides access to rehabilitation and mental health care services for all unaccompanied or separated children in need of such services.

- **2.** The Department for Education and Skills in conjunction with the Association of Directors of Social Services and members of the Refugee Children's Consortium, should devise and implement a national training scheme to ensure that all social services departments are aware of the particular psychiatric and psychological needs of the unaccompanied or separated children whom they may be accommodating or may accommodate in the future.

Endnotes

- 1 Immigration and Asylum Act 1999, s94.
- 2 These authorities often have specific asylum seeker teams.
- 3 Children Act 1989, s17.
- 4 Operational Processes. *Processing Applications from Children*. C8, "Special Types of Cases," para 6.1.
- 5 Unless the adult was the unaccompanied or separated child's grandparent, brother, sister, uncle, or aunt, this arrangement was a private fostering arrangement, and the adult was obliged by s66 of the Children Act 1989 to inform social services in any event.
- 6 The Department of Health previously had responsibility for unaccompanied and separated children. Responsibility was transferred to the Department of Education and Skills in 2004.
- 7 *Guidance on Accommodating Children in Need and Their Families*. Local Area Circular (2003) 13.
- 8 [2003] EWHC 2075 (Admin).
- 9 U.K. Immigration Service. *Best Practice: Unaccompanied Minors*. 1 January 2004.
- 10 Children Act 1989, s22.
- 11 Children Act 1989, s26.
- 12 2003/9/EC, 27 January 2003. This had to be implemented by the U.K. by 6 February 2005.

- 13 At college doing the equivalent of A levels or HND courses.
- 14 University level studies.
- 15 UASC Reform Programme Coordinator. *Unaccompanied Asylum Seeking Children Reform Programme 2005/6: Update for Consortia Members*. 12 January 2006.
- 16 In the white paper *Controlling our borders: making migration work for Britain, the Government's five year strategy for asylum and immigration* Cm 6472. February 2005.
- 17 This was a view expressed to researchers in a number of different meetings during the research process, and one which was also apparent from case files reviewed by the U.K. Coordinator in her role as a barrister representing unaccompanied or separated children in community care cases.
- 18 Undertaken by Matthew Hodes, Senior Lecturer in Child and Adolescent Psychiatry at Imperial College, London. 2003–2004.
- 19 An example from the U.K. Coordinator's case load.
- 20 Ibid, Endnote 19.
- 21 Ibid, Endnote 19.
- 22 Interview with Paul Morris, a case worker at South Manchester Law Centre. 2004.
- 23 Interview with Kathryn Cronin, a barrister at Two Garden Court Chambers. 2004.
- 24 After many delays, this scheme started on 20 June 2005.
- 25 Children Act 1989, ss23C, 24A–D.
- 26 Audit Commission. *Another Country — Implementing Dispersal Under the Immigration and Asylum Act 1999*. 2000.
- 27 Kidane, Selam. *I did not choose to come here: Listening to Refugee Children*. BAAF, 2001. Quotation from boy from Afghanistan who arrived in the U.K. when he was 15.
- 28 See Kohli, Ravi K.S. "The comfort of strangers: social work practice with unaccompanied asylum-seeking children and young people in the UK." *Child and Family Social Work*. 2006: 1–10; see also Kohli, Ravi K.S. "The sound of silence: Listening to What Unaccompanied Asylum-seeking Children Say and Do Not Say." *British Journal of Social Work*. 2005.
- 29 Girl from Ethiopia interviewed in depth for this research.
- 30 Interview with Kate Philips, Assistant Social Worker, Child Asylum Team, West Sussex County Council.
- 31 Interview with Bill Davies, head of the Asylum Support Team at Manchester City Council. 2004.
- 32 Interview with Chris Perkins, manager of the Homeless Young Persons' Team, and Alex Browne, manager and senior social worker for Children and Families Services at Glasgow City Council. 2004.
- 33 Interview with Val Watson, Family Support Team, Children's Services, Newcastle Social Services Department.
- 34 Ibid, Endnote 7.
- 35 Northern Ireland has its own devolved regional departments and services.
- 36 The Children Order is similar to the Children Act 1989 which operates in England and Wales.
- 37 *Asylum Seekers and Refugees: Police Guidance on Access to Health and Social Services*. Department of Health, Social Services and Public Safety, Northern Ireland, April 2004.
- 38 UNHCR. *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*. February 1997. Para 7.5.
- 39 Separated Children in Europe Programme. *Statement of Good Practice*, Third Edition. 2004. C11.
- 40 Ibid, Endnote 20.
- 41 Hereward & Foster Solicitors, London. 2005.
- 42 Burnett, Angela and Fassil, Yohannes. *Meeting the Health Needs of Refugee and Asylum Seekers in the UK: An Information and Resource Pack for Health Workers*. NHS.
- 43 Ibid, Endnote 12.
- 44 Watters, Charles and Ingleby, David. "Locations of care: Meeting the mental health and social care needs of refugees in Europe." *International Journal of Law and Psychiatry* 27 (2004).
- 45 Ibid, Endnote 39, C11.2.
- 46 A coalition of NGOs working to support either children or asylum seekers and/or refugees.



The Need for a Legal Guardian

Unaccompanied or separated children are insufficiently prepared for entering the asylum determination process — they sometimes misunderstand the purposes of the screening interview and are not always provided with appropriate care by the local authority accommodating them.

These are just a few of the difficulties they face attempting to navigate a complex asylum determination process alone and far from home. In rare cases an unaccompanied or separated child is placed with a foster carer who does adopt a holistic parental role and tries to represent the child's views to the local authority and ensure good quality legal representation. Sometimes these foster carers are even interested in formally adopting the unaccompanied or separated children in their care. Others have formed a group to lobby for former unaccompanied or separated children to be permitted to remain in the U.K. after they became 18 on the basis of the private life they had established with their foster carers.

Regrettably however, this level of “parental” support is often not offered and the unaccompanied or separated child is accommodated by a local authority in hostel or semi-independent accommodation, or with a foster carer who does not raise any of the unaccompanied or separated child's concerns with the relevant local authority and who may not even understand the asylum process the child is going through. In such cases, and they are frequent, the unaccompanied or separated child has no adult to take responsibility for his or her day to day welfare or long term protection needs (which may be unmet if he or she is not granted asylum). Instead there are a plethora of adults

who the child must try to relate to in order to comply with the demands of the asylum determination process and obtain the support needed to survive pending a decision.

For example, the child might have to go to social services to collect his or her financial support on a fortnightly basis, apply to a Student Welfare Officer¹ in order to obtain a grant to pay for travel to college, ask the Connexions worker² to help obtain a place in further education, and meet with the key worker provided by the accommodation provider.³ The child also has to give detailed instructions on the asylum case to the legal representative.⁴ In some cases an unaccompanied or separated child may not even have a named social worker.⁵

Unaccompanied or separated children have been greatly assisted by welfare officers attached to schools or colleges⁶ or advocates employed by non-governmental organizations (NGOs) such as Save the Children U.K.⁷ Nevertheless, these children remain uncertain about the support they can expect from national and local governmental organizations and indeed at times these bodies do try to offload their responsibilities onto other agencies. In particular, some local authorities appear to expect Connexions Personal Advisers to undertake a role more usually played by a local authority social worker or personal adviser and college welfare officers to fund educational expenses, absolving the local authority social workers themselves from doing anything more than providing a telephone number for emergencies and a financial support every fortnight.⁸ This causes real practical difficulties for children. The lack of effective adult support also has a negative effect on the child's ability to disclose the full extent of past persecution and cope with the asylum determination process. It may even impinge on the child's ability to comply with the requirements of the asylum determination process,



since none of the available adults see themselves as having the competence or statutory duty to assist the child through the asylum determination process.

This leads to unaccompanied or separated children attending their asylum appeal hearings alone. In one case, two very young children arrived for their appeal hearing alone and the Regional Adjudicator had to call the police to ensure their safety even though they were accommodated by a local authority.⁹ In another case a young boy was brought to court by a mini cab driver paid by the local authority accommodating him.¹⁰

8.1 Dual Role of the Legal Representative

Often the only adult who plays a consistent role in the unaccompanied or separated child's asylum determination process is the legal representative.

“With a lot of the kids I have represented, I am the only person they have continuous contact with.”¹¹

This places legal representatives in a difficult position as their primary responsibility is to provide the unaccompanied or separated children with advice about their asylum application and to provide representation at any subsequent appeal. To do this the representatives have to take instructions directly from the unaccompanied or separated child, whereas in other jurisdictions they would be able to work through the child's litigation friend¹² or children's guardian.¹³ There is also a common misapprehension about the role of social services when they assume responsibility for unaccompanied or separated children. Even where they accommodate an unaccompanied or separated child under section 20 of the Children Act 1989 social services do not acquire parental responsibility for the child.¹⁴ They merely have the power to do what is reasonable to safeguard and promote their welfare.¹⁵ This means that they can assist an unaccompanied or separated child to instruct a legal representative but they cannot give instructions on the child's behalf. Foster carers do not acquire parental responsibility or the right to act on the child's behalf in legal proceedings either.

Whilst Social Services have a higher level of responsibility than the Refugee Council's Children's Panel, they do not have parental responsibility for the vast majority of asylum-seeking children they look after.¹⁶ There remains, therefore, a disparity¹⁷ with other children in the U.K.¹⁸

Therefore, lawyers who are representing unaccompanied or separated children in the Asylum and Immigration Tribunal¹⁹ or subsequently in the High Court or the Court of Appeal, are doing so despite the fact that these children may not have the mental or legal capacity or indeed the intellectual maturity to give them full instructions and have no adults with the legal capacity to give instructions

on their behalf. Many legal representatives are concerned about this potential conflict of interest: they are forced to take decisions on the child's behalf relating to welfare and legal entitlements, and at same time they are required to act on the basis of the child's instructions. Many lawyers believe this dual role distracts them from their primary duty to promote the child's legal interests.

"My role is that of an immigration lawyer. It's not a caring, sharing relationship. My involvement is not enough to protect that child. They need someone who is responsible for their interests as a child. They are extremely vulnerable children."²⁰

8.2 Government Measures on Legal Representation

The U.K. was obliged under Article 19 of the EU Council Directive laying down minimum standards for the reception of asylum seekers²¹ to "take measures by 6th February 2005 to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by a organisation which is responsible for the care and well-being of minors, or by any other appropriate representation."²²

At one time it appeared that the U.K. Government was intending to take steps to create a form of legal guardianship which would respond to the needs of unaccompanied or separated children. In its Green Paper *Every Child Matters*²³ it stated that "some of the children in greatest need [were] unaccompanied asylum seekers [who] may have left their homes and communities in violent and traumatic circumstances and [suffer] poor health." Senior managers within the Immigration and Nationality Directorate also recognised the need for unaccompanied or separated children to have a consistent

adult in their life to speak on their behalf and mentor them.²⁴ The Department for Education and Skills acknowledged the general need for a key person in the lives of children and young people in its wider policy work.²⁵ However, no additional provisions for unaccompanied or separated children were included in the subsequent Children Act 2004 despite an amendment being tabled²⁶ which would have provided for a legal guardian for every such child.

Furthermore, no amendments have been made to the Immigration Rules to ensure that unaccompanied or separated children receive the representation required by the EU Directive.²⁷ Instead the Government purports to comply with Article 19 by maintaining that unaccompanied or separated children are represented by both their social workers and the Refugee Council's Panel of Advisers. In the early months of 2005, the Government undertook a hasty review of the services being offered by the Refugee Council's Children's Panel to show that it was concerned to meet its obligations. To date it has not offered the Panel a statutory role.²⁸

Whilst it is true that the Refugee Council is funded by the U.K. Government to provide advice to unaccompanied or separated children through its Children's Panel, the Government gives an inaccurate description of its role in the Green Paper *Every Child Matters*²⁹ and in its response to its obligations under the EU Directive. In the Green Paper it states that the Panel plays "an important role in helping children through the asylum determination process and in accessing the services that they need for inclusion." This exaggerates the role of most Panel advisers. Without adequate funding or a statutory role, their work is of necessity far more limited. At best the Panel has assisted some unaccompanied or separated children to obtain a legal representative and support from a social services department.

"The Refugee Council's Children's Panel intends to guide children through but struggles to so this in reality because of resources. Not all children get to see an advisor and those that do might only get one or two meetings."³⁰

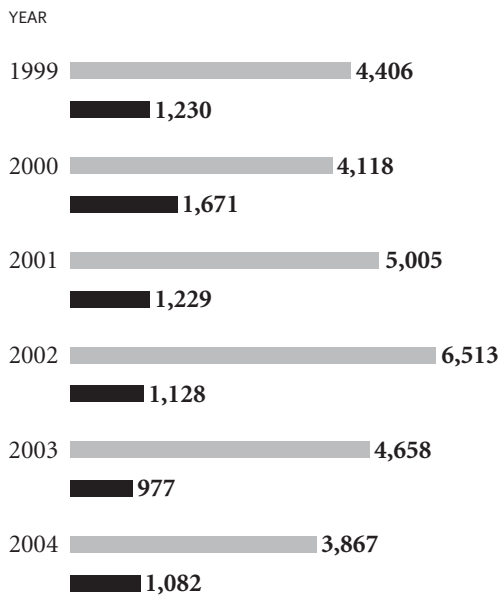
"Unless you have an active and involved social worker, it is extremely difficult for the separated child. The informal arrangement of the Refugee Council's Children's Panel doesn't work. It would be nice to have a formal structure."³¹

The Children's Panel is based at the Refugee Council's premises in South London and is coordinated by a Head of Section and a Manager. The London Casework Team has eight advisers and one senior adviser. In addition, it has a Regional Casework Team of five advisers and one senior adviser, who travel to Kent, Birmingham, Manchester, and Peterborough, areas which have a large number of unaccompanied or separated children. Five of the six regional advisers are based in London and many legal representatives outside of London report that they have little contact with Panel Advisers.³² Much of the time advisers are occupied assisting unaccompanied or separated children to resolve age disputes and obtain appropriate support and services from social services departments. In addition between 20 and 50 unaccompanied or separated children drop by every day to ask for advice about health, benefits, education, and housing.

The Panel simply does not have the resources to allocate an individual adviser to every unaccompanied or separated child referred to it and, therefore, it is not true to say that it provides all unaccompanied or separated children with representation. It cannot even allocate an adviser for all unaccompanied or separated children under 15 as it used to do.

Referral and Allocation of Advisers to Unaccompanied or Separated Child Asylum Seekers

■ Number of referrals
 ■ Number of allocations



“I had a couple of referrals from the Panel but most of my kids don’t get advisers. I think they are overwhelmed.”³³

“The panel will now only give kids an adviser if he or she is particularly vulnerable. I know that they don’t have the resources to do that much. When I started at the Refugee Legal Centre eight years ago, I could expect Panel Advisers to come to interviews as appropriate adults.”³⁴

Of the nine unaccompanied or separated children interviewed in depth for this research, six were referred to an adviser and three were not. However, this may not be a representative sample, as the chil-

dren interviewed were those who were already in contact with a non-governmental organization such as the Refugee Council. Those who were assisted were very appreciative of the support that they had been given.

“The Refugee Council Adviser helped me to find accommodation and referred me to social services and a solicitor. They also talked me through my confusions and frustrations. I think not just with me, but with many children, they must have prevented a lot of suicides. The way they comfort you and give you a reason to believe is really nice.”³⁵

The Refugee Council itself would welcome additional resources and a statutory basis for its Panel.

“Adopting a guardian ad litem model with a legal guardian who could take a step away and oversee social services [would be ideal]... we don’t have statutory authority, so if social services refuse to work with us, our hands are tied. The attitude of local authorities varies — those who are doing well, work well with us. Those that are doing a bad job don’t want to hear from us. Some regularly refer to us. Others refuse to give us details of the child.”³⁶

The Refugee Council also acknowledges that it:

has no legal responsibility for the child, no rights with regard to their care and little say in the asylum process [and that] currently there is no independent person to represent the best interests of the child as part of the asylum process. The Government [should] provide a legal guardian to every unaccompanied child entering the U.K., to represent their best interests in all proceedings for the time the child remains in the U.K.³⁷

8.3 Role of a Legal Guardian

Many legal representatives and non-governmental organizations working with unaccompanied or separated children believe that a guardian can play a very important role in ensuring that an unaccompanied or separated child's rights under Article 22³⁸ of the UN Convention on the Rights of the Child (CRC) are met. Meeting these needs would not necessarily contradict the U.K.'s reservation to the CRC, as many of the necessary measures would have no effect on the Government's right to maintain effective immigration controls.

There has been a great deal of discussion amongst legal representatives and non-governmental organizations about both the need for unaccompanied or separated children to be provided with a legal guardian and also about the form such guardianship might take.

There is a growing awareness that a guardian could play a very important coordinating and monitoring role ensuring that other professionals provide the child with the assistance he or she needs from legal representatives, social services departments, landlords, educational establishments, or the Asylum and Immigration Tribunal and higher courts.

The need for a legal guardian at the appeal stage has been discussed by many legal representatives. In contrast with the criminal and family jurisdictions in the U.K., no statutory measures³⁹ are in place within the asylum system to take into account the particular vulnerabilities of an unaccompanied or separated child in a court setting. Once in court, a child's legal representative is limited to argument about the child's right to protection. He or she cannot advise the court on the child's best interests, which may or may not accord with the child's legal

rights or even his or her own instructions. Providing this advice to protect the child's best interests is the role played by a Children's Guardian in the Family Court. The need for such a guardian is particularly apparent in cases where an unaccompanied or separated child has been trafficked but cannot come to terms with the possibility that a parent sold them to a trafficker, or where a child is not mature enough to grasp the parents' reasons for sending him or her to the U.K.⁴⁰

Compliance With International Standards

- **1.** UNHCR believes that an independent and formally accredited organization, charged with appointing a guardian or adviser as soon as an unaccompanied child is identified, should be established in each country. The guardian or adviser should have the necessary expertise in the field of child care, so as to ensure that the needs and interests of the child are appropriately safeguarded and protected during the refugee status determination procedures and until a durable solution for the child has been identified and implemented. To this end, the guardian or adviser would act as a link between the child and existing specialist agencies and individuals who would provide the continuum of care required by the child.⁴¹
- **2.** UNHCR has also stated in its Handbook on Procedures and Criteria for Determining Refugee Status that "a child — and for that matter an adolescent — not being legally independent should, if appropriate, have a guardian appointed whose task it would be to promote a decision that will be in [his or her] best interests."
- **3.** Paragraph 33 of the UN Committee on the Rights of the Child's General Comment No. 6

(2005) states that “states are required to create the underlying legal framework and take necessary measures to secure proper representation of any unaccompanied or separated child’s best interests.” Therefore, states should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the state in compliance with the Convention and other international obligations.”

■ **4.** The Separated Children in Europe Programme⁴² states that as soon as a separated child is identified an independent guardian or adviser should be appointed to advise and protect that child. Regardless of the legal status of this person (for example, legal guardian or NGO worker) their responsibilities should be as follows:

- to ensure that all decisions taken are in the child’s best interests;
- to ensure that a separated child has suitable care, accommodation, education, language support, and health care provision;



- to ensure that a child has suitable legal representation to deal with his or her immigration status or asylum claim;
- to consult with and advise the child;
- to contribute to a durable solution in the child’s best interests;
- to provide a link between the child and various organizations who may provide services to the child;
- to advocate on the child’s behalf where necessary;
- to explore the possibility of family tracing and reunification with the child; and
- to help the child keep in touch with his or her family.

Recommendations

- **1.** A legal guardian should be appointed for every unaccompanied or separated child within three days of his or her initial application for asylum.
- **2.** No part of the asylum determination process, including the screening interview, should take place until a legal guardian had been appointed for the unaccompanied or separated child in question.
- **3.** The legal guardian should accompany or should arrange for an appropriate adult to accompany the child to every appointment arranged in connection with his or her application for asylum.
- **4.** The legal guardian should supervise the arrangements made by the local authority to look after the unaccompanied or separated child.
- **5.** The legal guardian should appoint appropriate legal representation in connection with the child’s

asylum application and monitor the progress of his or her asylum claim.

- **6.** The legal guardian should provide a report to the Asylum and Immigration Tribunal and any higher court on the manner in which the unaccompanied or separated child's best interests can be met.
- **7.** Legal guardians should be appropriately qualified and trained and accountable to a publicly funded supervisory body.

Endnotes

- 1 These officers who are employed by individual colleges may have funds they can use to assist students who cannot afford to travel to the college or pay for books or other materials. Some have also taken on a more supportive role in relation to unaccompanied children.
- 2 There is a national scheme of Connexions Partnerships which provides personal advisers to 13 to 19 year olds who need advice about educations, careers, housing, money, health, and relationships.
- 3 Most local authorities contracted with private organizations who provided accommodation to unaccompanied or separated children on their behalf. A key worker was usually part of the package provided under these contracts.
- 4 In some of the poorer quality firms or organizations this may have meant telling his or her story to a number of different case workers whilst the case was being prepared.
- 5 The U.K. Coordinator's case load indicated that provision was largely a "post code lottery," with some areas providing a range of support services, and others practically nothing.
- 6 In one case, a welfare officer at West London College highlighted the failure by a local authority to accommodate unaccompanied or separated children under



s20 of the Children Act 1989, which led to the landmark case of *The Queen on the Application of Behre & Others v. the London Borough of Hillingdon* [2003] EWHC 2075 (Admin).

- 7 Within its Brighter Futures advocacy projects.
- 8 Conclusions are based on a large number of cases involving unaccompanied and former unaccompanied children undertaken by Hereward & Foster, a solicitors' firm in London (2005).
- 9 Information provided by another adjudicator (2004).
- 10 Information provided by an immigration barrister (2004).
- 11 Interview with Melissa Canavan, Senior Case Worker, Refugee Legal Centre (2004).
- 12 In proceedings in civil courts in the U.K.
- 13 In childcare proceedings in the U.K.
- 14 They would acquire parental responsibility for an unaccompanied or separated child if they took him or her into care under s31 of the Children Act 1989. However, it is unlikely that the local authority would be able to establish that the child would suffer significant harm unless such an order was made in most cases. One possible exception to this would be cases of trafficked children who were still in danger from their traffickers or parents who had sold them to their traffickers.
- 15 Children Act 1989, s3(5).
- 16 Both children who are taken into care under s31 of the Children Act 1989 and children who are accommodated under s20 are "looked after" for the purposes of the Act.

- 17 As other children will either have a person with parental responsibility (even though they are not presently living with them) or will have been actually taken into care, and the local authority will have assumed parental responsibility for them.
- 18 Refugee Council. *Laying down the minimum standards for the reception of asylum seekers: Response to the Home Office Consultation on the Implementation of Council Directive 2003.9.EC of 27 January 2003*. December 2004.
- 19 Prior to April 2005, before the Immigration Appellate Authority.
- 20 Interview with Liz Barratt, a solicitor at Bindman & Partners in London. 2004.
- 21 2003/9/EC.
- 22 Similar obligations arise from Article 30 of the EU Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, EU Directive 2004/83/EC, in relation to separated children subsequently granted discretionary leave, humanitarian protection, or refugee status.
- 23 Cm 5860. September 2003.
- 24 Interview with Ailish King Fisher, Assistant Director, Children and Family Asylum Policy Team, Asylum Appeal Policy Directorate. 2004.
- 25 It has established a system of “lead professionals” as part of its integrated working to improve outcomes for children and young people programme, which is part of the wider Every Child Matters programme.
- 26 The amendment was tabled by the Refugee Children’s Consortium, who believe that unaccompanied children must be guaranteed the right to the assistance of a guardian when instructing a legal representative and throughout the asylum determination process. See their parliamentary briefing for a debate which took place in Parliament on 23 February 2005 on *Controlling our borders: Making migration work for Britain — Five Year Strategy for asylum and immigration*.
- 27 A number of other changes were made to ensure compliance with this directive.
- 28 Information provided by Jane Dykins, Head of Children’s Section at the Refugee Council. March 2005. (In 2006 the Panel was given a very small increase in its budget so that it could provide some additional regional advice.)
- 29 Ibid, Endnote 23.
- 30 Interview with Laura Brownlees, policy officer at Save the Children U.K. 2004.
- 31 Interview with Kate Jessop, solicitor at Brighton Housing Trust. 2004.
- 32 Interviews with Samar Tasselli, a case worker at Stockport Law Centre, and Paul Morris, a case worker at South Manchester Law Centre, in which they commented that they had had no contact at all with panel advisers. 2004.
- 33 Ibid, Endnote 20.
- 34 Ibid, Endnote 11.
- 35 A girl from Rwanda who was interviewed in depth for our research.
- 36 Interview with Helen Johnson, manager of Refugee Council’s Children’s Panel. 2004.
- 37 Ibid, Endnote 18.
- 38 Article 22 states: “Parties shall take appropriate measures to ensure that a child who is seeking refugee status...receives appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”
- 39 At best, there is the Adjudicator Guidance Note No. 8 on *Unaccompanied Children*, which was issued by the then Chief Adjudicator in April 2004.
- 40 Many parents appear to have lied to their children in order to persuade them to leave without them and to ensure that they agree to go when the parent him- or herself cannot leave for political or practical reasons.
- 41 UNHCR. *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*. February 1997. Para 5.7.
- 42 Separated Children in Europe Programme. *Statement of Good Practice*, Third Edition. 2004. C6.



Applying for Asylum

9.1 Making an Application for Asylum

In order to apply for asylum in the United Kingdom an unaccompanied or separated child has to have physically arrived in the country. Although the U.K. does have a very small¹ Gateway Protection Programme through which it accepts refugees who are already known to UNHCR abroad, this programme is not open to unaccompanied or separated children.

Unaccompanied or separated children therefore have to apply at a port of entry, at one of the two Asylum Screening Units or at a local Immigration Service enforcement office.² When they do so there is an implicit assumption on the part of the Immigration Service or the Immigration and Nationality Directorate that unaccompanied or separated children both understand the concept of “seeking asylum” and know how to make an application for the protection provided by the Refugee Convention. Interviews con-

ducted for our research and by others revealed that both assumptions were incorrect in many cases.

“They just told me I needed to tell my story and I would be safe. I didn’t know what asylum itself was or that what I was doing was called asylum.”³

“The words for applying for asylum in my language are translated as “giving up your hand” (which means surrendering). That was what I was told to

do once I got to London. The picture I had was that I would surrender to someone with guns. So you can imagine the misunderstanding at immigration when I kept on saying take me to the police so I can surrender. Now I laugh about it, but then I was so scared.”⁴

“When I arrived in Waterloo I was so confused — no one explained what to do. I did not ask either. I don’t know what I was thinking of but for months we were all waiting to get out by any way possible, but we never talked about after getting out.”⁵

“I had one child from the DRC who genuinely didn’t know about passports. Some children do not even know what [the Immigration Service] are talking about if asked about passports.”⁶

Many legal practitioners believe that because unaccompanied or separated children have such a predictably poor understanding of the protection offered by the Refugee Convention and the intricacies of the asylum determination process, their applications are never likely to succeed. Legal representation clearly makes an enormous difference in this situation. Neither the Immigration Service nor the Immigration and Nationality Directorate has any obligation to provide unrepresented children with any pre-application briefing to ensure that they understand their rights and comprehend the process they are about to enter. The presence or absence of legal representation is particularly significant when children are liable to be returned to a third country.

Recommendations

- **1.** The Immigration Service and the Immigration and Nationality Directorate should provide each unaccompanied or separated child with a

detailed briefing in his or her own language and in the presence of his or her legal representative. The briefing should explain the Refugee Convention and the protection it can provide and also the asylum determination process before any screening interview takes place. Children should also be provided with information about the European Convention on Human Rights and the protection it may offer them.

- **2.** An unaccompanied or separated child should then be entitled to consult with his or her own legal representative so that the legal representative can ensure that the unaccompanied or separated child has understood the contents of the briefing and what he or she is required to do during the asylum process and can answer any queries the unaccompanied or separated child may have, before the screening interview takes place.

9.2 The Screening Process

An unaccompanied or separated child applying for asylum is subjected to the same screening process as an adult asylum seeker with a few additional modifications to take the child’s age into account.

It is only when unaccompanied or separated children are 10 years or older that they are screened at all. If the child is under 10 he or she is only asked a few questions to obtain basic identity details.⁷

In addition, unaccompanied or separated children are screened at their local enforcement office, where one is available, instead of having to travel to London or Liverpool to attend an Asylum Screening Unit.⁸ The conduct of the screening interview for

children who apply at the Asylum Screening Unit in Croydon is also an improvement on the procedure adopted for adults. Since early 2004 children are not interviewed over the counter in the public office. Rather, they are taken to an interview room which is set aside for unaccompanied or separated children (though this excludes age disputed children).

Screening interviews of children are supposed to be conducted by specially trained immigration officers (at ports of entry or local enforcement offices) or case workers (at Asylum Screening Units). However, if a trained officer is not available the interview is conducted by an untrained officer who is supposed to follow the guidance contained in “Processing Applications from Children”.⁹ Interviews can only proceed if the unaccompanied or separated child is accompanied by a responsible adult. However, legal practitioners have told the researchers that they doubt this is a sufficient safeguard for unaccompanied or separated children. They point out that the Immigration and Nationality Directorate defines

a “responsible adult” as a “legal representative or another adult who for the time being is taking responsibility for the child” and that this definition reveals the very low threshold for the required relationship between adult and child. They point out that whilst such a temporary role may be appropriate in criminal proceedings where an “appropriate adult” has to do little more than sit in on an interview with a juvenile in the absence of his or her parents, an unaccompanied or separated child’s situation is very different. This category of child does not have an adult with parental responsibility in the U.K. and might well still be traumatized by the journey to a foreign country and separation from family and community.

Many unaccompanied or separated children have also experienced violence, torture, detention, or the death or injury of their parents. Consequently they need more than the transitory support of someone who could be an unknown adult.



Some social services departments do supply a social worker to act as the responsible adult and in North Shields, for instance, the Immigration Service does not screen an unaccompanied or separated child unless a social worker is present.¹⁰ Other social services departments maintain they do not have sufficient staff to do this.

Unlike for adults, the Legal Services Commission does fund a legal representative to accompany an unaccompanied or separated child to a screening interview.¹¹

However, the research reveals that many unaccompanied or separated children are not able to obtain legal representation before the screening interview takes place or that when they find a legal representative this person does not always have the appropriate training or experience to represent unaccompanied or separated children effectively.

The Legal Services Commission is aware of this problem: in November 2005, its Immigration Policy Team launched a consultation¹² on proposals to contract with firms capable of representing children to provide a duty scheme at the two Asylum Screening Units.¹³ The aim of the scheme is to ensure that every unaccompanied or separated child is appropriately represented at their screening unit interview. The on-site legal adviser will be expected to liaise with social services about accommodating the unaccompanied or separated child, if this has not already been done, and for transferring their case to a firm listed on a specialist Immigration and Children Panel.

The Level 1¹⁴ Screening Form used is identical to the one designed for adults. It is largely concerned with the child's identity and family and the journey to the U.K. Additional questions are asked where appropriate, for example if the unaccompanied or separated child reveals he or she has been a victim



of child trafficking.¹⁵ Unaccompanied or separated children who are interviewed often appear to have misunderstood the purpose of their screening interview and feel frustrated by what they perceive as a refusal by the interviewer to listen to their accounts of persecution. The use of screening interviews to test an unaccompanied or separated child's nationality and age also confuses and upsets them.

"They asked me who my president was, what flag of my country is, why I have problems, and why my father was killed by the government. I felt very bad so I started crying. At that point the Home Office interviewer stopped the interview. I was afraid because I didn't understand what asylum and refugees were.... She kept asking me questions that I didn't understand."¹⁶

"They asked me how I came. Why I came. Did I know what asylum was? What did I eat on the plane? They were bullying me and didn't let me tell my story or give me room to explain why I was there. They just wanted to taunt me. I have seen a lot more than most 16 year olds have seen but they didn't want to hear my story. In fact once they started questioning you, they actually know already what they are going to do. From the first minute they've already decided whether you can stay or not. There's a lot of ignorance. They totally don't know what is going on in my country."¹⁷

“Usually a fee earner but sometimes a very experienced case worker [accompanies the child to the screening interview]. We have had to make a lot of interventions where it is clear that the child did not understand. [The Immigration Service] are trying to improve their style. In function terms they are specializing [in children] but [they are still] lacking in expertise.”¹⁸

The screening interview is supposed to be non-probing but interviewers can exercise some discretion and adopt a more rigorous approach where issues of credibility arise.¹⁹ It is clear from refusal letters sent to unaccompanied or separated children and information provided by immigration solicitors²⁰ that the content of screening interviews is heavily relied upon when the Immigration and Nationality Directorate makes decisions on an unaccompanied or separated child’s application for asylum.

“Screening interviews do stray into the area of the [substantive] claim and [the Immigration and Nationality Directorate] is refusing claims on the basis of credibility. Before screening interviews [were introduced] for children, we rarely got refusals based on credibility.”²¹

This tendency to primarily assess an application for asylum on the basis of the consistency and cogency of the account given by the asylum seeker is not unique to applications from unaccompanied or separated children and appears to be part of a pervasive culture of disbelief which exists in relation to asylum seekers within the Immigration and Nationality Directorate.

Some unaccompanied or separated children also misunderstand the role of the interpreter during the screening interview and do not realise that he or she is merely there to facilitate the interview.²² They sometimes think the interpreter is interviewing

them or can be asked for advice on how to answer the questions. Conversely, the fact that the interpreter is from the child’s country can cause additional trauma because of the child’s past persecution by adults from that country. Despite the particular challenges of interpreting for children, the interpreters used by the Immigration and Nationality Directorate do not receive any specific training.

Compliance With International Standards

- **1.** Paragraph 30A of the UN Committee on the Rights of the Child’s General Comment No. 6 (2005) states that the assessment must be conducted in a scientific, safe, child- and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity.

Recommendations

- **1.** No screening interview should take place if an unaccompanied or separated child is not accompanied by his or her guardian or an appropriate adult and his or her own legal representative.
- **2.** An adult should not be deemed to be an appropriate (or “responsible”) adult until it has been ascertained that he or she has the necessary training and experience to fulfil this role.
- **3.** The screening interview should not be used to probe the credibility of an unaccompanied or separated child’s substantive application for asylum.
- **4.** The screening interview should only be used to check an unaccompanied or separated child’s identity or to resolve any child protection concerns arising from his or her situation.

- **5.** The screening interview should not be used to resolve any disputes about an unaccompanied or separated child's age.
- **6.** The interviewer should always ensure that the unaccompanied or separated child has fully comprehended the precise purpose and the limitations of the screening interview and the type and extent of information he or she is expected to provide.
- **7.** The interviewer should always ensure that an unaccompanied or separated child fully understands any interpreter being used in the screening interview and the role which he or she will play at the interview and that the child is also happy about the gender and nationality or ethnic or tribal origins of the interpreter.
- **8.** Interpreters should also be specially trained to interpret for unaccompanied or separated asylum seeking children.

9.3 Completing the Initial Asylum Application Form

The U.K. Government has taken a number of steps to make it easier for unaccompanied or separated children to make their asylum applications. Despite this, a major shortcoming of the current procedure is the fact that the children are not given an appropriate briefing about the nature and scope of the protection offered by the Refugee Convention (or the European Convention on Human Rights) before they are asked to complete the Children's Statement of Evidence Form. The Immigration and Nationality Directorate seems to assume that such a briefing is unnecessary or that it would be provided by the child's social worker or



legal representative. In reality very few children have any idea whether or how they can rely on these Conventions. Most social workers have no such appreciation either²³ and many unaccompanied or separated children do not gain access to legal representatives with the skills to work effectively with them.

Very few minors understand the legal process. Decisions are made for them by social workers, accommodation providers, members of the community, and even the Home Office when they stop children from claiming asylum because they have relatives in the United Kingdom.²⁴

Unaccompanied or separated children are given 28²⁵ days to complete and return their SEF (Statement of Evidence) forms; adults by contrast are given 14 days, the additional time being an acknowledgement of the extra time it may take legal representatives to take instructions from children.

“Preparing a statement for a separated child can take less time if you ignore what is going on behind your instructions. Most will [give] you a small statement that you can fit on one page of A4 with very vague details. It is your decision if you want to do the job properly. You have to dig deeper to give them any chance of success and if you are concerned about protection issues. I like to see a child for an initial session to take basic details and tell him or her what’s going to happen [in the asylum determination process] and what a refugee is. On the next occasion I will begin to take his or her statement very slowly.”²⁶

From October 2003, children have been provided with a 27 page Children’s SEF²⁷ designed to be more child friendly than the self completion questionnaire used for adults and to provide a greater level of information than the self completion questionnaire previously used for unaccompanied or separated children. However, the form is still in English.²⁸ Its completion is therefore inevitably a lengthy process. As a result, a number of solicitors and local authorities have expressed dissatisfaction with the 28 day extended period:

“Some young people are not educated, they are traumatized and isolated. To be able to get a statement and do all the legal work in [28 days] is going to be impossible. Young people can give the basics quite quickly but to get some of the stories takes quite a long time. It takes support, sympathy, and being a good ear. One girl who was trafficked, [needed] six to seven appointments of three hours duration with her solicitor on top of time with us. A lot of them are so ashamed. Trafficked cases are particularly hard — it depends who they are most afraid of and what they want.”²⁹

“Our experience is that disclosure takes a long time. An overwhelming number of children are traumatized. It is very hard for them to provide a lot of information when they first arrive. I am sure that there are some who are still too frightened to repeat what happened to them.”³⁰

Although the length of the form causes practical timing difficulties, its detail offers unaccompanied or separated children some additional protection as it signposts some of the most important issues to address. The language used is similar to that in the adult form but some of the questions are broken down into more detailed component parts or annotated so that the information sought is clearer.

The one major lacuna is that there are no questions referring to child specific forms of persecution such as female circumcision, child trafficking or forced marriages. The relevant part of the form merely states that if the unaccompanied or separated child’s claim is partly or wholly based on a reason other than race, ethnic group, nationality, religion, political opinion (including membership of a particular social group) that section should be completed. This contrasts with the sections in the form relating to other possible Convention reasons which include a series of more detailed questions. As a result of this serious omission, an unaccompanied or separated child is not alerted to the fact that information on these issues could be relevant to the asylum application.

The form does contain a section on “Avoiding Military Service” but the questions focus on being called up, deferring military service, starting military training, or being charged for refusing to undergo military service. It does not include any reference to the child specific issue of unlawful recruitment as a child soldier or alert a child to the fact that international law prohibits the use of child soldiers by governments or rebel groups or that a fear of



return to a country requiring service as a child soldier could place the child at risk of persecution within the meaning of the purposes of the Refugee Convention.

The section of the SEF form on political opinion does ask a number of relevant questions about political activity by the child and his or her family members. However, the form requires more detail and understanding about the political process than an unaccompanied or separated child is likely to have.³¹ It does not explicitly alert the child or the legal representative to the fact that imputed political opinion can suffice as a basis for international protection.

The Children's Statement of Evidence Form is a crucial part of the asylum determination process for an unaccompanied or separated child; in the absence of a substantive asylum interview, it forms

a key part of the child's case. It is a major part of the subjective evidence on which the child's application is decided by the IND case worker. It is also likely to be the document an adjudicator or Immigration Judge uses to compare and contrast with any written statement the child might submit or any oral evidence he or she may give at any appeal hearing.

The research reveals that in most cases information in the Children's Statement of Evidence Form is not enough to ensure that an unaccompanied or separated child is granted asylum. To succeed children have to submit a large amount of corroborative evidence and a very well focused skeleton argument. Therefore the quality of legal representation is crucial. Legal representatives, however, are not provided with any mandatory training in representing unaccompanied or separated children.³² They are also not obliged to undertake training on the specific

needs of asylum seeking children as this is not included within the syllabus³³ for the Accreditation Scheme now run by the Law Society and the Legal Services Commission.³⁴ It is clear from the research that some unaccompanied or separated children have been very badly represented and that they have not had the experience or the confidence to demand a better service.

“A” was an asylum seeker from Sierra Leone. She fled to the U.K. after her parents were killed. Her solicitor told her that if she was ready to deposit some money, he would help her fill in her SEF. Otherwise she would have to fill it in herself. She found this hard as her English was not very good and she was nervous. If she could not figure out a question she had to queue to ask the solicitor a question. It took a day for her to complete the form. She had to pay her solicitor £100 before he would send her form in.³⁵

Any incompetence on the part of an unaccompanied or separated child’s legal representative has very serious consequences as a child who does not return the Statement of Evidence Form within 28 days will have the application refused on non-compliance grounds without any substantive consideration of the child’s account of persecution.

In 2002, 665 (or 11%) of separated children who were still minors when a decision was reached on their application were refused asylum on non-compliance grounds.³⁶

Non-compliance also arises from the failure by social services departments to obtain proper legal representation for unaccompanied or separated children or an unaccompanied or separated child’s misunderstanding of procedures.

Recommendations

- **1.** Where an unaccompanied or separated child appears to be so traumatized by his or her past experiences that the child is not able to disclose the extent of past persecution or future fears, the asylum determination process should be suspended until an appropriately qualified and experienced psychiatrist or psychologist has certified that the child is fit to provide a detailed statement in support of the asylum application.
- **2.** A legal guardian should be appointed for every unaccompanied or separated child to ensure that the child gains access to a suitably qualified and experienced legal representative who will assist the child to complete his or her Statement of Evidence Form within the required 28 day time period.
- **3.** Part C6 of the Statement of Evidence Form (which deals with applications on the basis of membership of a particular social group) should be amended to include specific reference to child trafficking, female circumcision, forced marriage, and the recruitment of child soldiers.
- **4.** The section of the Statement of Evidence Form which relates to political opinion should specifically refer to the fact that a well founded fear of persecution based on imputed political opinion can give rise to a need for international protection under the Refugee Convention.
- **5.** No unaccompanied or separated child should have his or her application for asylum refused purely on the grounds that he or she has failed to return his or her Statement of Evidence Form within the requisite 28 days without being offered a further opportunity to comply with the process.

- **6.** The syllabus for the Accreditation Scheme run by the Law Society and the Legal Services Commission should include a basic understanding of the specific issues relating to the representation of unaccompanied or separated children claiming asylum.
- **7.** The Law Society and Legal Services Commission should also establish an accredited Children’s Panel whose members when admitted to the Panel will be entitled to enhanced remuneration for representing unaccompanied or separated children.

Endnotes

- 1 The U.K. only accepted 201 refugees through this programme between May 2003 and May 2005.
- 2 Where there was a local enforcement office, unaccompanied or separated children were encouraged to apply there. In places such as Norwich this enabled a good relationship to be established between the local authority accommodating the unaccompanied or separated child and the immigration officers at the local enforcement office. It also meant that social services could assess the child’s needs and his or her age before the application for asylum was even made. Adult asylum seekers who were not classed as “vulnerable” could only apply at an ASU.
- 3 “S” was a separated child from the DRC who was interviewed in depth for this research.
- 4 Kidane, Selam. *I did not choose to come here: Listening to Refugee Children*. BAAF, 2001. Quotation from a 14-year-old boy from Ethiopia.
- 5 Ibid, Endnote 4. Quotation from a 16-year-old boy from Albania.
- 6 Interview with Katherine Henderson, Head of the Immigration and Asylum Department at Browell Smith Solicitors in Newcastle. 2004.
- 7 U.K. Immigration Service. *Best Practice: Unaccompanied*



- 8 *Minors*. 1 January 2004. Where a child is under 10, the Immigration Service will conduct a short question and answer session in order to try to obtain as much information as possible.
- 8 The majority of adult asylum seekers claiming “in country” are required to claim at an Asylum Screening Unit, but unaccompanied children and adults deemed to be vulnerable are permitted to apply at their local enforcement office.
- 9 Operational Processes. *Processing Applications from Children*. C5, “Special Types of Cases,” para 7.2.
- 10 Interview with Val Watson, Family Support Team, Children’s Services, Newcastle City Council. 2004.
- 11 Immigration Specification for an LSC contract, para 12.3.2 2(a).
- 12 Information provided to a meeting of ILPA’s Age Dispute Research Board on 16 December 2005.
- 13 In Croydon and in Liverpool.
- 14 Level 2 and 3 screening forms are currently rarely used. Level 2 forms were previously used to ascertain whether an adult or age disputed child had claimed asylum as soon as reasonably practicable for the purposes of s55 of the Nationality, Immigration and

Asylum Act 2002. Level 3 forms were used when there was concern about trafficking or other criminality.

- 15 Letter to the ILPA from the IND, dated 22 December 2003. Once an allegation had been made, the interview would be stopped and a referral would be made to the police.
- 16 Boy from Chad who was interviewed for our research and who was age disputed at the time of the screening interview, but who was subsequently found to be a child and granted refugee status.
- 17 Girl from Rwanda interviewed for our research.
- 18 Ibid, Endnote 6.
- 19 Ibid, Endnote 9.
- 20 Interview with Sally Thompson, Partner at Luqmani Thompson solicitors in London. 2004.
- 21 Interview with Kate Jessop, a solicitor at Brighton Housing Trust. 2004.
- 22 Comment by the U.K. country coordinator based on



- 23 Views provided by legal representatives with children in their case load.
- 24 Ibid, Endnote 20.
- 25 Letter from Suzanne Gooch, Asylum Casework Directorate (South), IND, 3 September 2003.
- 26 Ibid, Endnote 6.
- 27 It was produced by the Asylum Processing and Procedures Unit in consultation with operational and policy staff and Home Office legal advisers. No external organizations were consulted.
- 28 In contrast, the accompanying completion notes are available in 34 different languages.
- 29 Ibid, Endnote 10.
- 30 Interview with Bill Davies, Head of the Asylum Support Team at Manchester City Council (2004).
- 31 ILPA. *Working with Children and Young People Subject to Immigration Control: Guidelines for Best Practice*. Funded by the Nuffield Foundation, November 2004. See paras 5.41, 6.2.
- 32 Historically, any training that exists has been provided by the Immigration Law Practitioners' Association and a small number of lawyers involved in *Putting Children First: A Guide for Immigration Practitioners*, Legal Action Group, 2002, and *Working with Children and Young People Subject to Immigration Control: Guidelines for Best Practice*, ILPA, 2004.
- 33 Information provided by the Families and Children Team at the Legal Services Commission, as the Accreditation Scheme did not have a detailed published syllabus.
- 34 From 2004/2005, the Legal Services Commission requires all solicitors and case workers to sit accreditation exams if they wish to represent and advise clients in publicly funded immigration and asylum cases.
- 35 One of the unaccompanied or separated children interviewed in depth for our research. It is also the case that some solicitors refused accreditation have remained in private practice providing very poor advice and charging high fees to provide this poor advice.
- 36 Provisional figures provided by the IND.



The Determination Process

10.1 The Asylum Interview

Up until 2002, it was not the policy of the Immigration and Nationality Directorate (IND) to interview unaccompanied or separated children about the substance of their claims for asylum.

Paragraph 352 of the Immigration Rules HC 395 previously stated that “a child will not be interviewed about the substance of his claim to refugee status if it is possible to obtain by written enquiries of from other sources sufficient information properly to determine the claim.” In February 2002, the U.K. Government announced that it would be amending the Immigration Rules to enable immigration staff to interview unaccompanied or separated children about their applications in a wider set of circumstances.¹ It went on to state that it believed that many unaccompanied or separated children would welcome the opportunity to tell their story and that this would

give case workers a better understanding of an unaccompanied or separated child’s background and experiences which would enhance the Home Office’s ability to offer appropriate levels of protection.

Paragraph 352 was amended in September 2002 and stated that an “unaccompanied minor who has claimed asylum in his own right may be interviewed about the substance of his claim or to determine his age and identity.”

Whilst recognising the right of unaccompanied or separated children to participate in the asylum determination process, many legal representatives and non-governmental organizations contacted during

this research believe that it is not in the best interests of unaccompanied or separated children to be interviewed about the substance of their applications for asylum, as the Immigration and Nationality Directorate primarily uses asylum interviews to challenge the credibility of the asylum seeker and not to clarify or expand on the information contained in the asylum seeker's statement of evidence form (SEF). Because of this they believe that such an interview would be likely to cause an unaccompanied or separated child further and unnecessary trauma. This perception was confirmed in part by the Evaluation Report for the Non-Suspensive Appeals Unaccompanied Asylum Seeking Children's Interview Project (NSA UASC Interview Project)² referred to below. One of its recommendations was that in future, training for interviewers should include input from a reputable child psychologist in order to enhance the ability of the interviewing case worker to test an unaccompanied child's credibility.³

Some legal practitioners believe that in instances where an unaccompanied or separated child has the intellectual capacity to give cogent and coherent answers in an interview and wishes to do so, attendance by the child at an interview accords with the principles of the UN Convention on the Rights of



the Child.⁴ However, if the child's ability to give such evidence is in doubt or there are concerns about whether the interview process would assist in clarifying the child's application, his or her views could equally well be put forward by his or her legal representative or guardian, thus enabling the child's views to be appropriately taken into account in the determination process.⁵

The Immigration and Nationality Directorate did not carry out any research prior to this change of policy into either the benefits or the potential adverse effects of interviewing unaccompanied or separated children, although it did establish a Non-Suspensive Appeals⁶ Unaccompanied Asylum Seeking Children's Interview Pilot after the change in policy was introduced. The terms of reference for the research were to:

- test the value of interviewing asylum seeking children;
- deliver a process that provided the opportunity for the child to be heard;
- deliver a process that would elicit further information on which to assess the merits of the child's claim;
- develop and test the procedures necessary for interviewing asylum seeking children; and
- obtain feedback from children who had been interviewed, their representatives and others involved in the process.

The pilot was run by the Immigration and Nationality Directorate in Croydon from October to December 2003 and involved 133 unaccompanied or separated children between the ages of 12 and 17. Two interview rooms were set aside for the duration of the Pilot Project and re-painted and provided with posters and plants. Attendance at the interview was mandatory and 120 of the 133 children attended. The



majority of the children were from Kosovo⁷ and Albania but there were also some from Moldova, Bangladesh, Romania, Serbia, the Former Yugoslavia, Jamaica, and Ecuador. The evaluation concluded that the interviews were conducted in a manner which took due regard of the unaccompanied or separated child's age and maturity. However, on the wider question of the value that an interview added to the asylum determination process the evaluation was more negative. The report concluded that the amount of information elicited from the interview was dependent upon the unaccompanied or separated child understanding the asylum process and the questions being asked. This observation accords with the views of many representatives with experience of preparing appeals for unaccompanied or separated children.

More positively, the evaluation reported that "interviewing Officers stated that they felt that the interview provided them with the opportunity to expand upon the information contained in the applicant's written statement which was often very brief and contained only limited information upon which to make a decision."⁸ Nevertheless they also stated that "they did not obtain additional informa-

tion that would have affected the decision outcome." A senior Immigration and Nationality Directorate officer explained in a Minors Interview Project Meeting that this was largely the result of the decision to use unaccompanied or separated children from non-suspensive appeals countries for the Pilot Project, given that there was an assumption built into section 94 of the Nationality, Immigration and Asylum Act 2002 that these countries were now safe.⁹ This meant that even where unaccompanied or separated children had "opened up and given harrowing accounts of what had happened to them" during Pilot Project interviews they were not deemed to be entitled to international protection.

There was a considerable delay in publishing the results of this research and IND concentrated on the impact that introducing an interview stage would have on the Directorate's ability to meet its two month target for determining asylum applications.¹⁰ It was subsequently agreed that a further pilot should be undertaken to ascertain how unaccompanied and separated children's applications could be determined within this timescale and to assess the benefits of interviewing unaccompanied or separated children in the context of the asylum determination process as a whole (not just within the non suspensive appeal process).¹¹ This pilot will be linked to work already being undertaken with UNHCR to improve the quality of initial decision making and the development of an enforced returns programme for unaccompanied children.¹² In particular, all unaccompanied or separated children in the proposed returns programme will be interviewed and UNHCR will be asked to look at these interviews. No such further pilot programme had been introduced by September 2006 and it continued to be the practice of the Immigration and Nationality Directorate to not invite unaccompanied or separated children for interviews about the substance of their applications for asylum.

A recent White Paper¹³ states that Home Office staff should be trained to interview unaccompanied or separated children and that no one will be permitted to interview a child unless they are trained. Immigration and Nationality Directorate case workers had previously received a two day training course before interviewing unaccompanied or separated children in the NSA UASC Pilot Project. This training included sessions on the legislative and policy framework for considering applications from unaccompanied or separated children and on developing effective techniques for interviewing unaccompanied or separated children. There were also guest speakers from UNHCR and the London Borough of Croydon's social services department.

The Immigration Rules¹⁴ require an interviewer to have particular regard to the possibility that an unaccompanied or separated child may feel inhibited or alarmed by the interview process itself. They stipulate that unaccompanied or separated children should be allowed to express themselves in their own way and at their own speed and that if they appear tired or distressed, the interview should be stopped.¹⁵ The Immigration Rules also require the presence of a legal representative or another adult, who for the time being is taking responsibility for the unaccompanied or separated child if such a child is to be interviewed.¹⁶ However, there is no requirement that either of these adults have any legal responsibility for the child. The only stipulation is that an interview cannot go ahead if the sole adult present is an immigration officer, a police officer, or a Home Office official.

In reality if the legal representative is the only adult present apart from a member of the Home Office staff, this may lead to a potential conflict of interest between two different roles: participant in the interview, and advocate acting on the child's instructions.

The legal representative may also find him or herself in the role of a potential witness if there is any dispute about the conduct or content of the interview. This possible conflict was raised at a Minors Interviewing Pilot Working Group on 5 December 2003 but this has not led to any change in policy. The proper role of a legal representative should be to ensure that the interview is conducted in accordance with current Immigration and Nationality Directorate policy and that questions are asked which enable the child to indicate precisely how he or she may benefit from the international protection provided by the Refugee Convention (or the European Convention on Human Rights).

Further guidance¹⁷ provided by the Immigration Service indicates that the role of a "responsible adult" can be taken by a social worker, relative, foster carer, doctor, priest, vicar, charity worker, or Refugee Council representative. There is no requirement that the "responsible adult" have any training for, experience of, or aptitude for this role and therefore this requirement does little to safeguard an unaccompanied or separated child's interests. Many practitioners are of the view that a child's interests would only be properly met if an appropriately trained and experienced legal guardian were to be appointed for each unaccompanied or separated child.



The guardian would ensure this by intervening to prevent a traumatized child being asked to repeat accounts of past persecution when this information was already contained in reports from psychiatrists, psychologists, or other adults with direct relevant knowledge. The legal guardian might also have to intervene to ensure that questions being put were not beyond the child's competence.

During the pilot, a leaflet explaining the limited role of the “responsible adult” was enclosed in each letter inviting an unaccompanied or separated child to an interview. The adult’s role was described as supporting and facilitating but not intervening. Sufficient time was allowed for the child to arrange to be accompanied by such an adult and an interview was postponed if a “responsible adult” was not available.

In addition, the Legal Services Commission provides Community Legal Services funding under its Legal Help scheme for a legal representative and an interpreter to accompany a child to the asylum interview even though adult asylum seekers are no longer entitled to public funding for this purpose.¹⁸ Recent Home Office research¹⁹ confirms the importance of a legal representative’s presence during adult asylum seekers’ interviews to ensure that no pertinent facts are omitted and that no disputes are raised at appeal hearings about what was or was not said during the interview. As unaccompanied or separated children have not been interviewed about the substance of their application for asylum in the past (apart from during the one small pilot project mentioned above) there is insufficient data on which to assess the efficacy of interviewing unaccompanied or separated children. The findings of the Home Office’s research may nevertheless be relevant. For instance, even though three quarters of the government case workers interviewed did not believe that applicants should be able to bring their own interpreters to the asylum interview, a small

number of case workers gave examples of instances where they had used them to check the interpretation being provided by the Home Office interpreter. In contrast all the legal representatives interviewed could recall instances when independent interpretation had been crucial. When the Immigration and Nationality Directorate do start to interview unaccompanied or separated children, the presence of an independent interpreter may be even more important than it is for adults, as children are less likely to have been exposed to other dialects or variations of their own language. They are also likely to be functioning at a lower linguistic level than adult asylum seekers. For both these reasons a poorly trained or unsympathetic Home Office interpreter²⁰ could be fatal to a child’s claim.

Compliance With International Standards

- 1. UNHCR believes that interpreters should be skilled and trained in refugee and children’s issues.²¹

Recommendations

- 1. Every unaccompanied or separated child should be provided with a legal guardian to accompany him or her to any asylum interview.
- 2. In the absence of the appointment of a legal guardian, “responsible adults” should only be present at an interview if they have had the appropriate training and experience and should normally either be local authority social workers or key workers or advocates employed by a non-governmental organization working with unaccompanied or separated children.
- 3. Legal representatives should not be asked to “double” as a “responsible adult” as they have



an important and distinct role to perform at the asylum interview.

- **4.** The role of the legal guardian (or “responsible adult” in the absence of the appointment of a legal guardian) should be to ensure that the child’s best interests are met during the asylum interview.
- **5.** Unaccompanied or separated children should always be provided with an independent interpreter at an interview to ensure the accuracy of interpretation provided by the Home Office and also to ensure that the child’s legal representative can remind the child of the function and format of the interview just before it takes place. It is also important to have an interpreter present to reassure the child or answer any questions he or she may have immediately after the interview finishes.

10.2 Making the Determination

The initial decision about whether to grant asylum to an unaccompanied or separated child is taken by a case worker within the Immigration and Nationality Directorate, who assumes the delegated duties and powers of the Secretary of State for the Home Department. As civil servants these case workers are supposed to be politically neutral but many legal representatives and non-governmental organizations have noted a distinct blurring in recent years between the objectivity generally expected of civil servants and the IND expectation that their staff will respond to the “political” targets set by Ministers for the number of asylum seekers to be granted protection and the number of failed asylum seekers to be removed from the U.K. The Immigration and Nationality

Directorate aims to reach a decision on 80% of applications by unaccompanied or separated children within two months of the application being made. Although there are dedicated teams of case workers deciding applications from unaccompanied or separated children²² the targets of necessity put pressure on case workers to make decisions quickly. Cases involving unaccompanied and separated children are supposed to be referred to a senior case worker²³ who reviews the preliminary decision reached by the basic grade case worker.

Decision making about asylum applications from unaccompanied or separated children should, in accordance with good child care practice, be as prompt as possible. However, setting rigid targets for a decision is not necessarily in an unaccompanied or separated child's best interests. It is helpful to distinguish between delays at different stages of the process, since their impact on children's best interests is not uniform. Delays which result from a child's age being disputed or from the need to obtain expert evidence must be contrasted with delays that occur after a child has completed the application and submitted all the evidence. In the latter case, considerable delay in reaching a decision can lead to further unnecessary stress for the unaccompanied or separated child, whereas delay during the application process itself assists a child in presenting as full a case as possible. Legal representatives report a number of instances when, after all the child's information has been submitted, IND's decision is considerably delayed especially when the country concerned is experiencing serious conflict.²⁴ At times this means that no decision is reached on an unaccompanied or separated child's application until he or she has become an adult, which has an obvious and fatal impact on the prospect of success if the claim is based on child specific persecution.

“The speed at which a child’s case is determined can be crucial. Living in limbo impacts on the ability to plan and their emotional well-being. I know of unaccompanied children who arrived at 16 and still have not had a decision at 18 1/2.”²⁵

According to government policy, applications for asylum from an unaccompanied or separated child should be considered in the light of the child's maturity, with more weight being given to objective indications of risk than to the unaccompanied or separated child's subjective assessment of the situation.²⁶ The present research indicates that this has not been happening in practice. Decision letters rarely mention a child's age or any difficulties the child might experience in giving an account of the fear of persecution due to immaturity or trauma. No instances of the Immigration and Nationality Directorate taking expert advice on a child's mental and emotional stage of development were discovered.

“The quality of decision making is very poor. Decisions don’t reflect the fact that the claim is by a child. There is no difference between adult and child refusal letters.”²⁷

“I have seen decision letters where a child was penalised for the action of an adult and called upon to explain decisions taken on their behalf. The decisions are culturally ignorant. Children often [genuinely] say ‘of course I didn’t ask my parents what they were doing.’”²⁸

It is also government policy that an asylum application made on behalf of a child should not be refused solely because the child is too young to understand the situation or to have formed a well founded fear of persecution.²⁹ Immigration and Nationality Directorate practice is meant to be informed by UNHCR's Handbook on Procedures and Criteria

for Determining Refugee Status.³⁰ This states that where there is doubt about a child's application a liberal application of the benefit of the doubt should be exercised. In practice this does not appear to happen. The Immigration and Nationality Directorate is hostile to individualized expert reports which are needed when a child is too young to establish a claim but is objectively at risk on return. Our research found no evidence that case workers liberally apply the benefit of the doubt to applications from unaccompanied or separated children. Rather we noted an almost universal culture of disbelief towards such applicants within the Immigration and Nationality Directorate. Thus trafficked children and child soldiers are regularly refused asylum because their accounts of persecution are not believed even when there is considerable corroborating evidence.

“Unaccompanied children who are trafficked children are being refused. There is no understanding of the specifics of children's cases or of trafficked children.”³¹



“There is a culture of disbelief. The basis of refusals [is the same as for adults: doubts about] credibility, general situation in the country of origin, and failure to claim on arrival. The [refusal] letters contain long standard paragraphs and it is a shock to get a real reason. The fact that the applicant is a child is only relevant in relation to the issue of discretionary leave and reception and care.”³²

This trend is not assisted by section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. This requires decision makers “when deciding whether to believe a statement to take into account anything which is potentially damaging to [an applicant's] credibility including any use of deception to gain access to or any failure to apply for asylum on the journey to the United Kingdom.” The section applies to both adults and minors. Given the high percentage of unaccompanied or separated children who have no option but to enter the U.K. illegally as a result of the lack of legal migration routes for such children, this section has a serious impact on an assessment of their overall credibility.

“There is the same hostility as with adults. I don't think there is any difference. A culture of disbelief exists just as much [with unaccompanied children] as it does in adult cases.”³³

“There is a widespread belief that [unaccompanied or separated children] are only here to get a better education or to get them out of the way of difficult situations where their education may otherwise be disrupted.”³⁴

Experienced legal practitioners working with unaccompanied or separated children also point out that the Country Information and Policy Unit (CIPU) reports published by the Immigration and Nationality Directorate rarely contain information relevant

to child specific persecution. Therefore objective indicators of risk often have to be obtained by commissioning reports from academic experts, non-governmental organizations, or journalists working in the country from which the unaccompanied or separated child has fled. These practitioners also allege that they are often obliged to adduce evidence of the child's level of maturity and consequent ability to understand the risk of persecution, because decision makers frequently assume that children's emotional and intellectual capabilities are similar to those of adults.

Reason for Refusal letters sent to unaccompanied or separated children usually quote extensively from the Immigration and Nationality Directorate's own CIPU reports even if expert opinion has been submitted on behalf of the unaccompanied or separated child. Recent research published by the Home Office's Research and Statistics Unit³⁵ confirms that case workers in the Immigration and Nationality Directorate in general rely heavily on CIPU reports when reaching an initial decision on asylum applications. By contrast, their view of expert country reports submitted by representatives is overwhelmingly negative unless they trust the particular legal representative who has submitted the report. Government case workers report they are often unable to verify the "trustworthiness" of expert country reports or evaluate the authenticity of documents submitted (even when submitted by CIPU) and therefore do not rely on them. By failing to take into account the views of most experts the case workers are not only acting in breach of the Immigration Rules, they are also depriving unaccompanied or separated children of essential evidence which they do not have the maturity or knowledge to articulate.

There is some evidence that the Country Information and Policy Unit has begun responding to criticism about its failure to include information of relevance to claims by unaccompanied or separated



children in its Country Reports. As part of the current research, we studied the content (though not the accuracy) of a sample³⁶ of October 2004 CIPU reports³⁷ on common countries for unaccompanied children. We found that these reports do include information on some child specific forms of persecution including child trafficking for prostitution and domestic slavery, the forcible recruitment of child soldiers, female circumcision, and abduction and enslavement, though they do not include reference to forced marriage. The sections on child specific forms of persecution tend to be brief and limited to a few short paragraphs. Though this new content contrasts favourably with reports produced in earlier years, which contained even less of this information, they still lack sufficient detail to provide an evidential basis for child asylum claims.

The lack of specificity in the CIPU reports seems to be a result of the research method used, which

draws on a small number of other reports, themselves the product on the whole of desk research. Four reports³⁸ produced by the Immigration Advisory Service³⁹ (IAS), which are based on a detailed analysis of CIPU reports for April 2003, October 2003, April 2004, and April 2005, confirm this. According to the third of these reports, on average 60% of each CIPU report is based directly on information contained in U.S. State Department reports which, in turn, are compiled by “US Embassies through their contacts with human rights organisations, public advocates for victims and others fighting for human freedom”⁴⁰ and not on original or field research. The remaining 40% of the CIPU information is based on desk research into reports produced by international human rights organizations or media reports.

The IAS reports highlight fundamental flaws in the substance of the CIPU reports themselves, and as a result raise questions about the sustainability of child asylum decisions which rely on this information. According to the reports, although each statement in a CIPU report is supposed to be based on an objective and named source, a number of statements are unattributed opinions of the author of the CIPU report, and some stated sources are inaccurate. According to the September 2003 IAS report, the level of sourcing is so poor that many of the Reports are chronically unreliable and as a result so are claims that particular countries are risk free. In 2004, the IAS reported some improvement but remained very concerned about the sourcing of reports on Iran, Angola, Somalia, Iraq, and Serbia and Montenegro. It also reported:

[T]he opinion of the writer [of the CIPU report and therefore the Immigration and Nationality Directorate] had crept into the reports on many occasions. In rare, but highly significant instances, this had occurred directly. More common was a lack of balance

*in the reports, where positive information was, without any stated reason, given precedence over negative information. The negative information was often not included at all or only in brief form.*⁴¹

The fourth IAS report⁴² noted an improvement in the quality of the CIPU reports, but still noted the persistence of numerous errors and inaccuracies, some lack of balance to source selection, and an almost endemic lack of basic accuracy.

The Immigration and Nationality Directorate has entered into a dialogue with both IAS and the Advisory Panel on Country Information⁴³ about IAS’s criticisms and as a result amendments have been made to some CIPU reports. Nevertheless IND remains resistant to using a more comprehensive and reliable set of country information sources. According to recent research by Amnesty International, “case workers were discouraged from searching on the internet. They were instructed to contact CIPU through a senior case worker if further information was required about a claim.”⁴⁴ This approach is clearly detrimental to unaccompanied or separated children as information pertinent to their fears of persecution is routinely omitted from the relevant CIPU reports.

A number of legal representatives have suggested that asylum applications by children receive less adequate consideration than those made by adults⁴⁵ because case workers are influenced by the fact that even if a child’s application is refused, that child will be granted a period of discretionary leave. The Immigration and Nationality Directorate has confirmed this.⁴⁶

There is concern about the amount of training given to case workers who decide applications from unaccompanied or separated children. In 2005, the Audit Commission recommended that the Immi-



gration and Nationality Directorate provide more training for its case workers both at the time of their induction and on a continuing basis, and this recommendation included reference to training on child related claims.⁴⁷ The Commission noted that each new case worker only receives an initial 11 day training course followed by 11 days with mentoring or support before taking over his or her own case load. Comparable staff in Germany and the Netherlands attend a three month course, increased to six months if the person has no previous legal training.⁴⁸ US asylum officers also receive more extensive training, including four hours per week of continuing training throughout their employment.

The adverse effect of poor decision making is somewhat ameliorated by a recent decision in the High Court that if an unaccompanied or separated child is wrongfully treated as an adult throughout the asylum determination process, including following an unsuccessful appeal,⁴⁹ the child is entitled to have any refusal to grant asylum rescinded and a fresh decision made which takes into account the fact that he or she is a minor.

Compliance With International Standards

- **1.** UNHCR believes that although a single definition of a refugee applies to all individuals regardless of age, in the examination of the factual elements of the claim of an unaccompanied child, particular regard should be given to circumstances such as the child's stage of development, his or her possibly limited knowledge of conditions in the country or origin and their significance to the legal concept of refugee status, as well as his or her special vulnerability.⁵⁰
- **2.** UNHCR further states that certain policies and practices constituting gross violations of specific rights of the child may, under certain circumstances, lead to situations that fall within the Convention. Examples of such policies and practices are the recruitment of children for regular or irregular armies, their subjection to forced labour, the trafficking of children for prostitution and sexual exploitation and the practice of female circumcision.⁵¹

- **3.** UNHCR also states that the question of how to determine whether an unaccompanied refugee child qualifies for refugee status will depend on the child's degree of mental development and maturity. An expert with sufficient knowledge of the psychological, emotional, and physical development and behaviour of children should be called upon to make the necessary assessment, bearing in mind that children may manifest their fears in ways different from adults.⁵²
- **4.** In addition, UNHCR states that the problem of "proof" is great in every refugee status determination. It is compounded in the case of children. For this reason, the decision on a child's refugee status calls for a liberal application of the principle of the benefit of the doubt. This means that should there be some hesitation regarding the credibility of the child's story, the burden is not on the child to provide proof, but the child should be given the benefit of the doubt.⁵³
- **5.** The Separated Children in Europe Programme⁵⁴ states that it is desirable, particularly with young children, children with a disability, or those suffering from a psychological trauma, that an independent expert carry out an assessment of the child's ability to articulate a well founded fear of persecution and also to identify any difficulties a child may have in recounting painful incidents or disclosing sensitive information.
- **6.** The Separated Children in Europe Programme also states that all decisions regarding separated children should be taken in a timely fashion taking into account the child's perception of time.
- **7.** Paragraph 53 of the UN Committee on the Rights of the Child's General Comment No. 6 (2005) states that a child who has already been



a victim of trafficking resulting in the status of being unaccompanied or separated should not be penalised and should receive assistance as a victim of a serious human rights violation. Some trafficked children may be eligible for refugee status under the 1951 Convention, and states should ensure that separated and unaccompanied trafficked children who wish to seek asylum or in relation to whom there is otherwise an indication that international protection needs exist, have access to asylum procedures.

Recommendations

- **1.** The Advisory Panel on Country Information should undertake an audit of all CIPU reports in conjunction with the Refugee Children's Consortium, to check their relevance and accuracy in relation to unaccompanied or separated children.
- **2.** All Immigration and Nationality Directorate case workers should be provided with training and have to pass an accreditation exam equivalent to that set by the Law Society/Legal Services Commission in its Accreditation Scheme for legal representatives⁵⁵ before they can assess any application from an unaccompanied or separated child.

- **3.** This accreditation should include a component part specific to applications from unaccompanied or separated children which should be devised after consultation with the Immigration Law Practitioners' Association (ILPA) and the Refugee Children's Constortium and take into account recommendations already made by the UNHCR,⁵⁶ the Separated Children in Europe Programme,⁵⁷ and ILPA.⁵⁸

- **4.** Immigration and Nationality Directorate case workers should be obliged to seek expert evidence if the CIPU report in question does not contain sufficient objective evidence on which to adequately assess an application from an unaccompanied or separated child.

- **5.** Case workers should not be required to decide 80% of applications from unaccompanied or separated children within two months. Instead they should be required to ensure that a decision is only taken once any age disputes have been resolved, any necessary expert evidence has been obtained and the unaccompanied or separated child has had time to disclose as full an account as possible of his or her fear of persecution. Once this has been done, a one month target for deciding the application should be imposed.



Endnotes

- 1 White Paper. *Secure Borders, Safe Haven: Immigration with Diversity in Modern Britain* Cm 5387. Para 4.58.
- 2 Home Office. Evaluation of NSA UASC Interview Project (internal document). August 2004.
- 3 Ibid, Endnote 2.
- 4 Article 12 of the Convention states that the views of 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.
- 5 Separated Children in Europe Programme. *Statement of Good Practice*, Third Edition. 2004. C10.
- 6 At that time s94 of the Nationality, Immigration and Asylum Act 2002 as amended by s27 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 deprived nationals from Albania, Bangladesh, Bolivia, Brazil, Bulgaria, Cyprus, the Czech Republic, Ecuador, Estonia, Hungary, Jamaica, Latvia, Lithuania, Macedonia, Malta, Moldova, Poland, Romania, Serbia & Montenegro, the Slovak Republic, Slovenia, South Africa, Sri Lanka, and Ukraine of a right of appeal against a refusal of asylum whilst they are still in the U.K., unless the Secretary of State certified that his or her claim is not clearly unfounded. (The presumption was that the countries in question do not generally give rise to any protection needs under the Refugee Convention.) Bangladesh was subsequently removed from the list, as were the countries who acceded to the EU.
- 7 In the recent past, applications from the former Yugoslavian countries have been variously categorized. Kosovo is now included in statistics for Serbia & Montenegro as a whole.
- 8 Many experienced solicitors who had taken over the representation of unaccompanied children at a later stage in the asylum determination process also commented that the solicitors initially instructed did not appear to have had the training, experience, or inclination to take a comprehensive and cogent statement from the child in question.
- 9 Minors Interview Project Meeting, 13 February 2004.
- 10 On 1 April 2001, the Government set a target for the

- IND of determining all new asylum applications within two months of the date of initial application. See para 4.7.1 of C2 of the IND's *Asylum Process Manual*.
- 11 Minutes of the Unaccompanied Asylum Seeking Children Stakeholders Group Meeting on 27 January 2005.
 - 12 Letter from Mrs Hellen Boyles, Assistant Director, Asylum Casework Directorate, IND, 13 January 2005.
 - 13 Ibid, Endnote 1.
 - 14 Immigration Rules HC 395.
 - 15 Immigration Rules HC 395, para 352.
 - 16 Immigration Rules HC 395, para 352.
 - 17 U.K. Immigration Service. *Best Practice: Unaccompanied Minors*. 1 January 2004.
 - 18 See the Immigration Contract Specification which was brought into force on 1 April 2004.
 - 19 Home Office. *The role of early legal advice in asylum applications*. Online Report, June 2005.
 - 20 Although the Home Office states that it uses strict criteria when employing interpreters, legal representatives regularly comment on the lack of linguistic ability of many of the interpreters used. They often lack the vocabulary to deal with political concepts and do not convey more subtle meanings or translate into full and stylistically correct English sentences.
 - 21 UNHCR. *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*. February 1997.
 - 22 This policy has varied over the years as the IND has been reorganized and then reorganized again. There were originally two or more children's teams which were then broken up and case workers assigned to generic teams. More recently they have been re-formed. There are now two teams with 20 case workers in each team based in London and in Liverpool. There is also another team in London which can be called upon to meet additional demand. It has not been possible to ascertain whether the unaccompanied or separated children referred to in this research had their applications determined by a dedicated case worker.
 - 23 Interview with Ailish King Fisher, Assistant Director, Children and Family Policy Team, Asylum Appeals Policy Directorate, IND, Home Office. 2005.
 - 24 This was also a trend for adults. A sample of determinations of appeals by unaccompanied or separated children, when analyzed, also revealed that a significant number of Afghani young people had claimed asylum as children, but their appeals were not heard until they had become adults.
 - 25 Interview with Laura Brownlees, policy officer at Save the Children UK.
 - 26 Immigration Rules HC 395, para 351.
 - 27 Interview with Samar Tasselli, a case worker at Stockport Law Centre. 2004.
 - 28 Interview with Liz Barratt, a solicitor at Bindman & Partners in London. 2004.
 - 29 Immigration Rules HC 395, para 352.
 - 30 Immigration Rules HC 395, para 219.
 - 31 Interview with Paul Morris, a case worker at South Manchester Law Centre. 2004.
 - 32 Interview with Katherine Henderson, head of the Immigration and Asylum Department at Browell Smith Solicitors in Newcastle. 2004.
 - 33 Ibid, Endnote 31.
 - 34 Interview with Adrian Matthews, project manager of the Refugee and Asylum Seeking Children's Project at the Children's Legal Centre. 2004.
 - 35 Home Office Immigration Research and Statistics Service. *The role of early legal advice in asylum applications*. Online report, June 2005.
 - 36 China, Iran, Nigeria, Serbia & Montenegro, Sierra Leone, Sri Lanka, Sudan, Uganda, and Vietnam.
 - 37 Published on 8 November 2004 and available on the IND web site.
 - 38 IAS. *Home Office Country Assessments: An Analysis*. September 2003, December 2003 & 2004. See also: IAS. *Submission to APCI: An Analysis of Home Office Country Reports*. August 2005.
 - 39 A charity partly funded by the Home Office to provide advice and representation to asylum seekers and others.
 - 40 Powell, Colin. U.S. Department of State. Preface to *Human Rights Reports for 2003*. 25 February 2003.



41 Ibid, Endnote 38, 2004.

42 IAS. *Submission to the APCI: An Analysis of Home Office Country Reports*. August 2005.

43 A body established by s182 of the Nationality, Immigration and Asylum Act 2002 as an independent body to consider and make recommendations to the Secretary of State for the Home Department about the content of country information.

44 Amnesty International. *Get It Right: How Home Office Decision Making Fails Refugees*. February 2004.

45 For example, see interview with Melissa Canavan, Senior Case Worker, Refugee Legal Centre (2004).

46 For example, comments by Ken Sutton and Jeremy Oppenheim at the November 2004 meeting of the National Asylum Support Forum.

47 House of Commons Committee of Public Accounts. Fourth Report of Session 2004–2005 HC 238.

48 Ibid, Endnote 47, para 25.

49 *The Queen on the Application of Milloja v. Secretary of State for the Home Department* [2005] EWHC 2833 (Admin).

50 Ibid, Endnote 21, para 8.6.

51 Ibid, Endnote 21, para 8.7.

52 UNHCR. *Refugee Children: Guidelines on Protection and Care*. 1997. P46.

53 Ibid, Endnote 52, p 47.

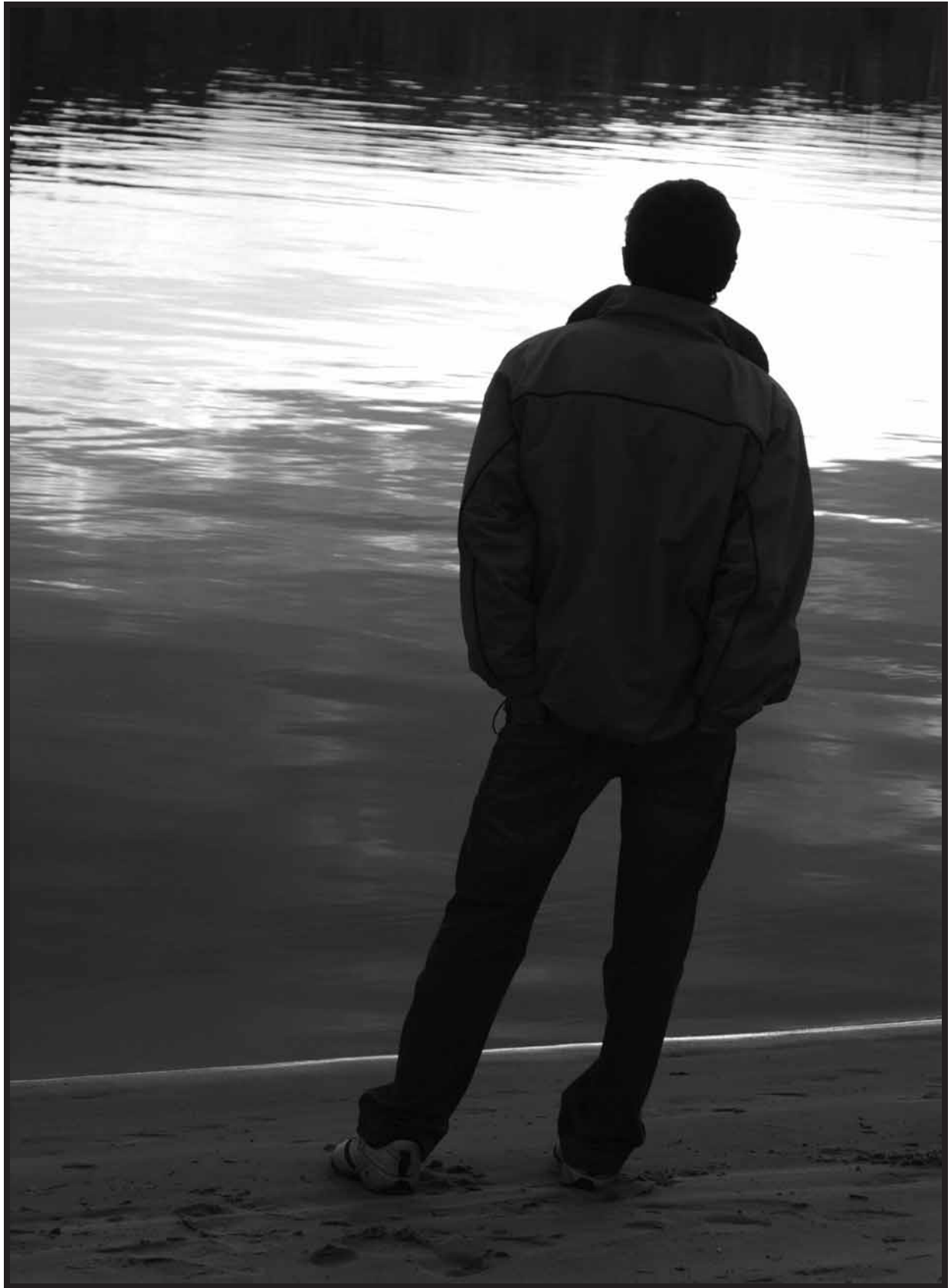
54 Ibid, Endnote 5.

55 This is also a recommendation made by UNHCR in London as a result of its *Quality Initiative Project*, in which it reviewed 2% of all initial decisions made by the IND between May 2004 and January 2005.

56 UNHCR. *Handbook on Procedures and Criteria for Determining Refugee Status*.

57 Ibid, Endnote 5.

58 ILPA. *Working with Children and Young People Subject to Immigration Control: Guidelines for Best Practice*. November 2004.



Outcomes of Asylum Applications

11.1 Being Granted Asylum Without a Need to Appeal

Very few unaccompanied or separated children are granted asylum after initial consideration by a case worker in the Immigration and Nationality Directorate (IND). Remarkably, despite their greater vulnerability, fewer children than adults are granted asylum.

If an **unaccompanied** or separated child is granted asylum, the local authority accommodating the child remains solely responsible for providing accommodation and financial support until the child's 18th birthday.¹ Thereafter the child has the same entitlement to public housing and welfare benefits as adult refugees. This policy is consistent with the Children (Leaving Care) Act 2000, which provides all children separated from their parents and looked after by a local authority with the maximum amount of support until 18. Immigration and Nationality Directorate case workers are required to notify the relevant local

Percentage of Applicants Granted Asylum

2002	9%	Unaccompanied or Separated Children
	10%	Adults
2003	4%	Unaccompanied or Separated Children
	5%	Adults
2004	2%	Unaccompanied or Separated Children
	3%	Adults
2005	5%	Unaccompanied or Separated Children
	7%	Adults

authority as soon as an unaccompanied or separated child is granted asylum,² because a change in the child's immigration status has a direct impact on the care plan formulated for the future.³ The grant of refugee status can also have a significant effect on the child's entitlement to student grants or loans, and refugees are classified as "home students," entitled to pay lower fees for higher education than "foreign students."

There is one important area of discrimination against unaccompanied or separated children granted refugee status.

The Family Reunion policy for refugees, incorporated into the Immigration Rules with effect from 2 October 2000,⁴ does not apply to family members of unaccompanied or separated children.



A child's parents or siblings can apply for leave to enter but this application is only likely to succeed in extremely compelling or compassionate circumstances.⁵ The U.K. government provides no justification for denying unaccompanied or separated children the same right to family reunion with their immediate family as adults. The Government fails to explain how this policy accords with the spirit of the Convention relating to the Status of Refugees, that children should enjoy the same rights as any other person entitled to remain in the U.K. Current policy also violates the Principle of Family Unity recommended by the Conference, which drafted the Convention, which did not distinguish between adult and minor refugees. The Government's refusal to grant unaccompanied or separated children family reunion rights further contradicts the positive and humane approach required by Article 10 of the UN Convention on the Rights of the Child, a contradiction for which the Government cannot reasonably rely on the reservation to the Convention. The latter "reserved the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom... as it may deem necessary from time to time." Once an unaccompanied or separated child has been granted asylum and leave to remain no question of immigration control arises to engage the reservation.

Compliance With International Standards

- 1. The UN Convention on the Rights of the Child states that applications by a child or his or her parents to enter or leave a state party for the purpose of family reunification shall be dealt with by state parties in a positive, humane, and expeditious manner.⁶

- **2.** Paragraph 83 of the Committee on the Rights of the Child’s General Comment No. 6 (2005) states that whenever family reunification in [an unaccompanied or separated child’s] country of origin is not possible [because of the child’s risk of persecution in that country]...the obligations under article 9 and 10 [of the Convention on the Rights of the Child] come into effect and should govern the host country’s decisions on family reunification there. In this context, state parties are particularly reminded that “applications by a child or his or her parents to enter...a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner” and “shall entail no adverse consequences for the applicants and for the members of their family.”
- **3.** The Final Act of the 1951 UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons recommended that governments take the necessary measures for the protection of the refugee’s family, especially with a view to ensuring that the unity of the refugee’s family is maintained.

Recommendations

- **1.** The Immigration and Nationality Directorate should (in conjunction with the UNHCR (London), the Immigration Law Practitioners’ Association, and the Refugee Children’s Consortium) establish an enquiry into the sustainability of the asylum decisions previously made in relation to applications from unaccompanied or separated children.
- **2.** The Immigration Rules HC 395 should be amended to enable the parents or legal and/or customary caregivers and siblings of an unaccompanied or separated child to apply for leave

to join an unaccompanied or separated child as soon as he or she has been granted refugee status and the child should not be required to show that he or she can maintain or accommodate them without recourse to public funds.

11.2 Refusal of Asylum

Unaccompanied or separated children are refused asylum on three separate bases.

11.2.1 Non-Compliance

Refusals on the basis of non-compliance

- | | | | |
|--------|-------------|--------|--------------|
| ■ 2002 | 11% Refused | ■ 2004 | 9% Refused |
| ■ 2003 | 10% Refused | ■ 2005 | 8.3% Refused |

A significant number of unaccompanied or separated children are refused purely on “non compliance” grounds⁷ for failing to attend a screening interview or complete or return their Children’s Statement of Evidence Form (SEF) within 28 days. In these cases, the Immigration and Nationality Directorate takes no further steps to investigate the application and refuses them because of insufficient information to make a substantive decision. Once this had happened — even if the child’s failure to provide information was due to the legal representative or relevant local authority’s incompetence — it used to be difficult to persuade the Immigration and Nationality Directorate to organize another screening interview or accept a Children’s SEF out of time. More recently it has been the policy⁸ of the Immigration and Nationality Directorate to only refuse applications on non-compliance grounds where an unaccompanied or separated child has “failed, without reasonable explanation, to make a prompt and full disclosure of material facts” and “every effort...to

contact the child via social services or the child's legal representatives [has failed]." A non-compliance refusal does not prevent an unaccompanied or separated child from appealing against the refusal but it does deprive the child of information about the arguments the Government will present on appeal. This makes preparation for the appeal hearing and anticipation of likely arguments in cross examination harder.

11.2.2 Third Country Refusals

Refusals on the basis of involvement of a Third Country

- | | | | |
|--------|---------------|--------|--------------|
| ■ 2002 | Under 1% (20) | ■ 2004 | 4% Refused |
| ■ 2003 | 1% Refused | ■ 2005 | 3.9% Refused |

As explained in chapter 1 an unaccompanied or separated child whose asylum application is deemed to be the responsibility of another country under Dublin II⁹ or in rare cases other arrangements is not entitled to have his or her asylum application considered in the U.K. Such a child will be returned to that third country for the application to be determined there.

11.2.3 Refusals after Substantive Consideration

Despite the many improvements in the processing of asylum applications from unaccompanied or separated children, the vast majority of such applications are still refused, with the percentage of refusals increasing between 2002 and 2004.

Percentage granted protection under the Refugee Convention

- | | | | |
|--------|------------|--------|------------|
| ■ 2002 | 8% Granted | ■ 2004 | 2% Granted |
| ■ 2003 | 4% Granted | ■ 2005 | 5% Granted |

Guidance¹⁰ given to Immigration and Nationality Directorate case workers states that "the younger or less mature the child is, the less he might be expected to know about the situation in his own country...the benefit of the doubt should be applied more liberally than when dealing with an adult." Yet this extract from a 14-year-old child's refusal letter is by no means atypical:

The Secretary of State for the Home Department is of the view that you were aware of the plot to overthrow the legitimate and democratic government of [your] country [and should not have participated in this unlawful activity].... He is [also] of the view that you did not stop to think that as a child you should not take part in such activities and neither should you be handling a gun.¹¹

Case workers are given training and guidance¹² on how to assess whether an unaccompanied or separated child is entitled to protection under the Refugee Convention. They are also reminded:

Children may suffer different forms of persecution [to adults] or suffer in different ways from adults. It is important to recognise that due to the variations in the psychological make-up of individuals, fear of persecution includes a subjective factor, and so what might not rise to the level of persecution for an adult could amount to persecution in the case of a child due to their lower tolerance to threats of harm and their greater vulnerability to trauma.

Yet refusal letters rarely take this into account as the following extract shows:

You say that men regularly came to your house before the election and in one case raped your mother. In order to bring yourself within the

scope of the United Nations Convention, you would have to show that these incidents were not simply the random actions of individuals but were a sustained pattern or campaign of persecution directed at you which was knowingly tolerated by the authorities, or that the authorities were unable, or unwilling, to offer you effective protection. In the opinion of the Secretary of State, this has not been established in your case. He considers that you could have attempted to seek redress through the proper authorities before seeking international protection.¹³

It is in this context that one legal representative comments:

“I have never seen a refusal letter that takes into account the age of an unaccompanied or separated child, even though in practice there is language in the letter which makes reference to age. They don’t take into account the child’s perception of the world.”¹⁴



11.3 Alternative Protection

If a case worker refuses an unaccompanied or separated child’s application for asylum it is standard practice for the officer to then consider whether there is any other basis for the child to be granted leave to remain in the U.K.

Since 1 April 2003¹⁵ Humanitarian Protection has been available for any unaccompanied or separated child (or adult) refused asylum who, if returned to the country of origin, would face a serious risk to life or safety arising from a death penalty, unlawful killing or torture, or inhuman or degrading treatment or punishment.¹⁶ This policy is largely a response to the prohibition contained in Article 3 of the European Convention on Human Rights and covers all prospective breaches of Article 3 except those which might occur as a result of a lack of adequate medical treatment in a country of origin. In such cases, unaccompanied or separated children are entitled to discretionary leave to remain.¹⁷ Discretionary leave can also be granted where there is a serious risk that another Article of the European Convention on Human Rights will be breached if the child is returned to the country of origin. Such discretionary leave is also granted where an unaccompanied or separated child is refused asylum but the Secretary of State for the Home Department is said not to be satisfied that there are adequate care and reception arrangements in place in the countries of origin. In practice these decisions are not a result of individual investigation and research, which is beyond the Government’s expertise and currently allocated resources. Rather it is a recognition of the Secretary of State’s lack of assurance that there are adequate care and reception arrangements in place and a welcome response to public and social services expectations that children will not be removed without adequate safeguards regarding their welfare.

It is not possible to ascertain the precise basis upon which any unaccompanied or separated child was granted Humanitarian Protection from the available data. What is clear is that very few unaccompanied or separated children are given this protection.

Grants of Humanitarian Protection to Unaccompanied or Separated Children

- 2003 0.3% Granted ■ 2005 1% Granted
- 2004 1% Granted (20)

The percentages were comparable to those for adults granted Humanitarian Protection during the same period.

Grants of Humanitarian Protection to Adults

- 2003 0.36% Granted ■ 2005 0.4% Granted
- 2004 0.33% Granted

Home Office statistics do not reveal the basis on which unaccompanied or separated children are granted discretionary leave. Grant letters indicate only that the child's leave is either a response to a prospective human rights breach or simply a consequence of the child's minority.

Prior to 1 April 2003, there was only one form of leave which could be granted to unaccompanied or separated children refused refugee status — exceptional leave to remain (ELR).¹⁸ This could be granted for a number of reasons. Sometimes the grant of ELR was an acknowledgement that returning the child to their country of origin would breach the European Convention on Human Rights. At other times it was used when there were particularly compassionate circumstances relating to the individual case. More usually it was granted to failed asylum seekers who were under 18 and for whom adequate care and reception arrangements were not in place in their country of origin.

The provision of exceptional or discretionary leave to remain until an unaccompanied or separated child's 18th birthday is a broad brush approach to meeting children's immediate welfare needs. The existence of this provision is seen by many legal practitioners as a distraction from the asylum determination process: the grant of exceptional or discretionary leave has the serious long term consequence of placing the grantee unaccompanied or separated child at risk of being returned to face persecution on turning 18. This occurs without the Government having given serious consideration to the child's entitlement to protection under the Refugee Convention.

Furthermore, as family tracing is rarely undertaken and care and reception arrangements are not explored, there may well be unaccompanied or separated children whose best interests would be met by being reunited with their families rather than by being granted leave to remain. (Legal practitioners believe this is only true of a minority of unaccompanied or separated children, because they rarely manage to contact their families in the countries of origin.)

Letters granting exceptional leave to unaccompanied or separated children did not specify the reason for the grant but experienced legal representatives believe that in the vast majority of cases, it was a result of the child's age. The fact that extension applications which would expire after a child's 18th birthday would generally be refused, confirms this supposition. Not all legal representatives expected this outcome.

“There is a difference between being granted discretionary leave on compassionate grounds and being given discretionary leave as a child, because discretionary leave on compassionate grounds carries the expectation of an extension.”¹⁹

“I worry about people’s failure to distinguish between exceptional leave to remain [as granted to adults] and discretionary leave granted on the sole basis of age.”²⁰

The general misconception amongst less experienced legal representatives and social services departments—that unaccompanied or separated children are granted exceptional leave in recognition of a need for international protection on human rights grounds and that therefore this leave will be extended on the same grounds—has given many unaccompanied or separated children an unjustified expectation that they will be able to remain in the U.K. once they turn 18.

This misconception is fuelled by the use of the same term to cover two very different situations. The absence of informative statistics which record the reasons for grants of exceptional or discretionary leave compounds the problem. It would be helpful if, instead of the current generic figures, statistics relating to grants of exceptional or discretionary leave to unaccompanied or separated children were categorized as “Exceptional leave to remain on the basis of age” and those given to adults as “Exceptional leave to remain to avoid a human rights breach.”

Exceptional or discretionary leave was and is also granted to a small but distinct group of unaccompa-

nied or separated children who have not claimed asylum but have protection needs, arising from their own family situation. These are usually unaccompanied or separated children who come to the attention of a local authority’s social services department in the course of their duties to safeguard and promote the welfare of children in their geographic area²¹ or to protect children from significant harm caused to them by their parents or carers.²² The former children may have become orphans whilst living in the U.K. with a parent or parents without indefinite leave to remain in the U.K.²³ Alternatively, the child may have entered as a visitor for a limited period of months some years before to join relatives, who were themselves settled in the U.K. In the absence of a legal basis for the child to remain indefinitely in the U.K.,²⁴ the relatives typically fail to inform the Immigration and Nationality Directorate about the child’s continuing presence,²⁵ and as a result the child becomes an overstayer.²⁶ When as often happens the relationship with the child eventually breaks down, it will fall to social services to provide him or her with accommodation and at some later date they will discover that the child has no continuing leave to remain in the U.K. It is now the policy of the Immigration and Nationality Directorate²⁷ that no unaccompanied or separated child should cross international borders without his or her legal status being ascertained. In the past these unaccompanied or separated children were usually given indefinite

Percentage Of Asylum Seekers Granted Exceptional Or Discretionary Leave To Remain

■ 2002	Exceptional leave to remain	69%	Unaccompanied or Separated Children	21%	Adults
■ 2003	Exceptional leave to remain <small>(prior to 1 April 2003)</small>	32%	Unaccompanied or Separated Children	8%	Adults
■ 2003	Discretionary leave	40%	Unaccompanied or Separated Children	6%	Adults
■ 2004	Discretionary leave	73%	Unaccompanied or Separated Children	8%	Adults
■ 2005	Discretionary leave	69%	Unaccompanied or Separated Children	10%	Adults

leave to remain if it was unlikely they could safely be returned to the care of their families. This policy was modified slightly, when children were given an initial limited four year period of leave after which they were permitted to apply for indefinite leave to remain.²⁸ More recently children have been granted short periods of discretionary leave which mirror the leave granted to unaccompanied or separated children refused asylum and which depend on their country of nationality and not their own individual circumstances. The expectation is that they will be returned to their country of origin when they reach 18. This approach makes it difficult for social services to plan coherently whilst these children are in their care and it also fails to take account of the psychological damage they may have experienced at the hands of their own parents.

11.4 Voluntary Returns to Country of Origin

The Immigration Act 1971 provides immigration officers with the power²⁹ to issue removal directions to anyone, including unaccompanied or separated children, to enforce their removal to their country of origin if they are an illegal entrant or have been refused leave to enter the U.K. An unaccompanied or separated child who has overstayed a limited period of leave to remain or who has breached a condition of his or her leave can also be removed.³⁰

However it has been the policy of the Immigration and Nationality Directorate since the early 1990s that no unaccompanied or separated child who has been refused asylum will be removed from the U.K. unless there are adequate reception and care arrangements in place in the country to which the child is to be removed.³¹ In practice no steps are generally taken to investigate whether adequate

reception and care arrangements are available in the child's country of origin and the child will be granted discretionary leave to remain for three years or until their 18th birthday, whichever is the shorter period of time.³²

There are a small number of children who express a desire to return to their countries of origin voluntarily after they have been refused asylum. The Immigration and Nationality Directorate relies on the International Organisation for Migration (IOM)³³ to facilitate such returns and between 2002 and 2004, 46 separated children (aged between 13 and 17) applied to be considered for their Returns Programme. Of these only nine were actually returned. IOM relied on UNHCR to undertake a fact finding exercise in the unaccompanied or separated child's country of origin and as a result of its enquiries it was not thought advisable to assist the other 37 children to return.³⁴

In 2004–2005, Refugee Action, a U.K. based non-governmental organization, also worked with 63 children who wished to make a voluntary return to their countries of origin through its *Choices* programme. Most of these children were between the ages of 16 and 18 and around 80% were boys. The project liaised with the appropriate social services department and UNHCR in the U.K. and UNHCR in the country of origin. A voluntary departure was only arranged if a parent or guardian had been identified and was able and willing to receive and look after the child.

The British Red Cross also run a family tracing service for unaccompanied or separated children who wish to find their family through its International Welfare Service. However, unaccompanied or separated children are not automatically put in touch with this service. It is left to their social workers or legal representatives to alert them to its existence. Anecdotally it would appear that unaccompanied or separated children are rarely able to



supply the level of detailed information necessary to successfully trace their family. As stated above, the Immigration and Nationality Directorate is now planning to return unaccompanied or separated children, whose applications for asylum have been refused and who have exhausted their appeal rights, to their countries of origin even if their families could not be traced.

“The Home Office ought to be looking at family tracing. It has never been the case that the Home Office could not remove — more that in practice it had no mechanism to ascertain whether there were adequate care and reception arrangements in place in a child’s country of origin or even if they did still have family there.”³⁵

The U.K. is obliged³⁶ to assist unaccompanied or separated children to trace their families. Though it has stated that it will encourage family tracing as an alternative to forced removals,³⁷ it has not established any formal mechanisms to do so. It has, however, issued Regulations which state that the Secretary of State for the Home Department will endeavour to trace the members of an unaccompanied or separated child’s family as soon as possible

after the child has claimed asylum and in a manner which will not place the child or his or her family at risk.³⁸ Family tracing is mentioned in the proposed returns programme for unaccompanied or separated children and it is now proposed that a social worker trained in the U.K. will be sent out to the unaccompanied or separated child’s country of origin to undertake a risk assessment of the child’s family circumstances.

The Home Office has also worked with the Association of Directors of Social Services (ADSS) Transitions, and Removals and Returns and Sub-groups on the preparation for return home once they turn 18 of children refused asylum but granted leave to remain. Pilot programmes have been established in Kent and Croydon. The ADSS produced a document in 2005 which addressed the need for parallel planning for the two groups of unaccompanied or separated children, those granted leave to remain in the U.K. and those returned to their country of origin.³⁹ At the same time Save the Children (U.K.), the London Borough of Hammersmith and Fulham and the Royal Borough of Kensington and Chelsea have developed a more sophisticated analysis which recognizes a third possibility, where a former unaccompanied or separated child is not granted

leave to remain but could not in fact be returned to the country of origin due to political instability and difficulties establishing the child's identity or nationality.⁴⁰

11.5 Forced Returns to Country of Origin

In parallel with the arrangements enabling children to remain, the U.K. Government is developing plans to return unaccompanied or separated children to their countries of origin after their applications for asylum are refused and any appeal rights have been exhausted. The Government indicated its intention to do this in a number of meetings⁴¹ during 2003–2004 but the first formal evidence that forced returns of under 18 year olds were going to start came when the policy on discretionary leave for separated children was amended,⁴² reducing to 12 months the period of discretionary leave for separated children from certain designated non-suspensive appeals countries. In January 2005, the Immigration and Nationality Directorate announced⁴³ that it would be returning children to Albania from the end of February/beginning of March 2005. The Evaluation Report on the Non-Suspensive Appeals (NSA) Unaccompanied Asylum Seeking Children Interview Project⁴⁴ indicates that this returns programme will eventually be extended to all non-suspensive countries.⁴⁵ The stated objective of the Unaccompanied Asylum Seeking Children (UASC) Early Returns Programme is to establish reception and care arrangements which are safe and sustainable and enable the Immigration and Nationality Directorate to remove unaccompanied asylum seeking children refused asylum and Humanitarian Protection, to their countries of origin in a way consistent with the Immigration and Nationality's international obligations and policy.⁴⁶

In February 2005, the Home Office also issued a Five Year Strategy for Asylum and Immigration⁴⁷ which stated:

We will address the difficult issue of returning unaccompanied asylum seeking children. The key is to trace their families in their country of origin or to create other acceptable reception arrangements. We are beginning a project in Albania. We do not believe that it is in a child's best interest to remain in the United Kingdom separated from their parents or communities.

As Albania has no publicly funded social workers or functioning child protection infrastructures, the Immigration and Nationality Directorate looked for non-governmental partners to implement its returns programme. A large number of non-governmental organizations working on the ground in Albania on trafficking issues indicated that they are not willing to assist.⁴⁸ UNICEF took the same approach, reporting that its only involvement might be to undertake an independent monitoring role to check on the welfare of any child who was returned.⁴⁹ The Immigration and Nationality Directorate planned to enter into a contract with the International Catholic Migration Commission (ICMC)⁵⁰ who would locate and liaise with the unaccompanied or separated children's families and assist the children to re-establish themselves either with their families or on their own in shared flats in Tirana. The U.K. Government stated that when an unaccompanied or separated child arrives back in Tirana, he or she would be met by someone from the ICMC and an Albanian border guard. The child would then be taken to an office and issued with a "starter pack" of food and clothing. Within 24 hours the child would be placed in short or medium term accommodation.

The Government plans to formalize the programme by entering into a "technical agreement"

with the Albanian Government. However, by May 2006 no such formal agreement had been reached between the two governments, nor had a contract been signed with ICMC. A draft UASC Returns Process Map has been produced by the Immigration and Nationality Directorate. This indicates that after an unaccompanied or separated child has exhausted all of his or her appeal rights, the local authority will have up to 42 days to conduct an assessment of need. There will then be an inter-agency meeting between the Immigration and Nationality Directorate and the local authority to discuss how the need identified can best be met by a “Match and Transfer” pathway to return. The meeting will be chaired by someone from the Immigration and Nationality Directorate and it will ultimately be IND’s decision as to whether the unaccompanied or separated child will be returned. Neither local authority social services departments nor the Department for Education and Skills appear to have played a major role in devising the programme. The scoping exercise carried out in Albania was subcontracted to an independent consultant who had been a social worker but had no experience of returning unaccompanied or separated children to their countries of origin.

According to the Immigration and Nationality Directorate, the best interests of the unaccompanied or separated child will always be an important consideration in any decision on removal but this will not take precedence over the need to maintain effective immigration control. In relation to “best interests,” IND clearly has a preconception about a child’s best interests, and this may not accord with child protection standards usually applied in the U.K. Even before the pilot project started the Directorate suggested that “it is not always in the best interests of [a] child to remain in the United Kingdom separated from [his or her] family or community. In most cases the best interest of the child will be

met by returning a child to either their families or to other appropriate arrangements in [his or her] country of origin.”⁵¹ A clear difficulty with this presumption is that it fails to take into account not only the number of children who may have been trafficked from their countries of origin, at times with the agreement of their families, but also child protection issues which may arise from the sheer fact that a parent has sent a child alone to a foreign and distant country.

Non-governmental organizations have reacted negatively to the proposals to return children to their countries of origin, as have some local authorities and a number of foster carers with whom unaccompanied children are living.⁵²

“We are most concerned about the recent move to return unaccompanied children [to their countries of origin] as it is clear that the best interests of the child will be a secondary consideration to the determination to demonstrate tough enforcement measures.”⁵³

“We have grave concerns about the Government’s plans to return unaccompanied children to Albania. We are in principle opposed to returning children where this is not consistent with domestic and international standards for the care and protection of children.”



“Unaccompanied children are not given a fair chance in our asylum system and we have made it clear to the Government that we cannot support the return of children without significant improvements in the system for deciding their claims for asylum or protection and a guarantee that where children are returned they will not be vulnerable to neglect and abuse.”⁵⁴

“Young people [already] have a fear of being returned at 18. Forced returns of [under 18s] could send children underground where they will be very vulnerable.”⁵⁵

“Some parents [of trafficked children] have been duped but others have not. It is difficult sometimes to ascertain what is in the child’s best interests. What did the parents actually know? Are social services going to have adequate resources to send a social worker to assess the home? How can that be done within a short time period?”⁵⁶

The U.K. Government also plans to return unaccompanied or separated children to Vietnam, the Democratic Republic of Congo, and Angola, because it believes that the increase in child asylum applications from these countries is without merit. This proposal was greeted with both disbelief and concern by non-governmental organizations aware that child victims of traffickers are brought into the U.K. for domestic slavery and forced labour from these very nations. Many of these children end up working in salons painting customers’ nails or living and working 24 hours a day in cannabis growing houses until the police raid these premises.⁵⁷ The U.K. Government has yet to finalize its plans but a number of non-governmental organizations working in Vietnam have announced their strong opposition to the proposals.

Compliance With International Standards

- **1.** UNHCR believes that if an unaccompanied child is found not to qualify for asylum, an assessment of the solution which is in the best interests of the child should follow as soon as practicable. It further believes that the identification of the most appropriate solution requires that all the various aspects of the case be duly considered and weighed. One way in which this objective may be ensured is by the establishment of multi-disciplinary panels in charge of considering on a case-by-case basis which solution is in the best interests of the child.⁵⁸
- **2.** The EU Directive “Laying down minimum standards for the reception of asylum seekers”⁵⁹ states that Member States should endeavour to trace the members of the family of an unaccompanied minor, or to identify the place of residence of the members of the family, regardless of their legal status and without prejudging the merits of any application for residence. Unaccompanied minors should also be encouraged and assisted in contacting the International Committee of the Red Cross, national Red Cross organizations, or other organizations who trace family members.
- **3.** The Separated Children in Europe Programme⁶⁰ states that where a separated child has a family member in a third country and both the child and the family member wish to be reunited in that country, the child welfare authority should carry out a careful investigation of the suitability of the family member to provide care for the child.
- **4.** The Separated Children in Europe Programme⁶¹ states that tracing for a child’s parents and family needs to be undertaken as soon as possible, but this should only be done where it will not endanger

the child or members of the child's family in the country of origin. Tracing should be undertaken only on a confidential basis. Separated children need to be properly informed and consulted about the process and their views taken into account.

- **5.** The Separated Children in Europe Programme⁶² states that a separated child should only be returned if return is considered to be in the best interests of the child. All other considerations such as the fight against illegal entry should be secondary.
- **6.** Article 22 of the UN Convention on the Rights of the Child states that “in cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason.”

Recommendations

- **1.** No unaccompanied or separated child should be returned to his or her country of origin until the child's application for asylum had been fully assessed in compliance with the recommendations contained in this report.
- **2.** No unaccompanied or separated child should be returned to his or her country of origin unless the child has had the opportunity to appeal any decision to refuse him or her asylum.
- **3.** No unaccompanied or separated child shall be returned to his or her country of origin until a full assessment of the child's needs has been undertaken in line with the guidance contained in the Department of Health 1988 guide, “Protecting Children: A Guide for Social Workers undertaking a Comprehensive Assessment”. This assessment must include meetings with, and an



assessment of the capabilities of, the child's parents or legal or customary caregivers in his or her country of origin.

- **4.** No steps should be taken to return an unaccompanied or separated child to his or her country of origin by force unless the child's parents or legal or customary caregivers have been traced and they have been found to be capable and willing to provide the child with a home life which meets his or her needs.

Endnotes

- 1 Children (Leaving Care) Act 2000, s6.
- 2 *Notifying Social Services Departments of an Asylum Decision*. Asylum Policy Notice 09/2003, Second Edition, January 2005.
- 3 As a looked after child the local authority would be organizing regular reviews of his or her progress and as he or she approached 18 it would also be devising a pathway plan for his or her transition into adulthood.
- 4 Immigration Rules HC 395, para 352A&D.

- 5 IND. *Unaccompanied Asylum Seeking Children Information Note (draft)*, 2004, para 13.
- 6 UN Convention on the Rights of the Child, Article 10.
- 7 Immigration Rules HC 395, para 340.
- 8 Operational Processes. *Processing Applications from Children*, C5, “Special Types of Case,” para 11.3.
- 9 Council Regulation (EC) No 343/2003. *Establishing the criteria and mechanism for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national*.
- 10 *Ibid*, Endnote 8, para 11.2.
- 11 Extract from the refusal letter to a boy from Sierra Leone who had been abducted by a rebel group after his parents were killed. He became very ill after receiving this letter and was diagnosed with post traumatic stress disorder and referred for counselling. Interview with Paul Morris, case worker at South Manchester Law Centre, 2004.
- 12 Home Office. *Children: Draft Asylum Policy Instruction*. April 2005.
- 13 Extract from the refusal letter for a 16-year-old girl from Uganda. In her witness statement she had explained that this visit occurred during an election campaign and that both her father and her brother were supporting an independent candidate against the “government” candidate.
- 14 Interview with Sally Thompson, Partner at Luqmani Thompson, 2004.
- 15 Humanitarian Protection was initially granted for a three year period but this was increased to five years as part of the New Asylum Model announced in February 2005. See *Controlling our borders: making migration work for Britain — the government’s five year strategy for asylum and immigration*, Cm 6472.
- 16 *Ibid*, Endnote 5, para 8.5.
- 17 Discretionary leave is generally granted for an initial three year period and an individual can apply for indefinite leave to remain once his or her discretionary leave has been extended so that he or she has been in the U.K. in this capacity for seven years.
- 18 Immediately prior to 1 April 2003 adults were usually granted exceptional leave to remain for four years and could then apply for indefinite leave to remain. Unaccompanied or separated children were usually granted exceptional leave for four years or until their 18th birthday if that occurred before this four year period would have expired.
- 19 Interview with Kate Jessop, a solicitor at Brighton Housing Trust, 2004.
- 20 Interview with Clare Tudor, an adviser at the Immigration Advisory Service in Glasgow, 2004.
- 21 Children Act 1989, s17.
- 22 Children Act 1989, s31.
- 23 In a number of cases this is as the result of their mothers dying of an AIDS related illness or infection.
- 24 Immigration Rules HC 395.
- 25 The Immigration Service does not record those leaving the U.K. and therefore does not know whether a visitor has left the U.K. at the end of his or her visit unless that person comes to its attention for a different reason at a later date.
- 26 That is, someone who has breached a condition of their leave by not leaving the U.K. at the end of their period of limited leave and who is therefore liable to administrative removal under s10 of the Immigration and Asylum Act 1999.
- 27 *Guidelines on Children in Need (draft)*.
- 28 IND. *Immigration Directorates’ Instructions*, August 2003, C8 Annexe M, para 8.
- 29 Immigration Act 1971, Schedule 2, paras 8(1)(c) and 9(1).
- 30 Immigration and Asylum Act 1999, s10.
- 31 *Ibid*, Endnote 8, para 13.4.1.
- 32 APU Notice 1/2003, 1 April 2003. Prior to this date separated children would have been granted exceptional leave to remain — but this category of leave was abolished on 1 April 2003 and replaced by discretionary leave and Humanitarian Protection, both of which were more clearly and strictly defined.
- 33 An international organization funded by national governments.

- 34 Information provided by the IOM in London, 2004.
- 35 Interview with Alison Harvey, formerly Principal Policy and Practice Manager at the Children's Society, 2004.
- 36 EU Directive 2003/9/EC *Laying down minimum standards for the reception of asylum seekers*, 27 January 2003, Article 19(3).
- 37 IND. *Unaccompanied Asylum Seeking Children (UASC) Returns Programme Policy Framework Document*, March 2005, para 17.
- 38 The Asylum Seekers (Reception Conditions) Regulations 2005 SI 2005/7, para 6.
- 39 This report is presently only available in draft form and has not yet been published.
- 40 Save the Children. *Unaccompanied refugees and asylum seekers turning 18: A guide for social workers and other professionals*. April 2005.
- 41 Meetings held between the IND and members of the Refugee Children's Consortium.
- 42 IND. APU Notice 5/2004, 1 October 2004.
- 43 Paper presented to the Home Office's Unaccompanied Asylum Seeking Children Stakeholders' Group in January 2005.
- 44 Circulated by the IND, 13 January 2005, para 3.1.
- 45 Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, Slovenia, Jamaica, Romania, Albania, Serbia & Montenegro, Moldova, Bulgaria, Macedonia, Bangladesh, Bolivia, Brazil, Ecuador, Sri Lanka, South Africa, Ukraine, and India.
- 46 IND. *Unaccompanied Asylum Seeking Children (UASC) Returns Programme Policy Framework Document*. March 2005.
- 47 Ibid, Endnote 15.
- 48 Letter from BKTF (The Albanian Coalition "All Together Against Child Trafficking"). 9 February 2005.
- 49 Letter from UNICEF to the Home Office Minister responsible for immigrants. 24 February 2005.
- 50 The ICMC is the operational arm of the Catholic Church and coordinates Catholic assistance activities for refugees, migrants, and other displaced persons worldwide. It has been working in Albania but has no particular expertise in child protection or child welfare work there.
- 51 Ibid, Endnote 46, para 12. In para 17 it also recognizes, however, that it may not always be appropriate for a child to be reunited with his or her family.
- 52 Information provided by the British Association for Fostering and Adoption, 2005.
- 53 Refugee Council. *Briefing on the Government's Five Year Asylum and Immigration Strategy*, February 2005.
- 54 Statement by the Refugee Children's Consortium, March 2005. The RCC is made up of the Asphaelia Project, the Association of London Somali Groups, the Association of Visitors to Immigration Detainees (AVID), Bail for Immigration Detainees (BID), Barnardo's, British Agency for Adoption and Fostering (BAAF), Children's Legal Centre, Child Poverty Action Group, Children's Rights Alliance for England (CRAE), The Children's Society, Family Service Units, the Immigration Law Practitioners' Association (ILPA), the Medical Foundation for the Care of Victims of Torture, National Children's Bureau, NCH, NSPCC, Redbridge Refugee Forum, Refugee Council, Refugee Arrivals Project, the Scottish Refugee Council, and Save the Children UK. The British Red Cross, UNICEF UK, and UNHCR have observer status.
- 55 Interview with Laura Brownlees, policy officer at Save the Children UK, 2004.
- 56 Interview with Mike Kaye, Communications Manager at Anti Slavery International, 2004.
- 57 Information from Chris Beddoe, Director, ECPAT UK, 2005.
- 58 UNHCR. *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*. February 1997.
- 59 2003/9/EC of 27 January 2003.
- 60 Separated Children in Europe Programme. *Statement of Good Practice*, Third Edition, 2004, C13.2.
- 61 Ibid, Endnote 60, C5.
- 62 Ibid, Endnote 60, C13.6.



Appeals: Right to Appeal and Representation

Neither the Immigration and Nationality Directorate (IND) nor the Department of Constitutional Affairs record the number of unaccompanied or separated children who appeal against initial refusals to grant them asylum. As a result it is only possible to ascertain how many unaccompanied or separated children succeed in their initial applications for asylum from official statistics.

The present research obtained permission to look at a sample of individual determinations on appeals by unaccompanied or separated children, promulgated between 1 October 2003 and 22 November 2004. They include former unaccompanied or separated children who became 18 before the date of the appeal as this is the only way to get an impression of the final outcomes of children's appeals. During this 14 month period, there were 4,805 appeals by unaccompanied or separated children, of which 2,145 were against refusals to grant leave to enter or remain as a refugee.

The U.K. Government's stated target is that initial

asylum applications are decided within two months of the date of application and that any subsequent appeals are heard within four months of the date of a refusal decision. Home Office statistics¹ for all asylum applications (including those from unaccompanied or separated children) for 2004/2005 show that 63% of appellants had their initial applications and any subsequent appeals determined within the overall six month target period for initial decision and subsequent appeal. The figure for April to September 2004 is 59%. It is not possible to say whether applications from unaccompanied or separated children are

decided with the same speed as adult cases but if we assume that the majority² claim asylum six to 12 months before their appeals are heard, some very broad conclusions can be drawn. In 2003, 3,180 unaccompanied or separated children applied for asylum and in 2004, 2,887 unaccompanied or separated children applied for asylum.³ Given the very low child asylum acceptance rate, there were about 3,000 potential appeals from unaccompanied or separated children in either year.⁴ Yet only 2,145 or around 71% of unaccompanied or separated children in fact appealed against decisions refusing them asylum between October 2003 and November 2004, compared to the adult appeal rate of 80% in 2003.⁵

12.1 The Right to Appeal

The relatively low figure is partly a consequence of the increasing restriction of children's appeal rights over the research period. The remaining right of appeal is under section 82 of the Nationality, Immigration and Asylum Act 2002. This appeal is to an independent appellate body funded by the Department of Constitutional Affairs and not the Home Office. As a result, and by contrast with other jurisdictions where the decision making and reviewing department is the same, here the government department responsible for making the initial decision to refuse asylum is not in charge of the appeal process but merely a party to any appeal.

Unaccompanied or separated children are subject to the same legislation and rules of procedure as adult appellants. Until 4 April 2005, there were two tiers of appeal. The first tier of the Immigration Appellate Authority consisted of an adjudicator sitting alone and the second tier was three adjudicators sitting as the Immigration Appeal Tribunal. There were further possible rights of appeal on points of law to the Court of Appeal and the House of Lords.

In April 2005, the two lower tiers were amalgamated into the one tier Asylum and Immigration Tribunal, although there were provisions for an internal reconsideration within the Asylum and Immigration Tribunal of an initial decision by an Immigration Judge on points of law. The reconsideration process is cumbersome. First of all a written application requesting a reconsideration has to be made to the Tribunal itself. If this is not successful, a further written application can be made to the High Court. If either the Tribunal or the High Court decide that the Immigration Judge has erred in law in his or her initial decision, the appeal is referred back to a panel of more senior Immigration Judges for a reconsideration hearing. If that reconsideration hearing is unsuccessful, there is a right of appeal on a point of law only to the Court of Appeal. A further appeal lies from there to the House of Lords but only in cases which raise an important point of law of wider significance. There is however a built in and significant disincentive within the new appeal system as funding for making applications for reconsideration to the Asylum and Immigration Tribunal and the High Court is only granted retrospectively and depends upon the outcome of any reconsideration.

Certain categories of unaccompanied or separated children have no or very restricted rights of appeal.

Children who have applied for asylum elsewhere in the European Union, who do not have a parent or legal guardian legally present in the U.K. and who have not been permitted to make an asylum application in the U.K. on humanitarian grounds⁶ are not even permitted to apply for asylum in the U.K. In such cases, no right of appeal can arise.

Other unaccompanied or separated children are entitled to make an application for asylum in the U.K. but are not entitled to an "in country" right of



appeal⁷ because the Secretary of State for the Home Department has issued a certificate under section 94 of the Nationality, Immigration and Asylum Act 2002 asserting that the application is clearly unfounded (since the country from which the child has travelled is considered generally “safe”). This certification can be challenged in the High Court by bringing a claim for judicial review on the limited issue of whether in fact the country is indeed generally safe.

Other unaccompanied or separated children retain an in country right to appeal subject to the major restriction mentioned below. Within the appellate system an appeal is not against the decision to refuse asylum itself but against what are defined as particular types of immigration decisions.⁸ For example, a decision to refuse an unaccompanied or separated child leave to enter the U.K. (as a refugee) is an immigration decision which can be appealed against (as long as no certificate under section 94 has been issued). There is also a right of appeal against a decision to refuse to remove a person to his or her country of origin or to refuse to vary their leave to remain in the U.K. by granting them a further period of leave on a different basis.

There are a number of grounds upon which an appeal can be brought.⁹ One is that refusal would be contrary to the U.K.’s obligations under the Refugee Convention. Another is that refusal would be unlawful under section 6 of the Human Rights Act 1998¹⁰ as a breach of the appellant’s rights under the European Convention on Human Rights.

Children are not entitled to any appeal against an initial immigration decision to refuse them asylum if at the same time as refusing them, the Secretary of State for the Home Department grants them discretionary leave to remain for a period of one year or less.¹¹ This automatically deprives all 17 year olds granted discretionary leave until their 18th birthday of a right of appeal even if they had initially applied for asylum at the age of 15 or 16 and been subject to IND delays in decision making. From 1 October 2004, unaccompanied or separated children from Albania, Bangladesh, Bulgaria, Jamaica, Macedonia, Moldova, Romania, Serbia and Montenegro (which includes Kosovo), and Sri Lanka have been deprived of a right of appeal because of a new policy to only grant them discretionary leave for 12 months or

until they turn 18, whichever is the shorter period.¹² Bangladesh has subsequently been removed from the list¹³ as a result of a decision in the High Court.¹⁴ Unaccompanied or separated children from the remaining non-suspensive appeal¹⁵ countries¹⁶ were added to this list by 30 August 2005.¹⁷ Mongolia, Ghana, and Nigeria became non-suspensive appeal countries on 24 October 2005.¹⁸ An unaccompanied or separated child falling in this category would also be automatically denied a right of appeal on human rights grounds: to qualify for protection under the European Convention on Human Rights, the child would have to show that a breach of rights was imminent, which would be impossible because of the discretionary leave.

An unaccompanied or separated child granted discretionary leave for a year or less can apply for this leave to be extended as long as he or she does so before the period of discretionary leave has expired. The child's application is then considered under the Immigration and Nationality Directorate's Active Review Policy.¹⁹ If the child is still under 18 and discretionary leave on the basis of age has previously been granted, the case worker must decide whether the child can be returned to the country of origin on the basis that there are adequate reception and care arrangements there.²⁰

In practice, since IND does not investigate the adequacy of the home country arrangements, return cannot be recommended. As a result an unaccompanied or separated child, under 18 when the current leave to remain expires, is likely to be granted a further 12 months of discretionary leave or leave until the child turns 18, whichever is shorter. Once he or she has been granted a further period of discretionary leave, which means that in aggregate he or she has had leave to remain in the U.K. for more than 12 months, section 83 of the Nationality, Immigration and Asylum Act 2002 no longer applies and the child can appeal against the previous refusal of asylum.



However, if an unaccompanied or separated child comes from a non-suspensive appeals country,²¹ he or she can be deprived of an in country right of appeal²² at this point because of a presumption that these countries are generally safe and the Secretary of State can certify that the child's application is clearly unfounded. In practice this does not happen in the case of child asylum seekers. However, even if the child has an in country right of appeal, he or she can be disadvantaged by built in delay caused by section 83 as events will not be as fresh in the child's mind and supporting evidence is likely to be more difficult to obtain.

If an unaccompanied or separated child applies for further discretionary leave just before he or she becomes an adult, the interview is deferred until the child turns 18 and the decision is determined for an adult. In theory, if the child is granted a further period of discretionary leave or Humanitarian Protection but not refugee status, he or she can appeal against the previous refusal to grant asylum if in aggregate he or she has been granted more than 12 months leave to remain. However, in practice former unaccompanied or separated children do not appear to

be granted further periods of discretionary leave or Humanitarian Protection²³ and so no right to appeal accrues.

Children are therefore left with a right to appeal against a refusal to extend their discretionary leave.²⁴ However, as the sole basis for granting the original period of discretionary leave is usually that the applicant is a child, an appeal against refusal to extend discretionary leave is not likely to succeed. However a few former unaccompanied or separated children have successfully argued that removal would be a breach of their right to family or private life²⁵ or lead to inhuman or degrading treatment.²⁶ This argument generally only succeeds if the former unaccompanied or separated child has been in the U.K. for a long period of time and has established a very strong bond with the foster carers or if there is compelling evidence of severe psychological damage or a risk of suicide which has been triggered by removal directions.²⁷

An unaccompanied or separated child is permitted to make a fresh (or second) application for asylum if he or she can establish further evidence to support the application or there are new circumstances not in existence when the first application was refused.²⁸ However, where the child is from a country designated²⁹ as having no general risk of persecution³⁰ the child can be denied a right of appeal before removal from the U.K. if the Secretary of State for the Home Department certifies that the claim is clearly unfounded.

The problems facing unaccompanied or separated children who want to appeal against a decision to refuse to grant them asylum are not purely statutory. Rather they may be a result of actions taken by their legal representatives, foster carers, or social workers, who mistakenly believe that the child's discretionary leave reflects recognition of a need for international protection or that it is in the child's interests to avoid an asylum appeal because an

adverse credibility finding might vitiate a later application to extend the child's discretionary leave.

With unaccompanied asylum seeking children I generally advise them not to go ahead with an appeal, because of a fear of adverse credibility findings being made. I have only gone ahead in three cases. One Eritrean/Ethiopian, one Liberian, and one Palestinian. In these three cases, credibility was not questioned in the refusal letter and they were not going to be called as witnesses at the appeal hearing.³¹

Both these situations reflect a mistaken assumption that the discretionary leave the unaccompanied or separated child was granted would subsequently be extended when the child becomes 18. However, the Asylum Policy Instruction on Discretionary Leave³² indicates quite clearly that this is primarily granted to unaccompanied or separated children because of the Secretary of State's policy of only returning children where their countries of origin have adequate reception and care arrangements. The instruction also specifies that children may qualify for discretionary leave if their removal would give rise to a breach of Article 3 or 8 of the European Convention on Human Rights. In practice, very few unaccompanied or separated children appear to be granted discretionary or exceptional leave on this basis. Children typically realize that their discretionary leave is unlikely to be extended because it was granted solely on the basis of their being minors when they change legal representatives. At this point they may try to revive the asylum application but if the basis for this was child specific persecution, they no longer have a case. They may also be unable to comply with the IND requirement that they adduce a reason or evidence for the renewed asylum application that could not have been put forward when the earlier decision not to appeal was taken.³³

Recommendations

- **1.** Every unaccompanied or separated child who is refused asylum should be granted an immediate right of appeal against that decision.
- **2.** No unaccompanied or separated child should be removed from the U.K. until he or she had been able to exercise that right of appeal and to have that appeal fully determined at all appropriate levels of the appellate structure.
- **3.** Any unaccompanied or separated child who has arrived in the U.K. and claimed asylum should [have his or her application considered] and should be granted an in country right of appeal even if he or she is potentially subject to Dublin II.

12.2 The Quality of Legal Representation

The perception amongst non-governmental organizations working in the field and experienced immigration lawyers is that many unaccompanied or separated children have very poor quality legal representation. This may be partly due to the fact that children do not have the same experience or critical abilities as adults to distinguish between good and poor representation. It is also a result of children's lack of family and community connections to the more experienced and skilled firms of solicitors. The non-governmental organizations and lawyers interviewed for this research more usually attributed the poor quality of legal representation to three particular factors. First, a lack of experience of or training in representing unaccompanied or separated children amongst firms and organizations which had been given con-

tracts by the Legal Services Commission. Secondly, a misunderstanding of the nature of discretionary leave offered to unaccompanied or separated children, and thirdly and probably most significantly a general shortage of appropriate good quality legal representation.

"A"³⁴ was an asylum seeker from Sierra Leone. Her solicitor did not inform her that she had been refused asylum but granted discretionary leave to remain. She was not advised about the implications of this decision or that she could appeal. When asked how the asylum determination process could be improved she stated that [the authorities] should make sure that [unaccompanied or separated children] have the right legal representation. She said she felt that she did not even have the opportunity [to appeal] and that as her first solicitor was bad, she could now do nothing.

There is clearly an acute shortage of good quality and experienced firms able to take on new clients. Reductions in funding³⁵ by the Legal Services Commission under the Legal Help Scheme³⁶ and the Controlled Legal Representation Scheme³⁷ have led to a number of very well respected and experienced firms³⁸ either shutting down completely or ceasing to represent publicly funded clients. This does not appear to have stemmed from a decision not to work for such clients but from a belief that the reduced public funding available for such work makes it impossible to provide their clients with the good quality required by their professional obligations. Other firms have simply become insolvent as a result of trying to subsidize the additional hours and disbursements required to provide their clients with appropriate representation from the profit margins necessary to keep their firms afloat.

“We have kept our devolved powers, which means that we can spend £800 on preparation and representation for asylum applications and £400 for disbursements.³⁹ For children’s cases, you may get into a problem with costs in taking a statement. Nearly all the disbursements will go on the interpreter. You will have very little time left for post application work. It will deter representatives from taking kids on.”⁴⁰

“Kids will get a worse service. It takes hours to do a child’s statement properly. If you have a child who needs an interpreter, you might take instructions in 45 minute to one hour slots. You can’t take instructions for 2–3 hours from a child.”⁴¹

Often the inadequacies of the legal representation available in asylum cases only comes to light when other professionals are involved. West Thames College reports⁴² that 90% of the 200 former or current unaccompanied and separated children studying there have sought alternative legal representation because of the poor quality of advice received from their initial immigration representatives. This is

confirmed by a solicitors firm⁴³ which has represented many of these children in community care proceedings. Unfortunately by this time, appeal opportunities may have been lost or appeals may have gone ahead with inadequate representation. Often the original representatives come from small High Street firms without the necessary training and expertise to represent unaccompanied or separated children proficiently. At other times they come from a growing number of very large firms who only survive financially by having a very high turnover of clients for whom they provide standardized bundles and skeleton arguments designed for adult asylum seekers.

“There is a lot of bad quality legal representation. Generally bad and lack of experience at handling children’s claims. There is a lack of sensitivity on the part of the legal representatives.... There was a view recently that it didn’t matter because children would get status. Now the Home Office are planning returns and removing at 18, [good quality legal representation] is more important than ever.”⁴⁴





“The quality of legal representation is appalling. People who are not very good at asylum, those who are not good at working with children and those who are bad at both. We see more cases where we are concerned about the quality of representation than not. Children find it hard to find representation. They are not choosing from a quality list.”⁴⁵

“At the moment some kids luck out and an enormous number of kids who are really disadvantaged do not. What are sometimes genuine protection or asylum issues are not being properly addressed.”⁴⁶

However, it is also clear that there are still some excellent immigration firms, who offer unaccompanied or separated children a high quality of representation. Some of these have been granted devolved powers⁴⁷ by the Legal Services Commission. The large majority of these firms⁴⁸ understand that discretionary leave to remain does not amount to international protection and that a need to appeal against a refusal of asylum may arise. They also appreciate the difficulties inherent in representing children.

“There are some exceptionally good solicitors out there who will work their socks off for a separated child. There just aren’t enough of them.”⁴⁹

“There are a small number of excellent firms. A large number who are less than fully engaged and a small number who are borderline criminal.”⁵⁰

12.3 The Effect of the Legal Services Commission Merits and Means Tests

Some former and current unaccompanied or separated children have been denied the public funding necessary to appeal against a refusal to grant them asylum. To obtain the Legal Services Commission funding for free advice and representation in relation to an asylum appeal, a child used to have to pass both a means and a merits test. The former test did not usually pose any problem as unaccompanied or separated children were not permitted to work, were cared for by a local authority and would not, therefore, have the necessary resources to pay for representation. However, until very recently the child would also have had to pass a merits test and show that the appeal had more than a 50% chance of success or that, if the merits were borderline, the result of the appeal was so important to the child that public funding was justified. This merits test was applied despite the fact that, according to the case law,⁵¹ it was only necessary to establish a serious possibility of persecution for a Convention reason to qualify for protection under the Refugee Convention and therefore in keeping with this standard of proof the merits test should have been applied more liberally. This is particularly important as the UNHCR Handbook on the Criteria and Procedures for Determining Asylum Applications recognises that in the light of the evidential

difficulties facing asylum seekers, the duty to ascertain and evaluate all the facts is shared between the applicant and the examiner.⁵² It can be inferred that unaccompanied or separated children face particular difficulties in adducing the necessary evidence and that therefore the adjudicator or Immigration Judge would have to pay more attention to objective evidence which was in the public domain.

For solicitors firms with devolved powers, the merits test was applied by the firm itself. Otherwise, the firm had to apply to the Legal Services Commission who would apply this same merits test. If the Commission refused funding, the solicitors firm could appeal to an Appeal Committee. If the firm with devolved powers refused funding the unaccompanied or separated child had to appeal the decision. The present research indicated that many unaccompanied or separated children are told by their solicitors that their appeal lacks merit and accept this advice without question.

The main reason given by a number of solicitors for not granting or applying for Controlled Legal Representation in order to appeal against an initial refusal of asylum was an insufficiency of merits.⁵³ However, when a sample of determinations from February, May, and October 2004 were analyzed, it appeared that the merits test may have been wrongly applied in some cases. There was often the factual basis for asserting that the unaccompanied or separated child would face persecution on the basis of a child specific or a general Convention reason. In addition, legal representatives often failed to apply a child specific framework when considering issues of credibility.

It would appear that where an unaccompanied or separated child became an adult before his or her appeal hearing was heard, they were even less likely to pass the merits test.

In February 2004, out of a total of 118 appeals heard that month, 11 unaccompanied or separated children were not legally represented. Four of these children were from Iraq, two were from India, and the others were from China, the Democratic Republic of Congo, Morocco, Palestine, and Vietnam. The child from the Democratic Republic of Congo was a girl of 12 who had claimed asylum on the basis of imputed political opinion. The child from Vietnam was a girl of 10 who was represented by an unrelated male guardian but not a legal representative.⁵⁴ She also feared persecution on the basis of imputed political opinion. Four of the other unaccompanied minors also had asylum appeals which had prospects for success with representation.

In a further eight appeals former unaccompanied or separated children were not represented. Two of them were from Moldova and the others came from India, Indonesia, Iraq, Romania, Serbia and Montenegro, and Sierra Leone. In two cases there was potentially the basis for being granted refugee status and in the majority of other cases, the potential for a claim under Article 3 of the European Convention on Human Rights.

In May 2004, there were 113 appeals involving unaccompanied or separated or former unaccompanied or separated children. In five cases unaccompanied or separated children were unrepresented. Two were from Iraq and the others were from Algeria, Chad, and India. In three of the cases there was a potential basis for the child's asylum appeal being allowed and in the two others an appeal could have been allowed on the basis of Article 3 of the European Convention on Human Rights.

There were also nine former unaccompanied or separated children who were unrepresented. Four were from Iraq, three were from Serbia and Montenegro (Kosovo), and the others were from Sierra Leone and India. In three cases there was a possible basis upon which his or her asylum appeal

could have been allowed. In one of these cases an 18-year-old former girl child soldier was refused an adjournment in order to obtain free legal representation after her current solicitors had tried to charge her for attending the hearing.⁵⁵

In October 2004, there were 83 appeals involving unaccompanied or former unaccompanied children. Three, who were still children at the time of their appeal, were not represented. Of these one was a 17-year-old Afghani boy who did not appear at this appeal and who feared persecution as the result of a family dispute. Another was a 17-year-old Iraqi boy, whose solicitors had withdrawn their representation and who did not appear at the hearing.⁵⁶ In the former case, although no Refugee Convention reason appeared to arise, it may have been possible to sustain an appeal on Article 3 grounds if he had attended and had been represented. It is impossible to assess the merits of the second case. The third case was of even greater concern. It involved a 17-year-old Somali from a minority clan whose legal representatives had not obtained Controlled Legal Representation for him and had left

him to appear in person. Luckily for him his appeal was allowed.

In addition, there were 26 former unaccompanied or separated children who were over 18 by the date of their appeal and who were unrepresented. Seven were Afghani, six were from Serbia and Montenegro (Kosovo), six from Iraq, two were from Sierra Leone, and the others were from Algeria, Iran, Liberia, Sudan, and Turkey. There was a potential basis for protection under the Refugee Convention in 13 of these appeals and in one other it was not possible to assess this on the information contained in the determination. The high numbers of this group of appellants being refused representation also reflected the tendency by legal representatives as well as adjudicators to place too much weight on general observations in CIPU reports and elsewhere about present conditions in a country of origin and too little weight on the individual's basis for fearing persecution.

It was also clear that if Controlled Legal Representation was refused, the unaccompanied or separated or former unaccompanied or separated

Appeals by Unaccompanied or Separated Children, and Former Unaccompanied or Separated Children

HEARD IN 2004	FEB	MAY	OCT
■ Represented	101	99	54
Unaccompanied or Separated Children, and Former Unaccompanied or Separated Children			
■ Unrepresented	10	5	3
Unaccompanied or Separated Children			
Potential for Refugee Convention Claim	2	3	1
Potential for ECHR Claim	0	2	1
■ Unrepresented	7	9	26
Former Unaccompanied or Separated Children			
Potential for Refugee Convention Claim	2	3	13
Potential for ECHR Claim	3	0	0
Totals	118	113	83

children often did not attend the appeal hearings themselves. In February 2004, three of the 10 unaccompanied or separated children without representation failed to appear at their appeal hearing, and six out of the seven former unaccompanied or separated children without representation failed to appear. In May 2004, two out of the five unrepresented unaccompanied or separated children failed to attend his or her appeal hearing, and three of the nine former unaccompanied or separated children did not attend. In October 2004, two of the three unaccompanied or separated children without legal representation failed to appear, and 10 of the 26 former unaccompanied or separated children without representation also failed to appear, and in two further cases it was unclear if he or she had attended. It was impossible on the data collected to ascertain whether the unaccompanied or separated and former unaccompanied or separated children who did not attend understood that they could appear even though they were not legally represented, or whether they just believed that their appeals were bound to be dismissed and that, therefore, there was no point in attending. However, given the fact that the research indicated that the decision to refuse public funding was at times erroneous, it is possible that they would have succeeded on appeal if they had attended the hearing.

Unrepresented Children and Former Children who Failed to Appear at Appeal Hearings: 2004

	FEB	MAY	OCT
■ Unrepresented Children			
Total	11	5	3
Failed to Appear	3	2	2
■ Unrepresented Former Children			
Total	8	9	26
Failed to Appear	6	3	10

It was this lack of representation at appeal hearings which first alerted the Child and Family Services Team of the Legal Services Commission⁵⁷ to the possible inadequacies of the existing system. Its figures showed that between 1 January 2005 and 25 April 2005, 13% of 17 year olds, 6% of 16 year olds, and 10% of those under 16 had been refused Controlled Legal Representation for their asylum appeals.

Determinations on Appeals by Unaccompanied or Separated Children

1 January 2005 to 25 April 2005

CLR	17 YRS NUMBER %	16 YRS NUMBER %	UNDER 16 NUMBER %
■ Granted	105 – 87%	109 – 94%	87 – 90%
■ Refused	16 – 13%	7 – 6%	10 – 10%
Total	121 – 100%	116 – 100%	97⁵⁸ – 100%

The number of under 16 year olds being refused representation raises questions about the quality of legal representation, and in particular about whether appropriate expert evidence is being adduced on their behalf and taken into account in the decision making.

Our analysis of determinations between October 2003 and November 2004 shows that a significant proportion of those denied representation were from Iraq, Kosovo, or Afghanistan, countries perceived as safe by the U.K. Government, and countries to which most adult asylum seekers were being returned. However, neither the Government nor the courts had considered whether it was safe to return former or current unaccompanied or separated children to these countries. The experience of legal practitioners representing such clients is that many children and young adults remain terrified of returning to their countries of origin, because of their past experiences. This is particularly the case if parents have been killed or disappeared. Many of these clients have potential claims for

resisting removal to their countries of origin under the Refugee Convention or the European Convention on Human Rights. The evidence presented above suggests that a number of vulnerable appellants are being denied the legal representation they need⁵⁹ to win appeals.

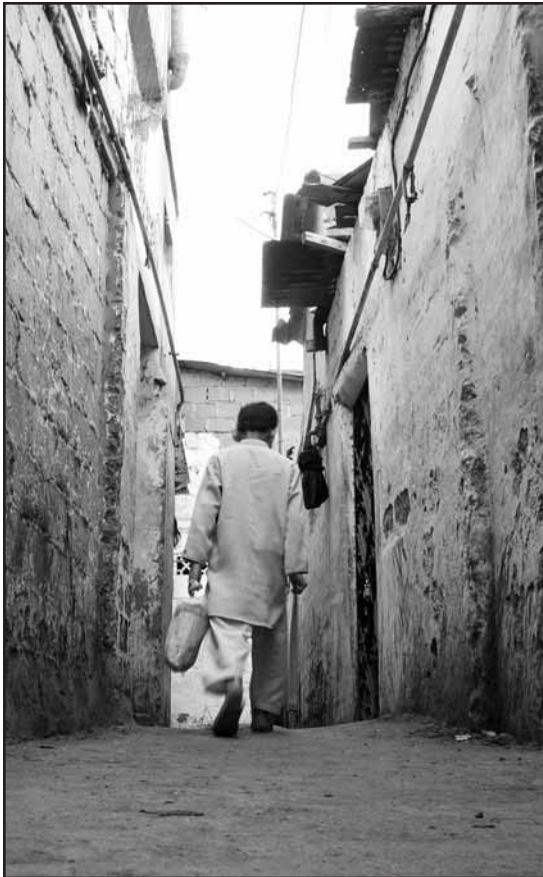
The Child and Family Services Team at the Legal Services Commission has carried out some informal consultation on the merits test applied to unaccompanied or separated children and following this has issued new instructions⁶⁰ to its case workers and suppliers;⁶¹ unaccompanied or separated children are to be granted controlled legal representation for their asylum appeals where the facts of their case (if believed by the Immigration Judge) would give rise to a right to asylum under the Refugee Convention. The Team is still carrying out further consultation to ascertain what other measures⁶² could be taken to ensure that children were well represented in the asylum determination process. The present proposal is to establish an Immigration and Children Panel to complement new duty representation schemes at Asylum Screening Units. Firms of solicitors with the skills and experience to represent unaccompanied or separated children would be appointed to this panel and would be paid enhanced⁶³ rates for representing this vulnerable group whilst firms would bid to provide representation at screening units.

Legal representatives also require greater flexibility in the contracts they are entering into in order to advise unaccompanied or separated children on other legal issues such as accommodation and support or a right to child protection under the Children Act 1989. This is particularly important when an unaccompanied or separated child is approaching 18 and plans for transition to adulthood need to be made. As a general rule, the Legal Services Commission only allows a firm with a contract to undertake immigration and asylum work an additional 30

minutes to give advice on matters not directly related to their client's immigration status. Thereafter representatives have to seek additional funding through an appropriate family or community care contract. This often leads to child clients being referred to a new firm of solicitors unfamiliar with their case and without an established trusting relationship with the child. The proposed panel would seek to ensure that a range of legal advice would be available to unaccompanied or separated children.

12.4 Ignorance in Relation to Child Specific Persecution

Legal representatives often mention that they have difficulty identifying a Convention reason for the child's appeal. The analysis of appeal determinations in children's cases confirms this and indicates a failure on the part of some legal representatives to provide a child specific framework for an analysis of the child's case. In the determinations for February, May, and October 2004, there were only a handful of cases where a child specific form of persecution was relied upon. In May 2004, when a Liberian girl did rely upon the fact that she had been trafficked she succeeded in her appeal. This general problem may reflect lack of appropriate training about child specific persecution. There certainly is a dearth of training on the representation of unaccompanied or separated children; the only courses we have identified are ones run by the Immigration Law Practitioners' Association (ILPA) and the Refugee Legal Centre. The ILPA courses usually deal with a wide range of issues relating to children in the immigration and asylum context and do not exclusively deal with unaccompanied or separated children. Some have been run to update the contents of *Putting Children First: A Guide for Immigration Practitioners*.⁶⁴ ILPA has also produced



Working with Children and Young People Subject to Immigration Control: Guidelines for Best Practice,⁶⁵ which addresses the question of child specific persecution and the first course in relation to this publication was run in March 2005.

Compliance With International Standards

- **1.** The UN Committee on the Rights of the Child believes that the U.K. should carry out a review of the availability and effectiveness of legal representation and other forms of independent advocacy for unaccompanied minors.⁶⁶
- **2.** The UN Committee on the Rights of the Child's General Comment No. 6 (2005) reminds states

of the need for age- and gender-sensitive asylum procedures and an age- and gender-sensitive interpretation of the refugee definition. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds.

- **3.** The Separated Children in Europe Programme believes that at all stages of the asylum process unaccompanied children should have a legal representative, who will assist him or her to make her asylum application. It also believes that this legal representation should be made available at no cost to the unaccompanied child and that the representatives should possess expertise in the asylum process and be skilled in representing children and aware of child specific forms of persecution.

Recommendations

- **1.** The Department of Constitutional Affairs in consultation with the Legal Services Commission and the Law Society should establish a Children's Panel for legal representatives wishing to represent unaccompanied or separated children, whose members will be paid enhanced rates.
- **2.** The Department of Constitutional Affairs in consultation with the Immigration Law Practitioners' Association and the Refugee Children's Consortium should establish an independent review to consider the availability and effectiveness of legal representation and other forms of independent advocacy for unaccompanied or separated children.



- **3.** The Law Society and the Legal Services Commission should include a module on representing unaccompanied children in the curriculum for the Immigration Accreditation Process.
- **4.** The Legal Services Commission should permit a tolerance of 15% where solicitors are representing unaccompanied or separated children.
- **5.** The revised merits test for Controlled Legal Representation should also apply to former or age disputed unaccompanied or separated children.

12.5 Age Disputes and the Appeal Process

An analysis of the determinations promulgated in February, May, and October 2004 indicates that the age of some unaccompanied or separated children continues to be an issue at the appeal stage in a significant minority of cases. In some others, adjudicators refer to the age of the unaccompanied or separated child but it is unclear

whether the Home Office ever disputed that they were in fact children. In February 2004, in 13 out of 39 appeals where an unaccompanied or separated child's age was disputed, the adjudicator accepted that the appellant was under 18 or had been on arrival; the relevant proportions were 22 of 37 cases in May 2004 and 11 out of 13 in October 2004. In one case, the adjudicator inexplicably left age to be decided by a court in Somaliland.

If these statistics are representative (and there is no reason to believe that they are not as the three months subjected to detailed scrutiny were randomly chosen) it is probable that a significant minority of unaccompanied or separated children have been wrongly treated as adults throughout the asylum determination process.

The reasons for finding that the appellant is a child vary. Medical evidence of age was accepted in three appeals in February but rejected in two others. In the latter two appeals and in one other where there was no medical evidence, the adjudicator based the finding solely on the child's physical appearance.

Medical evidence was accepted in nine cases in May 2004 and in 10 others the adjudicator relied on the child's physical appearance. This led to the appellant being accepted as a child in three cases and held to be an adult in seven others. Medical evidence of age was accepted in three appeals in October 2004. Clearly, despite the guidance given by the courts,⁶⁷ adjudicators are still relying on physical appearance as the sole determinant of age in some cases.

On occasion, other factors, such as the child's own evidence or the evidence of the responsible social services department, informs the decision making. Children's evidence about themselves was accepted in three out of six appeals, in February 2004, and in four out of five appeals in October 2004. Social services evidence was accepted in three appeals in February 2004, rejected in an appeal in May 2004 but accepted in one in October 2004. These decision making procedures contradict official instructions: in April 2004 the Chief Adjudicator issued clear guidance⁶⁸ to adjudicators regarding the resolution of age disputes which stated that at directions hearings "[w]here the age of the child is in dispute, [you should] consider making directions for appropriate expert evidence."

The failure to follow this guidance is particularly disturbing because it is clear that an adverse finding on age often leads an adjudicator to making adverse findings in relation to other aspects of an unaccompanied or separated child's appeal.

Recommendations

- **1.** The Department of Constitutional Affairs should arrange appropriate training for all Immigration Judges, Designated Judges, or Senior Immigration Judges who hear appeals from unaccompanied or separated children or from age-disputed unaccompanied or separated children.

- **2.** The resolution of an age dispute should be treated as a preliminary issue in an asylum appeal and if the evidence indicates that an unaccompanied or separated child has been wrongfully treated as an adult, the Secretary of State for the Home Department should be asked to re-determine his or her initial application according to the appropriate guidelines.

12.6 Pre-Hearing Review

As long ago as March 1997, it was agreed at a meeting of Regional Adjudicators⁶⁹ that there should be a pre-hearing review in each unaccompanied or separated child's case to ensure that the final hearing took into account the particular needs of unaccompanied or separated children.⁷⁰ Adjudicators were asked to consider whether the hearing should take place in the adjudicator's chambers as opposed to the court and whether the initial decision maker had taken into account the advice given in the UNHCR Handbook in relation to the consideration of applications by separated children.

Adjudicators were also invited to consider whether children should be permitted to give evidence through a video link. At least one hearing centre followed these instructions.⁷¹

In 2004, the Chief Adjudicator issued Guidance⁷² to adjudicators (which subsequently also applied to Immigration Judges) hearing appeals from unaccompanied or separated children. Paragraph 3.4 states that where an unaccompanied or separated child's age is in dispute adjudicators should bear in mind the decision of *R (On the Application of B) v. The Mayor and Burgesses of the London Borough of Merton*⁷³ which requires him to show that it is more likely than not that he is a minor. In the

determinations we analyzed this did not appear to have happened in a number of cases, where it was left to the adjudicator hearing the substantive asylum appeal to consider age. In February 2004, prior to the Guidance being issued, six of the adjudicators dealing with age disputes referred explicitly to the case of *B v. Merton* and two others reminded themselves that they should not rely upon physical appearance alone when determining an appellant's age. In the cases in May 2004, no adjudicator made explicit reference to the Chief Adjudicator's Guidance, though one adjudicator did mention *B v. Merton*; in October 2004, only one Immigration Judge referred to the Guidance and none mentioned *B v. Merton*. Clearly there is wide variation in approach and competency amongst adjudicators.

Endnotes

- 1 Home Office Research Development and Statistics Directorate. *Asylum Statistics United Kingdom 2004*. 23 August 2005.
- 2 Clearly the ages of some of the appellants in the sample indicated that a minority did not have their applications decided within this time frame.
- 3 These figures did not include applications from age disputed unaccompanied or separated children as discussed above.
- 4 During these years the percentage of unaccompanied or separated children granted asylum after an initial consideration of their applications were low: 4% in 2003 and 2% in 2004.
- 5 Home Office Research Development and Statistics Directorate. *Asylum Statistics United Kingdom 2003*. November 2004.
- 6 EU Council Regulation 2003/343/EC and Council Regulation 2003/1560/EC *Establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national*.

- 7 An appeal before being removed from the U.K.
- 8 Nationality, Immigration and Asylum Act 2002, s82.
- 9 Nationality, Immigration and Asylum Act 2002, s84.
- 10 Under s6 it was unlawful for a "public authority" such as the Home Office to act in a manner which was incompatible with an appellant's rights under the European Convention on Human Rights.
- 11 Nationality, Immigration and Asylum Act 2002, s83.
- 12 APU Notice 5/2004 *Application of Non Suspensive Appeal (NSA) Process to Asylum Seeking Children*, para 7.
- 13 See SI 2005/1016.
- 14 *R (On the Application of Husan) v. Secretary of State for the Home Department* [2005] EWHC 189 (Admin).
- 15 Countries certified to be generally "safe" by the Secretary of State for the Home Department and whose nationals were not generally permitted to appeal against any decision to refuse asylum whilst still in the U.K. In other words, the pending appeal did not suspend the state's authority to remove the appellant.
- 16 Brazil, Bolivia, Ecuador, India, South Africa, and Ukraine.
- 17 Operational Processes. *Processing Applications from Children*, C5, "Special Types of Case," para 14.



- 18 Home Office. *Further Steps to Cut Asylum Abuse — Three Countries Added to List of Designated Countries*. Press Release, 24 October 2005.
- 19 A process by which the IND decides whether there are still any grounds for believing that the child or former child is still in need of protection (under either the ECHR or in some cases the Refugee Convention).
- 20 Ibid, Endnote 12, para 11.
- 21 By 24 October 2005 this list included Albania, Brazil, Bolivia, Bulgaria, Ecuador, Ghana, India, Jamaica, Macedonia, Moldova, Mongolia, Nigeria, Romania, Serbia and Montenegro (including Kosovo), South Africa, Sri Lanka, and Ukraine.
- 22 Nationality, Immigration and Asylum Act 2002, s94.
- 23 The IND did not collect statistics on the number of former unaccompanied or separated children granted leave as the result of the Active Review Process.
- 24 Nationality, Immigration and Asylum Act 2002, s82(2)(d).
- 25 ECHR, Article 8.
- 26 ECHR, Article 3.
- 27 Arguments based on Article 8 of the ECHR which required a grant of leave which was not provided for under the Immigration Rules HC 395 were not likely to succeed unless there were truly exceptional circumstances, as in *Huang v. Secretary of State for the Home Department* [2005] EWCA Civ 105 where the Court of Appeal held that the Government had taken the need to comply with the ECHR into account when drafting these rules.
- 28 Immigration Rules HC 395, para 353.
- 29 Nationality, Immigration and Asylum Act 2002, s94 as amended by subsequent orders.
- 30 Albania, Bulgaria, Serbia and Montenegro (including Kosovo), Jamaica, Macedonia, Moldova, Romania, Bolivia, Brazil, Ecuador, Sri Lanka, South Africa, Ukraine, and India and for a time to Bangladesh.
- 31 Interview with Samar Tasselli, a case worker at Stockport Law Centre, 2004.
- 32 API 1/2003 *Humanitarian Protection and Discretionary Leave*, 1 April 2003.

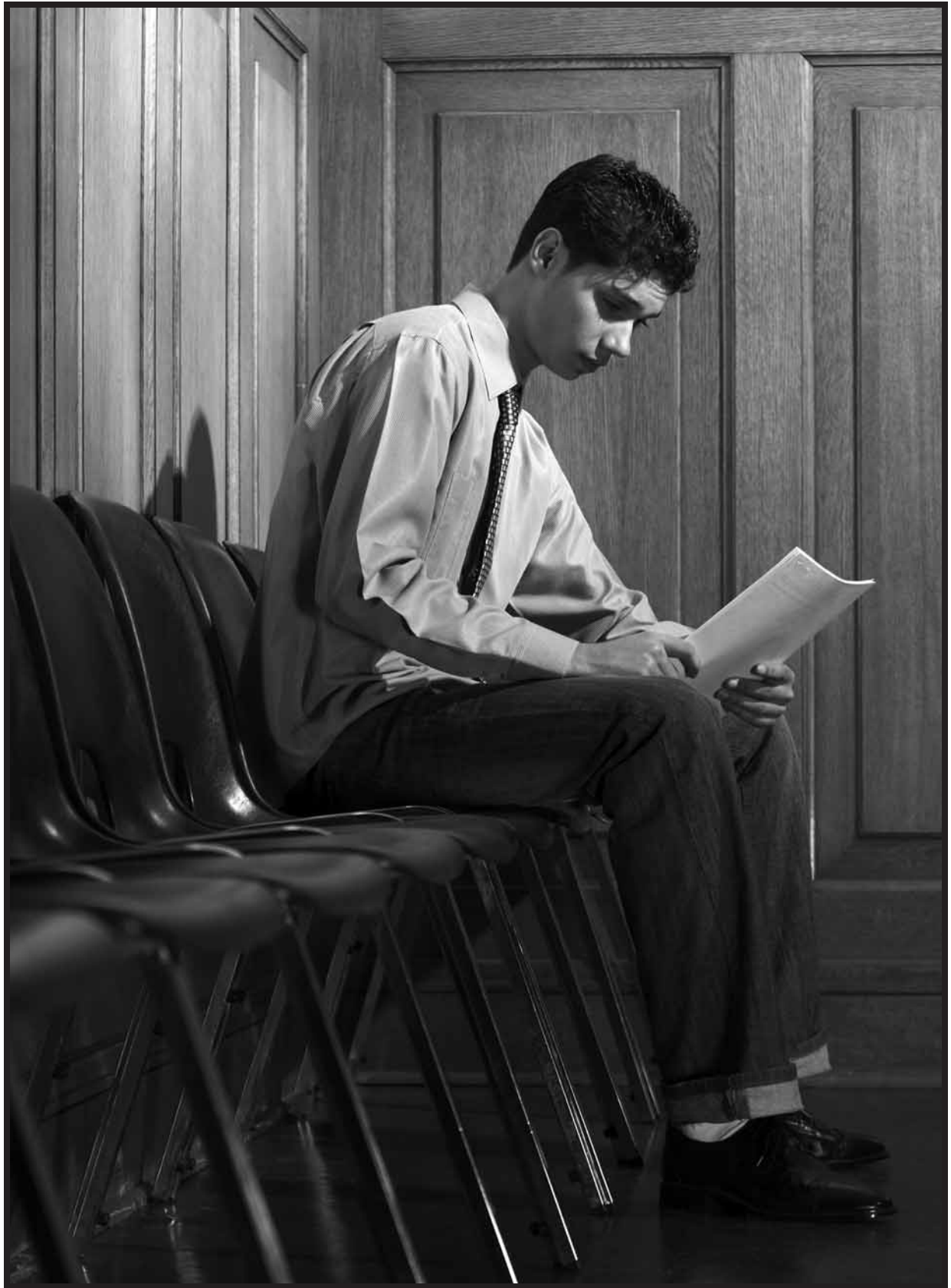


- 33 Immigration Rules HC 395, para 346.
- 34 One of the young people interviewed for the purposes of this research.
- 35 Legal Services Commission. *Immigration Specification*. April 2004. For example, since 1 April 2004, solicitors have only been entitled to five hours of funding by the Legal Services Commission prior to an initial decision unless it agrees to an extension on the grounds that further funding is reasonable and will move the case forward.
- 36 The Legal Help Scheme funds the initial preparation for making an application for asylum.
- 37 The Controlled Legal Representation Scheme funds representation at asylum appeals.
- 38 To name but a few such firms: Coker Vis., Edwards Duthie & Glazer Delmar (as an immigration department); Winstanley Burgess (completely); Wesley Gryk and Fisher Jones Greenwood (as providers of publicly funded representation).
- 39 This is more than the amounts granted to firms who do not have devolved powers.
- 40 Ibid, Endnote 31.
- 41 Wood Green Appeal Centre in London.



- 42 Interview with Laura Brownlees, Policy Officer at Save the Children UK, 2004.
- 43 Hereward & Foster in London, 2004.
- 44 Interview with Helen Johnson, Manager of the Refugee Council's Children's Panel, 2004.
- 45 Interview with Alison Harvey, then Principal Policy and Practice Manager at the Children's Society in London, 2004.
- 46 Interview with Kathryn Cronin, barrister at Two Garden Court Chambers in London, 2004.
- 47 A system under which individual solicitors' firms could grant themselves the power to incur costs on new cases or extend their spending limits on existing cases without seeking the prior approval of the Legal Services Commission.
- 48 Bartram & Co, Bates Wells & Braithwaite, Bindman & Partners, Birnberg Peirce, Clore & Co., Deighton Guedalla, Fisher Meredith, Glazer Delmar, Hamer-Smith & Fulham Law Centre, Irving & Co, JCWI, Lawrence Lupin, Luqmani Thompson, O'Keefe's, Philcox Gray, Wesley Gryk, Tyndallwoods, Ben Hoare Bell, The Rights Partnership.
- 49 Comment by Adrian Matthews, Children's Legal Centre, 2004.
- 50 Comment by Mike Kaye, Anti Slavery International, 2004.
- 51 *Sivakumaran v. Secretary of State for the Home Department* [1988] AC 958.
- 52 UNHCR. *Handbook on Procedures and Criteria for Determining Refugee Status*, para 196.
- 53 In order to qualify for the necessary Controlled Legal Representation funding from the Legal Services Commission to be represented at an asylum appeal hearing before the appellate authorities, the unaccompanied or separated child or his or her legal representative had to show that: (1) he or she was a minor so that it would be difficult for him or her to present his or her case without representation; (2) the likely benefits of winning the appeal justified the likely cost of being represented; and (3) the prospects of success were over 50 % or were 50/50 but the case was of overwhelming importance to the appellant or raised significant human rights issues or had a significant wider public interest (the latter was unlikely to be the case in an appeal before

- an adjudicator as his or her determination would have no precedent value).
- 54 In this case no question were raised about the possibility of her being a victim of child trafficking.
- 55 As asylum seekers were not permitted to work at that time, it is unlikely that she was refused Controlled Legal Representation on her means. There is also substantial objective evidence which indicates that former child soldiers may be persecuted on return on account of the atrocities they may have taken part in.
- 56 It was not possible to ascertain the grounds upon which he had appealed from the determination of his appeal.
- 57 Information provided by Simone Hugo and Nerissa Steel, 2005.
- 58 Statistics provided by the Legal Services Commission.
- 59 Although asylum appeals take place in a tribunal setting, the proceedings are adversarial and deal with complex issues of law and fact and even adult asylum seekers rarely succeed without proper legal representation.
- 60 See Immigration Contract documents issued by the Legal Services Commission.
- 61 Firms of solicitors or not for profit organizations who were contracted to supply representation at asylum appeals.
- 62 From 2004, solicitors and case workers wishing to practice in immigration and asylum law have been required to obtain accreditation under a scheme set up by the Law Society and the Legal Services Commission.
- 63 Solicitors who practice in Family Law and who have been admitted to the Children's Panel receive a 15% uplift on their fees when representing a child.
- 64 Coker, Jane, Finch, Nadine, and Stanley, Alison. Legal Action Group publication. 2002.
- 65 ILPA, November 2004, funded by the Nuffield Foundation. Heaven Crawley with Gaenor Bruce, Jane Coker, Nadine Finch, Susan Rowlands, Sue Shutter and Alison Stanley.
- 66 Committee on the Rights of the Child: *Concluding Observations: United Kingdom of Great Britain and Northern Ireland 09/10/2002*.
- 67 *R (on the Application of B) v. the London Borough of Merton* [2003] EWHC 1689.
- 68 Immigration Appellate Authority. Adjudicator Guidance Note No. 8. *Unaccompanied Children*, April 2004, para 3.4.
- 69 Information provided by a Senior Immigration Judge.
- 70 The Asylum and Immigration Tribunal, which took over responsibility for appeals on 4 April 2005, has stated that it expects any separated child to be accompanied to an appeal hearing by his or her social worker and that it will adjourn hearings where they do not appear with the child. It is too early to ascertain whether this is being applied in practice or what happens if the separated child has no allocated social worker.
- 71 The Hearing Centre at Wood Green in London.
- 72 Ibid, Endnote 68. This Guidance is now issued to all Immigration Judges sitting in the new Asylum and Immigration Tribunal, as is ILPA's *Working with children and young people subject to immigration control: Guidelines for best practice* (November 2004).
- 73 This case related to age assessments carried out by local authorities but its general principles can also be applied at the appellate stage. Mr. Justice Stanley Burnton held that: (1) a decision maker must not simply accept the Home Office's view of a child's age; (2) a decision maker must not just rely on the child's physical appearance; (3) a decision maker must elicit the general background of the separated child, including family circumstances and history, educational achievements and activities pursued in the past few years. Ethnic and cultural information may also be useful; (4) if there was a reason to doubt the child's own statement, the decision maker will have to make an assessment of his or her credibility by asking questions designed to test his or her credibility; and (5) the burden of proof lay with the separated child.



Appeals: Processes and Outcomes

13.1 Best Practice When Hearing Appeals by Unaccompanied or Separated Children

In accordance with the Chief Adjudicator's Guidance children's appeals are generally listed at the start of an adjudicator or immigration judge's list to ensure that a child does not have to wait at court all day.¹ Some adjudicators and immigration judges explain the proceedings to children in some detail and otherwise make the actual proceedings more child friendly. Others do not.

Adjudicators take a somewhat different approach to children than adults if you make a fuss about it. If you talk to the child as a child, the adjudicator will often pick up on it. They will say things like "there's no reason to feel afraid in my court." Other adjudicators say "Yes, you are a child but I am dismissing this appeal..."²

It is of note that the Chief Adjudicator is a woman. When she does a child's appeal, she comes down and sits at the same level but she is unique in that respect.³

The Guidance also states that unaccompanied children should be legally represented.⁴ Previously there was a difficulty in implementing this guidance if the unaccompanied child had been refused representation by the Legal Services Commission or his or her own legal representative on the basis that his or her case had insufficient merits to succeed. However, the recent decision by the Legal Services Commission to fund all appeals brought by unaccompanied children

should resolve this difficulty.

The Guidance states that unaccompanied or separated children should be accompanied by an appropriate adult.⁵ According to guidance to Immigration Judges⁶ by the Asylum and Immigration Tribunal⁷ an appeal cannot proceed unless a social worker is present. In practice, as mentioned earlier in the Guardianship section, children are often not taken to an appeal hearing by their allocated social worker or foster carer.

13.2 Determining the Appeal

From April 2004, adjudicators have been advised to create more child friendly environments by sitting around a table or moving to their chambers to hear an appeal from an unaccompanied child.⁸ They are also advised to consider whether it is appropriate for an unaccompanied or separated child to give evidence or be cross-examined, taking into account their age, maturity, capacity, or cultural differences and any expert evidence of the child's mental or physical condition. In practice the determinations analyzed

for this research suggest that adjudicators have not altered the way they conduct appeals to take children's needs into account. It is also clear that even if appeal hearings themselves become more child friendly,⁹ the majority of adjudicators did not adopt a child centred framework when arriving at a decision. Nor did they take into account the advice they had been given that the younger the unaccompanied or separated child the less likely they were to have full information about the reasons for leaving their country of origin or the arrangements made for their travel.¹⁰ Equally decision makers regularly fail to take into account variations in the reliability of oral versus expert or documentary evidence that reflect the maturity of the unaccompanied or separated child.¹¹ Children are routinely denied the benefit of the doubt.¹² Not only is this in breach of the Chief Adjudicator's Guidance, it also fails to comply with the Immigration Rules¹³ themselves according to which account must be taken of the child's maturity with more weight given to objective indications of risk than to the child's state of mind and understanding of the situation. Moreover, according to the Immigration Rules, an asylum application on behalf of a child should not be



refused solely because the child is too young to understand the situation or to have formed a well founded fear of persecution.¹⁴

It is clear from our analysis of the determinations for February, May, and October 2004, that adjudicators regularly permitted children as young as 13 to give evidence and rarely stop children from being cross examined by Home Office Presenting Officers. In one case an adjudicator would not permit the Home Office to cross examine a 12-year-old Somali girl but then questioned her himself.¹⁵ In an example of better practice, a 16-year-old Liberian girl who had been trafficked for child prostitution

was not required to give oral evidence and in another case the adjudicator would only allow a 13-year-old Somali girl to give her identity and confirm her statement.

“All cases before an adjudicator are a lottery. It tends to be full time adjudicators who hear children’s appeals. I am not sure that that means a great deal. Some in Manchester are not known to have ever allowed an appeal.”¹⁶

“We have very hard line adjudicators in North Shields, some of whom never allow [appeals].”¹⁷

Appeals: Processes and Outcomes | K’s Story

“K” was a 15-year-old boy from Cameroon who had suffered persecution throughout his childhood because of the political activities of his older relatives. This included physical and sexual assault. On the morning of his appeal hearing he heard that yet further relatives had been killed or had disappeared when a social worker mistakenly disclosed this to him.

His reaction was to say spontaneously “They have taken them all now.” The adjudicator gave permission for him to remain outside the room whilst an older cousin gave evidence. There was also a medical report which indicated that he was too traumatized to provide cogent evidence and expert evidence which indicated that older members of his family had attracted persecution on account of their political views. In addition, he had provided a detailed statement of the limited knowledge he had of his family’s political activities. (When he had asked why they were being persecuted in the past, they had told him that it was not safe for him to know more.) Despite this the adjudicator dismissed his appeal taking issue with the fact that he had not been tendered for cross examination and stating that he could have

moved on his own (as a 15 year old) to another part of Cameroon to avoid further persecution. The adjudicator also doubted his credibility because he had not left Cameroon at an earlier age of between six and 14.¹⁸

“Generally the stories children tell are disjointed and fragmented. Those without experience [of giving evidence, like children] will give a fragmented as opposed to a full and coherent statement and adjudicators do not take this into account. They hold against them the fact that they have “neglected” to tell their full story. Training for adjudicators [may help] but some are untrainable. The problems are scepticism and a prosecutorial attitude.”¹⁹

A number of legal representatives believe that adjudicators fail to subject asylum appeals by unaccompanied or separated children to the same anxious scrutiny accorded to adult appellants because they have already been granted exceptional or discretionary leave to remain until they were 18. A typical comment is:

“Adjudicators are not applying the same standards as with adults. They are probably reassured by the fact that children have some other form of leave. I think that they regard it as all a bit of a waste of time and money. One problem is that adjudicators do not believe that the child isn’t in contact with his or her parents. There is a problem with plausibility. (Adjudicators simply do not believe many unaccompanied or separated children.) Adjudicators take a culturally specific view (and judge the accounts given by the unaccompanied or separated child as if they had been made by a child brought up in the U.K.)”²⁰

Up until 2005 there was no specific training for adjudicators hearing appeals from unaccompanied or separated children. However, early in 2005 in preparation for the establishment of the Asylum and Immigration Tribunal,²¹ every adjudicator had to attend a training course and one of the case studies presented to them was that of an appeal by an unaccompanied or separated child.²²

Recommendations

- **1.** The Department of Constitutional Affairs should provide training for all Immigration Judges, Designated Judges, or Senior Immigration Judges before they are permitted to hear an appeal from an unaccompanied or separated child based on the Chief Adjudicator’s Guidance and guidance provided by UNHCR, the Separated Child in Europe programme, and the Immigra-

tion Law Practitioners’ Association (ILPA), and these three organizations should be consulted about the content of the course.

- **2.** In particular, this course should provide them with an appropriate child specific framework in which to decide appeals by unaccompanied or separated children. Both substantive questions regarding the meaning of child specific persecution, and procedural issues regarding appropriate conduct during hearings, should be covered.

13.3 Role of the Home Office Presenting Officer

Home Office Presenting Officers (HOPOs)²³ can play a crucial role at an appeal especially where a separated child is not legally represented. The research reveals extensive resistance to differentiating between adults and current or former unaccompanied or separated children who have just turned 18. An analysis of the determinations for February, May, and October 2004 shows that Home Office Presenting Officers who are allowed to, regularly cross examine children.

I have had HOPOs contest age at an appeal even when a separated child is accompanied by his or her social worker and when all the evidence in the bundle indicates that he or she is a child.

I haven’t discerned any change in that regard [since the Immigration and Nationality Directorate decided as a matter of policy to accept age assessments made by professional social workers employed by local authorities]. In one famous case involving a nine-year-old Somali girl both the HOPO and the adjudicator expected her to give evidence.²⁴

Appeals: Processes and Outcomes | M's Story

“M” was 19. She was a single parent having been abandoned by a physically abusive partner. She had been diagnosed as being HIV positive and had tried to take her own life on two occasions. The second attempt took place when she broke down when discussing her forthcoming appeal hearing with her solicitor and tried to jump out of a third floor window.

Her baby was subject to an interim care order as a result of concerns about her mental stability. Her first solicitor had failed to appeal against the decision to refuse her asylum and she was now seeking protection under the European Convention on Human Rights (ECHR) on the basis of her very poor mental and physical health. The HOPO cross examined her for two hours on issues which were relevant to her missed opportunity to appeal on asylum grounds but were no longer relevant to her present appeal for the apparent purpose of discrediting her. This was despite the fact that any right she may have had to protection under the ECHR would be determined by medical and other expert evidence and not anything she could say in evidence. Even when she collapsed on the floor of the court and had to have 20 minutes outside court to compose herself the HOPO resumed the very hostile cross examination as soon as she returned to the court. (The adjudicator hearing the appeal also declined to intervene in order to limit the

cross examination to issues which were strictly relevant or to suggest that the manner in which she was being cross examined was unacceptable.)



Recommendations

- **1.** The Home Office in conjunction with UNHCR, the Refugee Children's Consortium, and ILPA should devise a course to prepare Home Office Presenting Officers for representing the Secretary of State for the Home Department at appeals by unaccompanied or separated children.
- **2.** The Home Office should ensure that no Home Office Presenting Officer is allocated an appeal by an unaccompanied or separated child until he or she has attended any such course.
- **3.** The Home Office should prepare written guidance for Home Office Presenting Officers on how to represent the Secretary of State for the Home

Department at appeals by unaccompanied or separated children in compliance with best practice as established by UNHCR, the Separated Children in Europe programme, and ILPA.

13.4 Decisions on Appeals

As was explained above neither the Immigration and Nationality Directorate nor the Department of Constitutional Affairs collect statistics on the number of unaccompanied or separated children who appeal against an initial decision to refuse them asylum. Neither do they collect statistics on the number who succeed in their appeals. However, as part of the present research the decisions reached in 2,145 determinations of appeals brought by unaccompanied or separated or former unaccompanied or separated children between 1 October 2003 and 22 November 2004 were analyzed. (See chart below).

This revealed that during this period 12.26% of asylum appeals by unaccompanied or separated children were successful and a further 3.6% had their appeals allowed on human rights grounds.

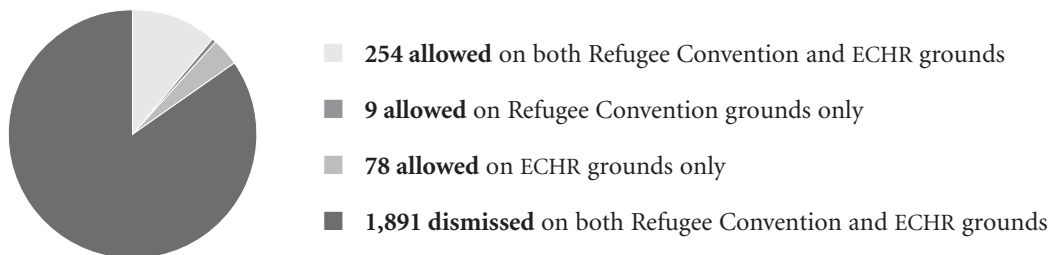
Home Office statistics, which did not distinguish between appeals brought on behalf of adults

and those brought by unaccompanied or separated children, indicated that in 2003, 20% of 81,725 appellants had their asylum appeals allowed and in 2004, 19% of 55,975 appellants had their asylum appeals allowed.

On the basis of the determinations sampled for this research it would appear that unaccompanied or separated children were less likely than adults to succeed in an appeal.

We analyzed the determinations promulgated in February, May, and September 2004 in more detail and detected certain trends and similarities both in relation to how these appeals were dealt with and which factors were likely to lead to a positive outcome. It is clear that a disproportionate amount of appeals by Somalis were allowed. This may reflect the Secretary of State for the Home Department's acceptance that a Somali who is a member of a minority clan or group is in need of protection under the Refugee Convention and thus the consequence that outstanding issues of fact on appeal are narrow, and can be dealt with by evidence from a suitably qualified expert or a relative. It may also indicate a high incidence of poor decision making by case workers on Somali cases.

Determination of Appeals — 1 October to 22 November 2004





It is also clear that a number of unaccompanied or separated children have had their appeals allowed on the basis of a political opinion imputed from their father’s political activities and that political opinion is a Convention reason which is readily accepted by adjudicators. This accords with the popular perception that asylum is principally a response to political repression.

We also found unaccompanied or separated children’s appeals allowed on the basis of race, religion, or

ethnicity. Notably, very few appeals were allowed on the basis of child specific persecution as a member of a particular social group, despite the fact that this convention reason was potentially applicable to a significant number of unaccompanied or separated children.

In the three months sampled for the purposes of this research 26% of current or former male unaccompanied or separated children had their asylum appeals allowed.

By comparison only 19% of current or former female unaccompanied or separated children had their asylum appeals allowed. This may indicate that girls have greater difficulty in winning appeals because they are more likely to rely on child specific forms of persecution such as child trafficking.

It also seems that boys are more likely to be considered “political” and therefore in danger of persecution because of an imputed political opinion. Appeals are heard from children of many nationalities, which reflects the great range of countries within Asia, Africa, Europe, and the former Soviet Union that generate asylum applications in the U.K.

2004 Appeals by Unaccompanied or Separated Children

■ Appeals heard	FEB		MAY		OCT	
	118 total		113 total		83 total	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
Male	—	—	89	78.8%	70	84.3%
Female	—	—	24	21.2%	13	15.7%
■ Appeals allowed	26	22.0%	25	22.1%	9	10.7%
■ Allowed on Refugee Convention grounds	21	17.8%	24	21.2%	8	9.5%
■ Allowed where appellant is 18+	4	3.4%	2	1.8%	2	2.4%

Basis Upon Which Appeals Were Allowed: February 2004

See footnotes on page 172

COUNTRIES OF ORIGIN	NUMBER HEARD	NUMBER ALLOWED			REFUGEE CONVENTION/ECHR REASON
		Male	Female	Total	
Somalia	21	3	5	8	ethnic origin
Iraq	15	0	0	0	
Serbia ¹	12	2	0	2	human rights
Eritrea	9	1	1	2	religion (m) ² ; ethnic origin (f)
Afghanistan	7	0	0	0	
DRC ³	7	0	0	0	
Burundi	5	1	1	2	imputed political opinion
Ethiopia	4	1	1	2	ethnic origin ⁴
Sierra Leone	4	1	0	1	human rights
Iran	3	0	0	0	
Pakistan	3	0	0	0	
Rwanda	3	0	0	0	
Albania	2	0	1	1	social group ⁵
Angola	2	0	1	1	ethnic origin ⁶
Cameroon	2	1	0	1	political opinion ⁷
India	2	0	0	0	
Moldova	2	0	0	0	
Turkey	2	1	0	1	imputed political opinion
Azerbaijan	1	1	0	1	political opinion
China	1	0	0	0	
Guinea	1	0	1	1	social group ⁸
Indonesia	1	0	0	0	
Kenya	1	1	0	1	religion ⁹
Liberia	1	0	1	1	human rights
Morocco	1	0	0	0	
Nigeria	1	0	0	0	
Palestine	1	0	0	0	
Romania	1	0	0	0	
Sri Lanka	1	0	0	0	
Vietnam	1	0	1	1	imputed political opinion
Unrecorded	1	0	0	0	
TOTALS	118	13	13	26	

Basis Upon Which Appeals Were Allowed: May 2004

See footnotes on page 172

COUNTRIES OF ORIGIN	NUMBER HEARD	NUMBER ALLOWED			REFUGEE CONVENTION/ECHR REASON
		Male	Female	Total	
Iraq	21	1	0	1	imputed political opinion
Somalia	19	4	7	11	ethnic origin (10); religion (1)
Afghanistan	12	1	0	1	imputed political opinion
Iran	11	1	1	2	political opinion
Serbia ¹⁰	7	1	0	1	ethnic origin
Angola	4	1	0	1	human rights
DRC ¹¹	3	0	0	0	
Vietnam	3	0	0	0	
Algeria	2	1	0	1	political opinion
Cameroon	2	0	0	0	
Eritrea	2	1	0	1	imputed political opinion
Ethiopia	2	0	0	0	
Guinea	2	0	0	0	
India	2	0	0	0	
Liberia	2	0	1	1	social group (trafficked)
Sierra Leone	2	0	0	0	
Uganda	2	1	0	1	religion/political opinion
Albania	1	0	0	0	
Belarus	1	0	0	0	
Bhutan	1	1	0	1	political opinion
Burundi	1	0	0	0	
Chad	1	0	0	0	
Colombia	1	0	0	0	
Côte d'Ivoire	1	0	0	0	
Georgia	1	0	0	0	
Nigeria	1	0	0	0	
Pakistan	1	0	0	0	
Rwanda	1	1	0	1	ethnic origin
Stateless (Bidoon)	1	1	0	1	ethnic origin
Turkey	1	1	0	1	political opinion
Zimbabwe	1	0	0	0	
Unknown	1	0	0	0	
TOTALS	113	16	9	25	

Basis Upon Which Appeals Were Allowed: October 2004

See footnotes below

COUNTRIES OF ORIGIN	NUMBER HEARD	NUMBER ALLOWED			REFUGEE CONVENTION/ECHR REASON
		Male	Female	Total	
Afghanistan	15	0	0	0	
Serbia ¹²	13	0	0	0	
Iraq	8	0	0	0	
Somalia	8	3	2	5	ethnic origin; human rights (1f)
Ethiopia	7	0	0	0	
Eritrea	4	2	0	2	ethnic origin (1); imputed political opinion (1)
Turkey	4	1	0	1	imputed political opinion
Guinea	3	0	0	0	
Sri Lanka	3	0	0	0	
China	2	0	0	0	
DRC ¹³	2	0	1	1	imputed political opinion
Iran	2	0	0	0	
Sierra Leone	2	0	0	0	
Sudan	2	0	0	0	
Albania	1	0	0	0	
Angola	1	0	0	0	
Lebanon	1	0	0	0	
Liberia	1	0	0	0	
Nigeria	1	0	0	0	
Pakistan	1	0	0	0	
Vietnam	1	0	0	0	
Zimbabwe	1	0	0	0	
TOTALS	83	6	3	9	

Footnotes for Preceding Charts: Basis Upon Which Appeals Were Allowed: February, May and October 2004

- | | | |
|--|--|--|
| 1 Serbia and Montenegro (including Kosovo). | 6 Member of Bakongo tribe. | 11 Democratic Republic of Congo. |
| 2 Jehovah's Witness. | 7 Where family were political and he was perceived as being political. | 12 Serbia and Montenegro (including Kosovo). |
| 3 Democratic Republic of Congo. | 8 FGM and forced marriage. | 13 Democratic Republic of Congo. |
| 4 One parent from Ethiopia and one from Eritrea. | 9 Persecution of Mungki sect. | |
| 5 Young woman; trafficking the manifestation of persecution. | 10 Serbia and Montenegro (including Kosovo). | |

**Appeals Allowed 2004 Samples:
Refugee Convention and ECHR Reasons**

	FEB		MAY		OCT	
■ Appeals Allowed	26 total		25 total		9 total	
■ Convention Reason / ECHR	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
Ethnic Origin	12	46%	13	52%	5	56%
Political Opinion	6	23%	9	36%	3	33%
Social Group	2	8%	1	4%	–	–
Religion	2	8%	2	8%	–	–
ECHR	4	15%	1	4%	1	11%

13.5 The Immigration Appeal Tribunal

For nearly 12 years up until 4 April 2005, if an unaccompanied or separated child's appeal was dismissed by an adjudicator he or she could seek permission to appeal to a three person Immigration Appeal Tribunal (IAT).²⁵ No records are available from the Immigration Appellate Authority of the number of the unaccompanied or separated children who applied for or were granted permission to appeal or the number of children whose appeals were successful at this level. Copies of determinations of appeals at the Tribunal level were not available either. As a result it is not possible to form a view of the treatment of children in this context. Theoretically unaccompanied or separated children whose appeals were dismissed by the Immigration Appeal Tribunal could then seek permission to appeal to the Court of Appeal and then to the House of Lords. To date there have been no reported decisions of any unaccompanied or

separated children appealing their substantive asylum applications.²⁶

The fact that the research project was not able to analyze determinations at Immigration Appeal Tribunal level lost some of its relevance when the IAT was abolished on 4 April 2005. Since then Immigration Judges who sit in the new Asylum and Immigration Tribunal have had a pivotal role in decision making and it is recommendations made in relation to their practice, training, and competence which will be determinative of the prospects of success for unaccompanied or separated children.²⁷

Compliance With International Standards

- 1. The UNHCR states that where there are grounds for believing that an unaccompanied child's parents wish him or her to be outside his or her country of origin on grounds of a well founded fear of him or her being persecuted, the unaccompanied child can be presumed to also have such a well founded fear.²⁸

Recommendations

- **1.** The Department of Constitutional Affairs and the Home Office should collect statistics about the number of unaccompanied or separated children appealing against an initial refusal to grant them asylum, the grounds upon which such appeals were brought, and the outcome of these reports, and the basis upon which they were allowed or dismissed.

Endnotes

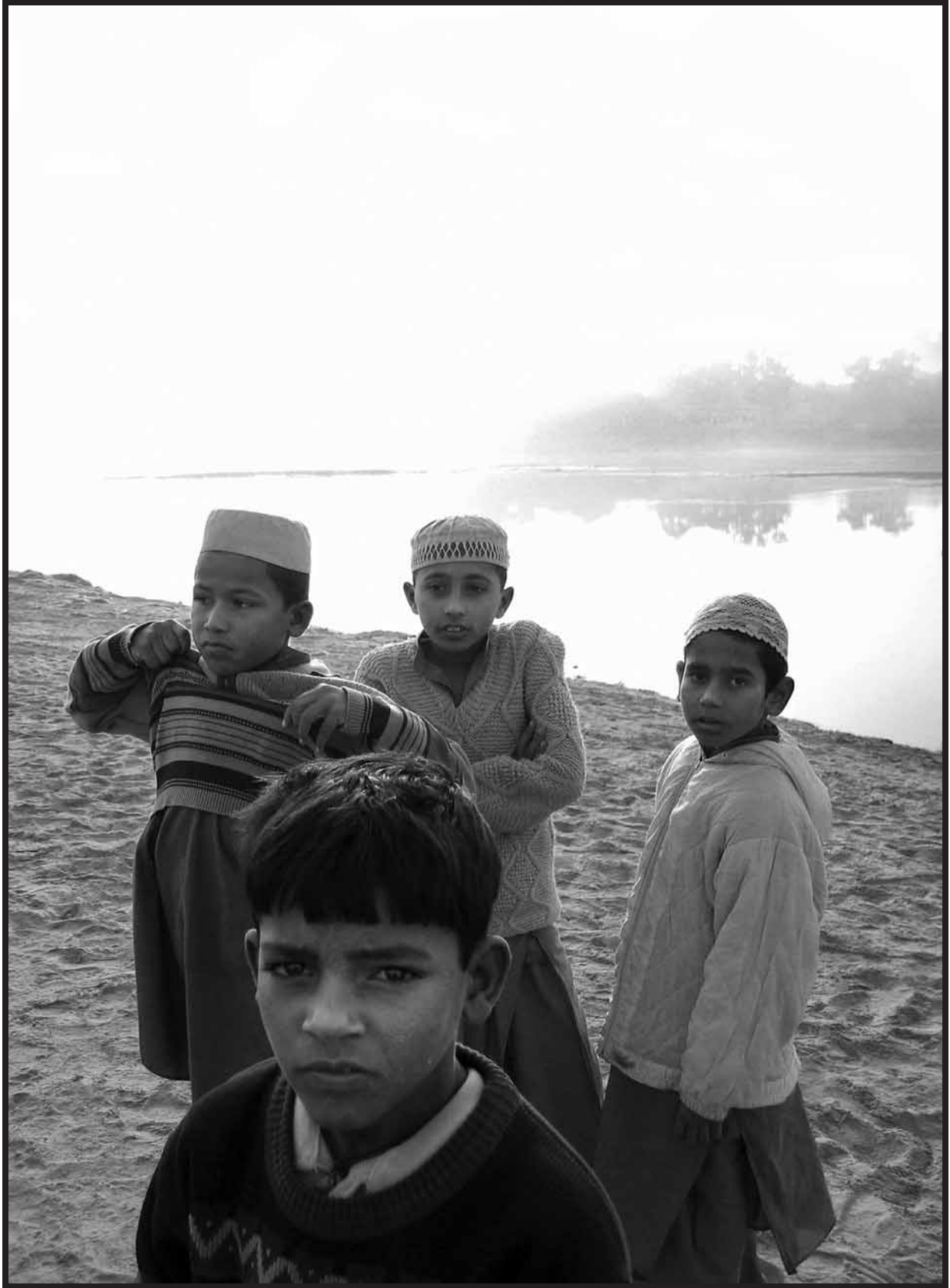
- 1 This is particularly important when the immigration court is situated in a criminal court building, but is also important when it is in a building purely used for immigration appeals. In both locations there are likely to be a number of adults who are distressed and volatile.
- 2 Information provided by Margaret Phelan, a barrister at Renaissance Chambers in London, 16 March 2004.
- 3 Information provided by Paul Morris at South Manchester Law Centre, 27 February 2004.
- 4 Adjudicator Guidance Note No. 8. *Unaccompanied Children*, April 2004, para 3.1.
- 5 Ibid, Endnote 4, para 3.7.
- 6 “Immigration Judge” is the name given to adjudicators from 4 April 2005.
- 7 The Asylum and Immigration Tribunal is the one tier appeal system which has been in operation since 4 April 2005.
- 8 Ibid, Endnote 4, para 4.4.
- 9 For example, adjudicators were advised to create a child-friendly hearing room by sitting around a table or moving down to the same level as the unaccompanied or separated child.
- 10 Ibid, Endnote 4, para 5.2.
- 11 Ibid, Endnote 4, para 5.3.
- 12 Ibid, Endnote 4, para 5.4.
- 13 Immigration Rules HC 395, para 351.
- 14 Immigration Rules HC 395, para 351. Endorsed by the Immigration Appeal Tribunal in *Dermica* (18890), 29 January 1998.
- 15 In this particular case, the girl’s legal representative had asked her very minimal questions in chief and the correct approach by the adjudicator would have been either to have given greater weight to the objective evidence or asked the girl’s legal representative to ask further questions to clarify any evidential points.
- 16 Ibid, Endnote 3.
- 17 Information provided by Katherine Henderson, a partner at Browell Smith in Newcastle, 20 February 2004.
- 18 A recent case in which the Research Coordinator appeared.
- 19 Information provided by Kathryn Cronin, barrister at Two Garden Court Chambers in London, 23 February 2004.
- 20 Information provided by Samantha Day, a solicitor at Luqmani Thompson in London, 11 February 2004.
- 21 The one tier appeal tribunal was created to replace the previous two tier Immigration Appellate Authority from 4 April 2005.
- 22 Information provided by an Immigration Judge, 2005.
- 23 Home Office Presenting Officers appear at appeal hearings to represent the Secretary of State for the Home Department.
- 24 Ibid, Endnote 2.
- 25 See the provisions of the Immigration and Asylum Appeals Act 1993, the Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2004, and then the Asylum and Immigration (Treatment of Claimants etc.) Act 2004.
- 26 There have been a number of applications for judicial review by separated children arising from age disputes or the failure by local authorities to provide them with appropriate care, and the key decisions in such cases have been referred to in the section on Care Provided to Separated Children.
- 27 From 4 April 2005, an unaccompanied or separated child has been able to seek an internal review of any decision by an Immigration Judge to dismiss his or



her appeal, and this review was carried out by Senior Immigration Judges. If a permission to review was refused, the unaccompanied or separated child had been able to seek a statutory review of this refusal by applying on paper to the High Court. However, no public funding was granted until this statutory review and any subsequent review by Senior Immigration Judges had taken place, and then only when the Asylum and Immigration Tribunal had approved funding. Therefore, very few unaccompanied or separated children were able to find legal representatives willing to apply for statutory review or prepare for and appear at any subsequent review, unless the local authority looking after them was prepared to provide funding

from its own resources. This used to happen in a minority of cases involving separated children in the past before Controlled Legal Representation became available for appeal hearings.

- 28 This approach was approved by the Immigration Appeal Tribunal in *Sarjoy Jakitay* (12658), 15 November 1995.



Policy and Practice Recommendations

14.1 Conclusion

This report documents a complex pattern of concern, neglect, and suspicion towards unaccompanied or separated child asylum seekers in the U.K. It illustrates the tension between child protection mandates and preoccupations about excessive immigration, a tension which drives and underlies attitudes and policies throughout the asylum determination process.

While our research revealed striking examples of good practice, of careful reform and of sensitive intervention, it also documents disturbing evidence of discrimination against children, of indifference towards the hardships they encounter and of wilful violation of international human rights treaty obligations. Among the features of U.K. policy which we commend are the careful reforms relating to holistic age determination processes and the inclusion of unaccompanied and separated child asylum seekers

within the overall provisions of the Children Act. We also endorse the many local initiatives, by both statutory and non-governmental organizations, to support and assist children in their attempts to secure asylum and a permanent, caring environment for their future life in the U.K., from the provision of carers to accompany children to interviews and court hearings and nurturing fostering arrangements, to meticulous and patient preparation of child specific pleadings and submissions. On the other hand, we note with

concern the plethora of evidence of unsatisfactory policy and practice. Most notable is the difference between adult and child asylum grant rates, a difference which indicates that children are much less likely to be granted asylum, and therefore to be eligible for long term protection, irrespective of their needs and eligibility. Other defects include the neglect of child specific information on persecution, a failure to apply a liberal “benefit of the doubt” approach to evidence provided by children, despite the explicit international legal recommendations to adopt such an approach, and a series of recent policy initiatives relating to curtailed protection for children which place them at risk of renewed harm. We are particularly concerned by the significant numbers of children who, because of disputes over age determination, end up being detained and denied a child appropriate asylum determination procedure.

14.2 Outlining the Protection Deficits and the Way Forward

We conclude by outlining the protection deficits, and importantly, by collating our specific and concrete recommendations, in the hope that this will be the aspect of our work which is taken up and drives future developments in this important and problematic area of child protection.

Chapter 2 Unaccompanied or Separated Children Arriving in the United Kingdom

Inconsistent and narrow definition of “unaccompanied child”

According to the Home Office definition: “an unaccompanied asylum seeking child is a person who, at



the time of making an asylum application is, or (if there is no proof) appears to be, under eighteen; is applying for asylum in his or her own right; and has no adult relative or guardian to turn to in this country.” This definition focuses on the fact that the child has travelled alone. This does not adequately cover the situation facing many children who arrive or remain in the U.K. and are in need of protection. For instance the definition excludes children who arrive with adults who are not their parents or legal or customary primary caregivers (for example, where they have been trafficked or smuggled into the U.K.).

Inconsistency and incompleteness of statistical data

Until 2002 the annual statistics collected and published by the Home Office on applications from unaccompanied or separated children were incomplete. Data from local enforcement offices and from postal applications¹ were not collected, which probably led to significant underestimation. Moreover, until 2005, the Home Office did not include age disputed children in its statistics nor did it adjust its

statistics to reflect the number of age disputes which were subsequently resolved in favour of the unaccompanied or separated child. Anecdotal evidence from non-governmental organizations, social workers, and legal representatives also suggests that a number of unaccompanied or separated children trafficked into the U.K. have not come to the attention of the authorities and have not therefore been included in the statistics. Most importantly no statistics have been collected at any point in relation to the number of unaccompanied or separated children who actually do appeal against a decision to refuse them asylum or the numbers who succeed in any such appeal.

Reconsidering children as a special class of asylum seekers

A particularly high incidence of applications from unaccompanied or separated children as opposed to adults from specific countries suggests that they may be the targets of child specific persecution and thus cannot simply be subsumed into the wider class of asylum seekers without further thought. The fact that the top 10 countries of origin for female unaccompanied or separated children² do not mirror those for asylum seekers as a class further supports this point.

Juxtaposed controls

Over the past few years a growing number of barriers has been erected to prevent asylum seekers from reaching the U.K. Under a system of juxtaposed controls,³ immigration officers have been placed at ports and Eurostar stations in France and Belgium to check the immigration status of those wishing to travel to the U.K. Airline Liaison Officers also operate at various airports abroad playing a similar role. If a traveller is not entitled to enter the U.K., they are turned back at that point. No statistics are collected of the numbers of individuals thus refused

leave to travel to the U.K. or whether they include unaccompanied or separated children.

Children who do not come into contact with local authorities

Once an unaccompanied and separated child has made an application for asylum, the claim is processed and the child becomes the responsibility of a local authority social services department. Our research indicates that many unaccompanied and separated children entering the U.K. every year need the international protection offered by the Refugee Convention but fail to come into contact with the authorities and therefore have no means to claim asylum. They include children trafficked into the U.K. for various forms of exploitation and those brought in under private fostering arrangements which may also mask exploitative and abusive situations. Although the U.K. Immigration Service has responded to concerns about this group of children in a number of positive ways, the rapid increase in the number of children being age disputed has undermined progress on ensuring that unaccompanied and separated children entering the U.K. are properly protected.

Complications around private fostering arrangements

Our research reveals that significant numbers of unaccompanied or separated children are brought into the U.K. to be looked after by distant relatives or family friends in order to obtain better educational and eventually employment opportunities. Very strict rules and restrictions govern the grant of leave to remain as a dependant, and in practice, leave is refused unless the child has been orphaned or his or her parents and any other relatives in the child's country of origin are incapable of caring for him or her. Similarly strict controls are used in situations where a child enters the U.K. to be adopted.⁴

As a consequence of these restrictions a significant number of unaccompanied or separated children are brought in as short term visitors⁵ but with an intention to stay much longer. These privately fostered children are often not reported to local authorities for fear that they will be liable to administrative removal as “overstayers.” As a result local authorities are unable to exercise their duty and ensure that the unaccompanied or separated child’s welfare is satisfactorily safeguarded and promoted.

Recommendations

- **2.1** The definition of an unaccompanied or separated child used by the Immigration Service and the Immigration and Nationality Directorate should be uniform and should accurately reflect the legal significance of a child being separated from his or her parents or legal or customary caregivers.
- **2.2** Any child who is not accompanied by a parent or a legal or customary caregiver should be treated as an unaccompanied or separated child when applying for asylum and any policies relating to discretionary leave for unaccompanied or separated children should be applied to the child even if he or she is living with other relatives or adults.
- **2.3** If the U.K. is going to seriously address its child protection responsibilities, improved record keeping is a priority. This should include detailed records of numbers of applications, types of outcomes, and appeals by unaccompanied and separated children.
- **2.4** Asylum applications from unaccompanied or separated children require a legal and factual framework that takes into account child specific data and argument.
- **2.5** According to paragraph 20 of the UN Committee on the Rights of the Child’s General Comment No. 6 (2005): “A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.” Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process.
- **2.6** A mandatory registration scheme for privately fostered children should be introduced, to ensure local authority oversight of private foster placements.

Chapter 4 Monitoring Entry to Provide Protection

Contradictory statutory roles

As the only statutory body monitoring the situation of unaccompanied or separated children arriving in the U.K., the U.K. Immigration Service is required to fill a number of conflicting roles. Its primary statutory obligation is an immigration control one, to ensure that unaccompanied or separated children who arrive in the U.K. are only permitted to enter if they meet the requirements of the Immigration Rules or have made an application for asylum. But it also has a significant protection role, both in combating human trafficking⁶ and in exercising a de facto duty of care⁷ over unaccompanied or separated children in its custody until a carer or a social services department collects the child. The establishment of Minors Teams and the Best Practice Guidance are positive moves but comments made by children who are dealt with by the Immigration Service remain negative in part.

Reducing asylum intake vs. reducing human trafficking

Despite the Immigration Service's assertion that it owes a duty of care to unaccompanied or separated children the requirement to "reduce asylum intake" encourages officials to question children adversarially, which detracts from efforts to identify possible victims of trafficking. This contradictory approach is reflected in the 2006 amendments to the Immigration Rules that impose additional requirements for visitors who are under 18. Though the new rules were allegedly brought in to alleviate growing concerns about the number of unaccompanied or separated children trafficked into the U.K., they are responsive to the perception that unaccompanied or separated children are a "problem" and that they are difficult to return to their countries of origin.



More research/data needed on child trafficking

The Home Office acknowledges that collection of data and research are essential pre-requisites to the successful identification of trafficked children and other children at risk of harm. However, very little research has yet been done into the scale of child trafficking into and through the U.K.

Recommendations

- **4.1** A specialist team should be established at each port of entry to identify and combat child trafficking.
- **4.2** Immigration officers and staff working within the Immigration and Asylum Directorate should receive training to assist them in identifying unaccompanied or separated children who are being trafficked and in advising children of their entitlement to protection under the Refugee Convention and the European Convention on Human Rights. Immigration personnel should also be trained to recognize the potential impact of any directives or conventions to combat trafficking which the U.K. may subsequently opt into or ratify.
- **4.3** The Department for Education and Skills should appoint a senior civil servant to coordinate within the department research into, and schemes to combat, trafficking.
- **4.4** The Department for Education and Skills should establish a national training programme to alert social workers to the incidence of child trafficking for the purposes of sexual, domestic, and labour exploitation and the needs of the children who have been trafficked for these purposes.
- **4.5** The Department for Education and Skills should provide funding for local authorities to

accommodate unaccompanied or separated children who have been trafficked to the U.K. and who are not entitled to protection under the Refugee Convention where it would not be in their best interests to be returned to their countries of origin.

- **4.6** The Legal Services Commission should work with Anti Slavery International and the Immigration Law Practitioners' Association to develop training for legal practitioners to enable them to identify children who have been victims of trafficking.
- **4.7** The U.K. should introduce legislation to provide indefinite leave to remain for unaccompanied or separated children who do not qualify for protection under the Refugee Convention, but whose experience of being trafficked means that it is not in their best interests to expect them to return to their countries of origin.



Chapter 5

Age Disputes: A Barrier to Entering a Child Specific Asylum Determination Process

Age disputes

A significant number of unaccompanied or separated children have been denied access to a child appropriate asylum determination process and to social services accommodation because their age is disputed during the initial screening process. Often this assessment is based on subjective judgements that the child looks like an adult. An erroneous assessment not only deprives the child of an age appropriate asylum determination process but also impunes the child's credibility, which can negatively impact the chances of being granted asylum. There is anecdotal evidence that age disputed children are more likely to be detained than adults because of doubts about their credibility.⁸

Children not given the benefit of the doubt

The number of unaccompanied or separated children whose ages were disputed increased rapidly between 2001 (11%) and 2004 (37%), despite a clear written policy on how the age of an unaccompanied or separated child was to be assessed. Up until August 2005, immigration officers were advised to treat as adults children whose appearance strongly suggested that they were over 18 years old, until credible documentary evidence or a full age assessment demonstrating the contrary became available.⁹ There was little evidence that children were accorded the benefit of the doubt in borderline cases.

Documentary evidence of age

A significant number of unaccompanied or separated children and legal representatives report a persistent refusal by the Immigration Service and

Immigration and Nationality Directorate to accept documentary evidence of age.

Consequence of age disputes

If an unaccompanied or separated child's age is disputed, he or she is treated as an adult and referred to the National Asylum Support Service (NASS) for accommodation and given a Statement of Evidence Form to return within 14 days. In many cases it takes considerable time to overturn an inaccurate age assessment and in the intervening period the unaccompanied or separated child lives in emergency accommodation provided by NASS, often sharing a room with severely traumatized adult asylum seekers. Children interviewed for this research had no real understanding of the age assessment process and perceived the adults they came into contact with as hostile.

Recommendations

- **5.1** Where an unaccompanied or separated child's age is in dispute he or she should be provided with accommodation by the appropriate social services department for a seven- to 28-day period in order for a holistic age assessment to be carried out.
- **5.2** No age disputed child should be detained in an immigration removal or reception centre.
- **5.3** No age disputed child's application should be subjected to the Fast Track¹⁰ or Super Fast Track¹¹ asylum determination procedures or any similar accelerated process.
- **5.4** No age disputed child should be denied an in country right of appeal.
- **5.5** A legal guardian should be appointed for every age disputed child.
- **5.6** No steps should be taken to determine the age disputed child's asylum application until the question of his or her age has been finally resolved.
- **5.7** Independent panels comprised of suitably qualified professionals should be established to determine age where this is in dispute.
- **5.8** Any member of the Immigration Service or the Immigration and Nationality Directorate who may come into contact with unaccompanied or separated or age disputed children should undergo comprehensive training in the need for a holistic assessment of age by the method referred to in paragraph 7 above.
- **5.9** Original identity documents should not be retained by the Immigration and Nationality Directorate but should be returned to the unaccompanied or separated child or his or her legal representatives.

Chapter 6

Detention of Unaccompanied or Separated Children

Detention still used in age disputed cases

The U.K. Government broadly accepted that unaccompanied or separated children should not be detained during any part of the asylum determination process, including the Fast Track procedure at Oakington Reception Centre¹² or the Super Fast Track procedure at Harmondsworth or Yarl's Wood Removal Centres.¹³ However, our research revealed that in practice some unaccompanied or separated children were being detained as a result of being wrongly assessed as adults.¹⁴ Statistics obtained from the Refugee Council's Children's Panel revealed

that the vast majority of referrals from age disputed children in 2002–2003 had been detained in Oakington Removal Centre.¹⁵

Allocation of responsibility

Despite the protocol by the Association of Directors of Social Service, which allocates formal responsibility for children wrongfully detained in removal centres to local authorities,¹⁶ local authorities continue to dispute responsibility for these children, which can lead to delay in their release from detention.¹⁷

Negative consequences of detention

Being in detention has a detrimental effect on an unaccompanied child's ability to pursue the asylum application even if the child has not been allocated to an accelerated determination process. Immigration detainees regularly report that it is very difficult to obtain good legal representation whilst in detention or in some cases any representation at all, and even if the child is represented the fact of being detained has an adverse impact on their application.

Criminalization of unaccompanied or separated children

Because of the introduction of section 2 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004¹⁸ a number of unaccompanied or separated children have been either denied or had delayed access to the asylum determination process. This section introduces a new criminal offence (which applies to both adults and unaccompanied or separated children) of failing to provide a valid document showing identity and nationality without a reasonable excuse when first interviewed by an immigration officer. Most children affected by this rule are advised by criminal solicitors on a duty rota scheme with no knowledge of asylum law and are advised to plead guilty to get a shorter sentence. They are then sent to young offenders institutions for several months.

Whilst there very few have any contact with immigration solicitors and are not informed of the possibility of claiming asylum.

Recommendations

- **6.1** No unaccompanied or separated child should ever be detained in an immigration removal or reception centre.
- **6.2** No age disputed child should ever be detained in an immigration removal or reception centre.
- **6.3** If there is a doubt about a person's age, he or she should be accommodated by the appropriate social services department for a period of between seven and 28 days in accommodation designed for this purpose in order for a holistic age assessment to be carried out.
- **6.4** Where social services decide that an age disputed child is an adult but the child does not accept this view and brings a legal challenge, he or she should not be transferred to an immigration removal or reception centre until the question of his or her age has been finally determined by expert evidence or a court.



Chapter 7

Accommodation and Care of Unaccompanied or Separated Children

2005 Reform for accommodating unaccompanied or separated children

The U.K. Government has reviewed its approach to the accommodation of unaccompanied or separated children and is presently consulting on a reform program. The impetus for this reform programme is the fact that local authorities close to ports of entry are providing accommodation for the majority of unaccompanied or separated children and that when the children become 18 the authorities have ongoing duties to support them if they are in further education.¹⁹ The Government has considered placing unaccompanied or separated children with selected partner local authorities operating as specialist regional resources. However, child care practitioners are concerned that the proposed reform will undermine the fundamental principle underpinning the Children Act 1989, that every local authority owes a duty to safeguard the welfare of all children in need within their geographic area irrespective of their immigration status.

Reluctance to accommodate children under section 20 of the Children Act 1989

Some local authorities are reluctant to accommodate children under section 20 of the Children Act 1989 and provide them with foster placements or supported hostel placements. Instead they choose to assist them under section 17 of the Children Act 1989 and place them in what amounts to bed and breakfast accommodation, thus minimizing their contact with the children. The detrimental effect this may have on unaccompanied or separated children was identified in a pilot study which found that

unaccompanied or separated children were 18% less likely to suffer symptoms of post traumatic stress disorder associated with past persecution and trauma if they were placed in foster care as opposed to independent or semi-independent accommodation.

Trauma experienced by unaccompanied or separated children

Our research identifies certain common needs among unaccompanied or separated children which are not addressed by those caring for them. A pilot study of 50 unaccompanied or separated children discovered that 54% of these children showed symptoms of post traumatic stress disorder. Many of these children had experienced serious injury, armed combat, or the murder of relatives or friends. Despite this, the research showed that children were not always referred for a psychiatric assessment or offered the opportunity to talk to a counsellor and there was a general lack of awareness amongst social workers of the extent of these children's trauma and specific needs.

Identification of psychological needs

Despite the entitlement of unaccompanied or separated children to free National Health Service treatment, neither the Department of Health nor the Department for Education and Skills have adopted any national plan or referral system to ensure that these children's psychiatric and psychological needs are identified.

No dissemination of positive practice

There is no national strategy to ensure that existing good practice is disseminated and shared nationwide. The specialist treatment and counselling available is a result of individual initiatives devised by general practitioners and consultants to meet demands from their patients and clients. Many unaccompanied or separated children are not able to access the three existing centres of excellence

because of long waiting lists and because they are all situated in London.

Recommendations

- **7.1** All unaccompanied or separated children should be accommodated under section 20 of the Children Act 1989.
- **7.2** A full assessment of each unaccompanied or separated child's needs should be conducted within seven days of him or her being accommodated in accordance with the Framework for the Assessment of Children in Need and Their Families.
- **7.4** Particular attention should be paid to the child's medical, psychological, and emotional needs.
- **7.5** A named social worker should be appointed for each unaccompanied or separated child and he or she should liaise closely with the child's legal guardian when he or she is appointed.
- **7.6** The local authority should carry out an initial statutory Looked After Children Review after 28 days and a second review after three months and then further reviews every six months.
- **7.7** An unaccompanied or separated child should be accompanied by his or her social worker, key worker, or legal guardian to every appointment connected with his or her application for asylum, whether these are with the Home Office, his or her legal representatives, medical personnel, or others.
- **7.8** The Department for Education and Skills should devise guidance for local authorities as to the appropriate level of support to be given to unaccompanied or separated children and implement a programme of training to ensure that all social workers allocated to unaccompanied or separated children are aware of the level of support they are expected to provide.
- **7.9** The Department should also ensure that no unaccompanied or separated child is placed in bed and breakfast accommodation.
- **7.10** The Department of Health in conjunction with the Department for Education and Skills, the Home Office, the Association of Directors of Social Services and members of the Refugee Children's Consortium²⁰ should draw up a national plan of action to ensure that the U.K. meets its obligations under Article 18.2 of the Council Directive laying down minimum standards for the reception of asylum seekers and provides access to rehabilitation and mental health care



services for all unaccompanied or separated children in need of such services.

- **7.11** The Department for Education and Skills in conjunction with the Association of Directors of Social Services and members of the Refugee Children's Consortium, should devise and implement a national training scheme to ensure that all social services departments are aware of the particular psychiatric and psychological needs of the unaccompanied or separated children whom they may be accommodating or may accommodate in the future.

Chapter 8 Need for a Legal Guardian

Ineffective guardianship

A plethora of services is provided but none represent effective guardianship, responsive to the best interests of the child is needed. The multiplicity of supportive personnel can lead to confusion and the absence of any emotional bond with a trusted or caring adult figure in *loco parentis*. Moreover, the existence of different agencies leads to “buck passing” with unaccompanied or separated children remaining uncertain about the support they can expect. Unaccompanied or separated children do not have an adult who takes responsibility for their welfare and the progress of their asylum application.

Consequences of lack of effective adult support

The lack of effective adult support has many negative effects. Unaccompanied children are insufficiently prepared for entering the asylum determination process, sometimes misunderstand the purposes of the screening interview, and are not always provided with appropriate care by the local authority accommodating them. Moreover, the lack of adult support

affects the unaccompanied or separated child's ability to disclose the full extent of past persecution and to cope with the additional stress of the asylum determination process. It may also have a negative effect on the child's ability to comply with the requirements of the asylum determination process, since no single adult is under any statutory duty to assist the unaccompanied or separated child through this process.

Lack of proper training for guardians

Our research revealed that many of the adults with whom unaccompanied children come in contact during the screening or determination process lack the necessary legal understanding to assist the child appropriately.

Conflicting roles of legal representatives

Often the only adult playing a role in relation to the unaccompanied or separated child's asylum determination process is the legal representative. But advocates charged with representing the child applicant face severe conflicts when they find themselves called upon to choose between making best interest judgements and following the child's instructions. Many legal representatives are concerned about this requirement to perform two potentially conflicting roles.

Steps taken to ensure better legal guardianship

At one time it appeared that the U.K. Government was intending to take steps to create a form of legal guardianship which would better respond to the needs of unaccompanied or separated children. The Green Paper “Every Child Matters”²¹ recognized the need for unaccompanied or separated children to have a consistent adult in their life speaking on their behalf and mentoring them.²² However, no additional provisions for unaccompanied or separated children were included in the subsequent Children Act 2004 despite an amendment being tabled²³

which would have provided for a legal guardian for every unaccompanied or separated child. Furthermore, no amendments were made to the Immigration Rules to ensure that unaccompanied children received the representation required by the EU Directive.²⁴

Meanwhile the Children’s Panel is expected to provide all unaccompanied or separated children with representation but in reality the Panel lacks the resources to allocate an individual adviser to every referred child. It cannot even allocate an adviser for every child under 15 as it used to do.

Need for legal guardian at the appeal stage

Once in court, an unaccompanied or separated child’s representative is limited to argument related to the child’s legal right to protection. He or she cannot advise the court in relation to the unaccompanied or separated child’s best interests which may not accord with the child’s legal rights or instructions. This latter role is well performed in the family court by a Children’s Guardian. The need for such a guardian in asylum cases is apparent when a trafficked unaccompanied or separated child cannot come to terms with the reality that their parent had sold them to a trafficker or where the child lacks the maturity to understand the reasons for being sent to the U.K.²⁵

Recommendations

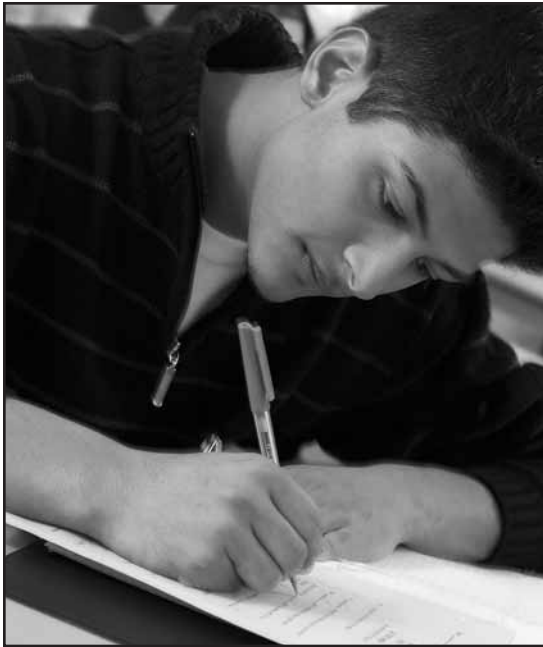
- **8.1** A legal guardian should be appointed for every unaccompanied or separated child within three days of his or her initial application for asylum.
- **8.2** No part of the asylum determination process, including the screening interview, should take place until a legal guardian has been appointed for the unaccompanied or separated child in question.

- **8.3** The legal guardian should accompany, or should arrange for an appropriate adult to accompany, the child to every appointment connected with his or her application for asylum.
- **8.4** The legal guardian should supervise the arrangements made by the local authority to look after the unaccompanied or separated child.
- **8.5** The legal guardian should appoint appropriate legal representation in connection with the child’s asylum application and monitor the progress of his or her asylum claim.
- **8.6** The legal guardian should provide a report to the Asylum and Immigration Tribunal and any higher court on the manner in which the unaccompanied or separated child’s best interests can be met.
- **8.7** Legal guardians should be appropriately qualified and trained and accountable to a publicly funded supervisory body.

Chapter 9 Applying for Asylum

Assumption that children understand what “seeking asylum” means

Unaccompanied or separated children have to apply for asylum at a port of entry, at one of the two Asylum Screening Units or at a local Immigration Service enforcement office.²⁶ There is an assumption on the part of Government that these children both understand the concept of “seeking asylum” and know how to make an application for protection under the Refugee Convention. Interviews conducted for this research revealed that both assumptions were often incorrect. The fact that unaccompanied or



separated children have such a poor understanding of the intricacies of the asylum determination process may jeopardize their applications from the initial stage.

No child specific screening practices

Despite the many improvements, an unaccompanied or separated child applying for asylum is still subjected to a broadly similar screening process as an adult asylum seeker. Only a few modifications to this procedure take into account the child's age.

Untrained officers

Screening interviews are supposed to be conducted by immigration officers at ports of entry, by local enforcement officers, or by case workers at Asylum Screening Units trained to interview children. However, we found that if a trained officer was not available, the interview was not postponed but conducted by an untrained officer. Even though a responsible adult has to be present at the interview this may not be a sufficient safeguard for unaccompanied or separated children.

Unavailable/untrained legal representation

While the Legal Services Commission funds a legal representative to accompany an unaccompanied or separated child to a screening interview, the research reveals that many unaccompanied or separated children are unable to obtain legal representation before the screening interview takes place or that when they found a legal representative, he or she has not always had the appropriate training or experience.

Misunderstanding the purpose of the interview

The Level 1²⁷ Screening Form used is identical to the one used for an adult and is largely concerned with the unaccompanied or separated child's identity and family, and his or her journey to the U.K. If the unaccompanied or separated child reveals during the screening interview that he or she has been a victim of child trafficking, the interview is stopped and a referral is made to the police.²⁸ However, unaccompanied children who are interviewed often appear to have misunderstood the purpose of their screening interview and feel frustrated at what they perceive as a refusal by the interviewer to listen to their accounts of persecution. The fact that screening interviews are used to check on a child's claims about their nationality is confusing and upsetting to children.

Improper use of screening interviews

The screening interview is supposed to be non-probing although interviewers are permitted to exercise some discretion and adopt a more rigorous approach where issues of credibility arise.²⁹ It is clear, however, from refusal letters sent to unaccompanied or separated children that the content of screening interviews is heavily relied upon in the Immigration and Nationality Directorate decision making process.

Misunderstanding the role of interpreters

Some unaccompanied or separated children misunderstand the role of the interpreter during the

screening interview and do not realise that he or she is merely there to facilitate the interview.³⁰ They sometimes think the interpreter is interviewing them or ask the interpreter for advice. Sometimes the fact that the interpreter comes from the child's own country causes additional trauma. Interpreters used by the Immigration and Nationality Directorate receive no training to prepare them for screening interviews involving unaccompanied or separated children.

Lack of child friendly briefings regarding the Refugee Convention

The U.K. Government had taken a number of steps to make it easier for unaccompanied or separated children to make their asylum applications, but one obvious deficit is the absence of a child friendly briefing about the nature and scope of the protection offered by the Refugee Convention (and the European Convention on Human Rights) before they complete the Children's Statement of Evidence Form. The Immigration and Nationality Directorate appears to assume that such a briefing is unnecessary or is provided by the child's social worker or legal representative. In reality very few children have any idea of whether or how they can rely on international legal protections. An appreciation of the law relating to the relevant conventions is also outside the range of expertise of the vast majority of social workers.³¹ Many unaccompanied or separated children do not even gain access to legal representatives with the necessary skills.

Length of application form

Despite the improvements to the initial asylum application form, the current document is 27 pages long³² and exclusively in English.³³ Questions and answers therefore have to be translated into English, a laborious and lengthy process. There are legitimate concerns that it is often not possible to obtain a full

account of a child's past persecution and future fears, despite the extended 28-day period that children have to complete the form.

Lack of questions relating to child specific persecution

A major problem with the new form is that it contains no questions referring to child specific forms of persecution, such as female genital mutilation, child trafficking, or forced marriages. C6 of the form merely states that if the unaccompanied or separated child's claim is partly or wholly based on a reason other than race, ethnic group, nationality, religion, political opinion (including membership of a particular social group), that section should be completed. The child is not alerted to the fact that information on these child specific issues can have relevance to the asylum application. This is a serious omission, especially since the claim to be part of a particular social group may be the most sustainable Convention reason for an unaccompanied or separated child.



Quality of legal representation

The Children’s Statement of Evidence Form is a crucial part of the asylum determination process for an unaccompanied or separated child as it forms the basis of the case. Our research established that in most cases the Children’s Statement of Evidence Form alone is insufficient to secure a grant of asylum for a child. Rather, to succeed, a child has to submit a large amount of corroborative evidence and a very well-focused argument. The quality of legal representation is thus crucial. However, legal representatives do not receive any mandatory training in representing unaccompanied or separated children.³⁴ Our research confirms that some unaccompanied or separated children have been poorly represented and lack the experience or the confidence to demand an adequate service.

Any incompetence on the part of an unaccompanied or separated child’s legal representative has very serious consequences, as a child who fails to return his or her Statement of Evidence Form within 28 days will have the asylum application refused on non-compliance grounds without any substantive consideration of the account of persecution.

Recommendations

- **9.1** The Immigration Service and the Immigration and Nationality Directorate should provide each unaccompanied or separated child with a detailed briefing in his or her own language and in the presence of his or her legal representative. The briefing should explain the Refugee Convention and the protection it can provide and also the asylum determination process before any screening interview takes place. Children should also be provided with information about the European Convention on Human Rights and the protection it may offer them.
- **9.2** An unaccompanied or separated child should then be entitled to consult with his or her own legal representative so that the legal representative can ensure that the child has understood the contents of the briefing and so the representative can answer any queries the unaccompanied or separated child may have, before the screening interview takes place.
- **9.3** No screening interview should take place if an unaccompanied or separated child is not accompanied by his or her guardian³⁵ or an appropriate adult and his or her own legal representative.
- **9.4** An adult should not be deemed to be an appropriate (or “responsible adult”) until it has been ascertained that he or she has the necessary training and experience to fulfil this role.
- **9.5** The screening interview should not be used to probe the credibility of an unaccompanied or separated child’s substantive application for asylum.
- **9.6** The screening interview should only be used to check an unaccompanied or separated child’s identity or to resolve any child protection concerns arising from his or her situation.
- **9.7** The screening interview should not be used to resolve any disputes about an unaccompanied or separated child’s age.
- **9.8** The interviewer should always ensure that the unaccompanied or separated child has fully comprehended the precise purpose and the limitations of the screening interview and the type and extent of information he or she is expected to provide.

- **9.9** The interviewer should always ensure that an unaccompanied or separated child fully understands any interpreter being used in the screening interview and the role which he or she will play at the interview and that the child is also happy about the gender and nationality or ethnic or tribal origins of the interpreter.
- **9.10** Interpreters should be specially trained to interpret for unaccompanied or separated asylum seeking children.
- **9.11** Where an unaccompanied or separated child appears to be so traumatized by his or her past experiences that the child is not able to disclose the extent of past persecution or future fears, the asylum determination process should be suspended until an appropriately qualified and experienced psychiatrist or psychologist has certified that the child is fit to provide a detailed statement in support of the asylum application.
- **9.12** A legal guardian should be appointed for every unaccompanied or separated child to ensure that the child gains access to a suitably qualified and experienced legal representative able to assist the child in completing the Statement of Evidence Form within the required 28-day time period.
- **9.13** Part C6 of the Statement of Evidence Form (which deals with applications on the basis of membership of a particular social group) should be amended to include specific reference to child trafficking, female circumcision, forced marriage, and the recruitment of child soldiers.
- **9.14** The section of the Statement of Evidence Form which relates to political opinion should specifically refer to the fact that a well founded fear of persecution based on imputed political

opinion can give rise to a need for international protection under the Refugee Convention.

- **9.15** No unaccompanied or separated child should have his or her application for asylum refused purely on the grounds that the Statement of Evidence Form was not returned within the requisite 28 days. Instead the child should be given a further opportunity to comply with the process.
- **9.16** The syllabus for the Accreditation Scheme run by the Law Society and the Legal Services Commission should include a basic understanding of the specific issues relating to the representation of unaccompanied or separated children claiming asylum.
- **9.17** The Law Society and Legal Services Commission should also establish an accredited Children's Panel, whose members when admitted to the Panel will be entitled to enhanced remuneration for representing unaccompanied or separated children.

Chapter 10 The Determination Process

Use of interviews to challenge credibility of applicant

The U.K. has amended its immigration rules to encompass the right of unaccompanied or separated children to participate in the asylum determination process. However, according to our research it is not in the best interests of unaccompanied or separated children to be interviewed about the substance of their applications for asylum, because the Immigration and Nationality Directorate use asylum interviews to inquisitorially challenge credibility rather than to clarify or expand on the information contained in the



Statement of Evidence Form. Children subjected to an interview of this nature are likely to suffer further and unnecessary trauma.

Legal representation

The Immigration Rules require the presence of a legal representative or other adult, to take responsibility for any unaccompanied or separated child being interviewed.³⁶ However, there is no requirement that either the interviewer or the responsible adult have any legal responsibility for the unaccompanied or separated child. The only stipulation is that an interview cannot go ahead if the only adult present is an immigration or police officer or a Home Office official. The Immigration Service have indicated that the role of a “responsible adult” can be taken by a social worker, relative, foster carer, doctor, or priest. There is no requirement that the “responsible adult” have any training for, experience of, or aptitude for this role and therefore this requirement does little to safeguard an unaccompanied or separated child’s interests.

Need for interpreters

Research related to adult applicants reveals that three quarters of case workers interviewed do not believe that applicants should be able to bring their own interpreters to the asylum interview. These findings may be relevant to child asylum applicants when the Immigration and Nationality Directorate begins to interview unaccompanied or separated children — the presence of an independent interpreter may be critical as children are less likely than adults to have been exposed to other dialects or variations of their own language. They are also likely to be functioning at a lower level of linguistic proficiency than adult asylum seekers. For both these reasons a poorly trained or unsympathetic Home Office interpreter³⁷ can be fatal to their claim.

Rigid targets and political agenda guiding the determination process

The Government’s political agenda has an impact on the manner in which children’s asylum applications are processed. The Immigration and Nationality Directorate aims to reach a decision on 80% of applications by unaccompanied or separated children within two months of the application being made. Although there are dedicated teams of case workers deciding upon applications from unaccompanied children,³⁸ this agenda puts pressure on these case workers to make decisions very quickly. While it is in accordance with good child care practice that there should be the least possible delay in reaching a decision on an asylum application from an unaccompanied or separated child, setting rigid targets for a decision is not necessarily in an unaccompanied or separated child’s best interests.

Unnecessary/fatal delays in the determination process

In contrast, once an unaccompanied or separated child has completed his or her application, an

excessive delay in reaching a decision is not in the child's best interests but instead can lead to further unnecessary stress. Legal representatives report a number of instances of considerable delay on the part of the Immigration and Nationality Directorate such that by the time a decision was reached the child had become an adult. Of course such a delay can have a fatal impact on the asylum applicant's prospect of success if the claim is based on child specific persecution.

No account taken of child's maturity/immaturity

Although government policy requires that in assessing the claim more weight should be given to objective indications of risk than to the unaccompanied or separated child's state of mind and understanding of his or her situation,³⁹ in practice decision letters rarely mention a child's age or any difficulties he or she might experience due to immaturity or trauma. No instances of the Immigration and Nationality Directorate taking expert advice on a child's mental and emotional stage of development have been reported.

Culture of disbelief

There appears to be an almost universal culture of disbelief within the Immigration and Nationality Directorate in relation to asylum applications from unaccompanied or separated children and there is no evidence of a liberal application of the benefit of the doubt to children's applications. For example, trafficked children and child soldiers are regularly refused asylum on the basis that their accounts of persecution are unpersuasive even when there is considerable corroborating evidence.

Problems with Country Information and Policy Unit reports

According to our research, the Immigration and Nationality Directorate relies heavily on Country

Information and Policy Unit (CIPU) reports when reaching an initial decision on asylum applications. While some improvements have been made to CIPU reports by including information on some child specific forms of persecution, these sections in the reports are still typically limited to a few short paragraphs. As a result of the lack of detail provided in the reports, they do not typically provide a sufficient evidential basis for concluding that there is a serious possibility that an individual child would face persecution for these child specific reasons on return. At most, the CIPU Reports confirm in general terms the existence of these forms of persecution in the relevant country.

Insufficient training of decision makers

There are concerns about the amount of training given to case workers deciding applications from unaccompanied or separated children.



Recommendations

- **10.1** Every unaccompanied or separated child should be provided with a legal guardian to accompany him or her to any asylum interview.
- **10.2** In the absence of the appointment of a legal guardian, “responsible adults” should they have had the appropriate training and experience and should normally either be local authority social workers or key workers or advocates employed by a non-governmental organization working with unaccompanied or separated children.
- **10.3** Legal representatives should not be asked to “double” as a “responsible adult” as they have an important and distinct role to perform at the asylum interview.
- **10.4** The role of the legal guardian (or “responsible adult” in the absence of the appointment of a legal guardian) should be to ensure that the child’s best interests are met during the asylum interview.
- **10.5** Unaccompanied or separated children should always be provided with an independent interpreter at an interview to ensure the accuracy of interpretation provided by the Home Office and also to ensure that the child’s legal representative can remind the child of the function and format of the interview just before it takes place. It is also important to have an independent interpreter present to reassure the child or answer any questions he or she may have immediately after the interview finishes.
- **10.6** The Advisory Panel on Country Information should undertake an audit of all Country Information and Policy Unit reports in conjunction with the Refugee Children’s Consortium, to check their relevance and accuracy in relation to unaccompanied or separated children.
- **10.7** All Immigration and Nationality Directorate case workers should be provided with training and have to pass an accreditation exam equivalent to that set by the Law Society/Legal Services Commission in its Accreditation Scheme for legal representatives⁴⁰ before they can assess any application from an unaccompanied or separated child.
- **10.8** This accreditation should include a component specific to applications from unaccompanied or separated children, which should be devised after consultation with the Immigration Law Practitioners’ Association (ILPA) and the Refugee Children’s Consortium and take into account recommendations already made by the UNHCR,⁴¹ the Separated Children in Europe Programme⁴² and ILPA.⁴³
- **10.9** Immigration and Nationality Directorate case workers should be obliged to seek expert evidence if the CIPU report in question does not contain sufficient objective evidence on which to adequately assess an application from an unaccompanied or separated child.
- **10.10** Case workers should not be required to decide 80% of applications from unaccompanied or separated children within two months. Instead they should be required to ensure that a decision is only taken once any age disputes have been resolved, any necessary expert evidence has been obtained, and the unaccompanied or separated child has had time to disclose as full an account as possible of his or her fear of persecution. Once this has been done, a one month target for deciding the application should be imposed.



Chapter 11

Outcomes of Asylum Applications

Low success rate of asylum being granted without appeal

Very few unaccompanied or separated children are granted asylum after an initial consideration by a case worker in the Immigration and Nationality Directorate. Remarkably, despite children's heightened protection needs, overall fewer children than adults are granted asylum.

Family reunification

Family reunification is a significant area of discrimination against unaccompanied or separated children granted refugee status. The Family Reunion policy for refugees does not apply to family members of unaccompanied or separated children. Their parents or siblings can apply for leave to enter but such an application is only likely to succeed in extremely compelling or compassionate circumstances.⁴⁴ The U.K. Government provides no justification for

not granting unaccompanied or separated children the same right to family reunion with their immediate family as adults. Nor does it explain how this discrimination is in keeping with the spirit of the Convention relating to the Status of Refugees or the Principle of Family Unity, which does not distinguish between adult and minor refugees.

Non-compliance based refusals

Between 2002 and 2004, there were a "significant number" of refusals (9–11%) of children's asylum applications based upon "non-compliance" grounds (failing to attend a screening interview or to complete or return a Children's Statement of Evidence Form within 28 days). Prior refusals have an adverse effect during a subsequent appeal hearing, even when the initial failure is due to incompetence or inefficiency on the part of the legal representatives or local authority. More recently, the policy of the Immigration and Nationality Directorate is to only refuse applications on non-compliance grounds where an unaccompanied or separated child has "failed, without reasonable explanation, to make a

prompt and full disclosure of material facts” and “[to make] every effort...to contact the child via social services or the child’s legal representatives.” This non-compliance refusal does not prevent the child from appealing; but it does deprive the child, and the legal representative, of any knowledge of the case, particularly details of the Government’s response to the child’s account of persecution that the Secretary of State will put forward at appeal hearings.

Refusals after substantive consideration

Despite the many improvements to the processing of children’s asylum applications, the vast majority are refused. Guidance given to case workers states that children are to be given the “benefit of the doubt” concerning knowledge of the situation in their countries of origin, yet the majority of refusals demonstrate that the same standard of proof is applied in children and adults’ cases.

Alternative protection: Considerations based on age and circumstance

If a case worker refuses an unaccompanied or separated child’s application for asylum it is standard practice to consider whether another basis exists for granting leave to remain in the U.K. Since April 2003 Humanitarian Protection has been available for unaccompanied or separated children refused asylum but who would face a serious risk to life or safety if returned to their country of origin. While it is not possible to ascertain the precise basis upon which any unaccompanied or separated child has been granted such protection, it is clear that very few unaccompanied or separated children have been afforded it (in 2003, 0.3% of cases).

Potential human rights violations

Prior to 1 April 2003, unaccompanied or separated children were entitled to exceptional leave to remain if they were at risk of human rights violations upon

return to the country of origin or merely because they were minors. A pervasive misconception amongst less experienced legal representatives and social services departments is that children were granted exceptional leave *in recognition of a need for international protection on human rights grounds* and will have this leave extended at a later date (as is typically the case with adults). In reality, the vast majority of exceptional leave to children were granted on the basis of age alone (up to 18 years), limiting their permission to remain to their 18th birthday. When unaccompanied or separated children apply for further exceptional leave which will extend past their 18th birthday, the applications are generally refused. For example in 2005 only five out of 275 unaccompanied or separated children who applied to extend their discretionary leave past the age of 18 were granted such leave.

Leave for family circumstance

Exceptional or discretionary leave was and is also granted to a small but distinct group of unaccompanied or separated children who have never claimed asylum but who have protection needs, which arise from their own family situation (the children may have become orphans while living in the U.K.). When the family/caregiver circumstances break down, social services become alerted to the fact that the child has no continuing leave to remain in the U.K. In the past these children were usually given indefinite leave to remain if they could not be safely returned to their families. This practice has changed and more recently these children have been granted short periods of discretionary leave.

Voluntary returns: Ensuring adequate reception in country of child’s origin

Despite the Immigration Act 1971, which provided immigration officers with the power to remove illegal entrants, including unaccompanied or separated

children, or anyone who had been refused leave to enter the U.K., the policy of the Immigration and Nationality Directorate has so far been that no refused child asylum seeker would be removed from the U.K. unless there were adequate reception and care arrangements in place in the country to which the child was to be removed. In practice no steps were generally taken to investigate whether adequate reception and care arrangements were available in the child's country of origin and children were not removed. Children refused asylum but granted leave to remain until they were 18 could potentially be returned to their country of origin when they become 18.

Forced returns to country of origin

In 2004 the Immigration and Nationality Directorate reduced the period of discretionary leave, particularly from non-suspensive appeals designated countries. Children refused asylum and Humanitarian Protection are to be removed when safe reception and care arrangements can be established in respective home countries. The Immigration and Nationality Directorate has stated that the best interests of the unaccompanied or separated child will always be an important consideration in any decision on removal, but that this will not take precedence over the need to maintain effective immigration control. There is grave concern about the proposal to return children to potentially dangerous circumstances or regions without adequate investigation into the specifics surrounding return in each case.

Recommendations

- **11.1** The Immigration and Nationality Directorate should — in conjunction with the UNHCR (London), the Immigration Law Practitioners' Association and the Refugee Children's Consortium — establish an enquiry into the sustain-

ability of the asylum decisions previously made in relation to applications from unaccompanied or separated children.

- **11.2** The Immigration Rules HC 395 should be amended to enable the parents or legal and/or customary caregivers and siblings of an unaccompanied or separated child to apply for leave to enter to join an unaccompanied or separated child as soon as he or she has been granted refugee status and the child should not be required to show that he or she can maintain or accommodate them without recourse to public funds.
- **11.3** No unaccompanied or separated child should be returned to his or her country of origin until the child's application for asylum has been fully assessed in compliance with the recommendations contained in this report.





- **11.4** No unaccompanied or separated child should be returned to his or her country of origin unless the child has had the opportunity to appeal any decision to refuse him or her asylum.
- **11.5** No unaccompanied or separated child shall be returned to his or her country of origin until a full assessment of the child's needs has been undertaken in line with the guidance contained in *Protecting Children: A Guide for Social Workers undertaking a Comprehensive Assessment*, Department of Health (1988). This assessment must include meetings with—and an assessment of the capabilities of—the child's parents or legal or customary caregivers in his or her country of origin.
- **11.6** No steps should be taken to return an unaccompanied or separated child to his or her country of origin by force unless the child's parents or legal or customary caregivers have been traced and they have been found to be capable and willing to provide the child with a home life which meets his or her needs.

Chapter 12

Appeals: Right to Appeal and Representation

Restriction of appeal rights

The research has identified an increasing restriction of children's appeal rights over the research period. Statutory provisions and a misunderstanding of the legal implications of discretionary leave to remain detrimentally impact children's access to appeal.

Restricted access to appeal

An unaccompanied or separated child who now wants to challenge the dismissal of a first instance appeal before an immigration judge must now request a reconsideration of this decision in writing from the Asylum and Immigration Tribunal, or if refused, from the High Court; a cumbersome process. Access to a reconsideration is further restricted by changes to the funding system where grants of controlled legal representation are now retrospective and depend on the outcome of the reconsideration.

Specifically disadvantaged groups of children

Children who are subject to Dublin II rules⁴⁵ are not even permitted to apply for asylum in the U.K. — and so no right of appeal can arise. Likewise, children who arrive in the U.K. claiming asylum from a country which has been certified “safe,” (under section 94 of the Nationality, Immigration and Asylum Act 2002), will automatically have their claim deemed unfounded. This decision can only be challenged by judicial review to the High Court, on the specific issue of whether the country is in fact generally safe. Children who have been granted discretionary leave to remain in the U.K. for a period of up to one year are also unable to appeal against a decision to refuse asylum.⁴⁶ This rule deprives all 17-year-olds granted discretionary leave to remain until their 18th birthday of a right to



appeal. The Asylum Policy Unit has standardized the granting of discretionary leave for 12 months — or until the child reaches 18 (whichever is shorter) for a list of countries⁴⁷ and has therefore effectively removed the right to appeal on human rights grounds for children from these countries.⁴⁸

Discretionary leave mistaken for grant of refugee protection

Some legal representatives, foster parents, and social workers have the mistaken belief that discretionary leave amounts to recognition of the child's need for international protection. Appeals are not pursued where advisers fear that the child may lose their discretionary leave to remain if an adverse finding of credibility is made during the appeal. There is a belief that discretionary leave will be extended into adulthood when in fact the grounds of discretionary leave are specific to the status of childhood.

Ignorance in relation to child specific persecution

A failure of some legal representatives to provide a child specific framework for analysis of children's cases has been recognized. In only a handful of the

cases reviewed was child specific persecution relied upon. It is suggested that this is reflective of a dearth of training about child specific persecution and representing unaccompanied or separated children.

Age disputes and the appeal process

Age disputes continue to have repercussions throughout the appeal stages. It is probable that a significant minority of unaccompanied or separated children have been wrongly treated as adults throughout the asylum determination process. Despite the guidance of the courts⁴⁹ and the Chief Adjudicator,⁵⁰ there remains a lack of conformity in the determination of age during appeal hearings, with many adjudicators still relying on physical appearance as the sole determinant. Medical evidence is at times accepted but at others rejected. The children's own testimony or the opinion of the allocated social worker sometimes informs the decision. The failure of adjudicators to follow official guidance is of concern given that an adverse finding on age often leads to an adverse finding in relation to other aspects of the unaccompanied or separated child's claim.

Recommendations

- **12.1** Every unaccompanied or separated child who is refused asylum should be granted an immediate right of appeal against that decision.
- **12.2** No unaccompanied or separated child should be removed from the U.K. until he or she has been able to exercise that right of appeal and to have that appeal fully determined at all levels of the appellate structure.
- **12.3** Any unaccompanied or separated child who has arrived in the U.K. and claimed asylum should have his or her application considered and should be granted an in country right of appeal even if he or she is potentially subject to Dublin II.
- **12.4** The Department of Constitutional Affairs in consultation with the Legal Services Commission and the Law Society should establish a Children's Panel for legal representatives wishing to represent unaccompanied or separated children, whose members will be paid enhanced rates.
- **12.5** The Department of Constitutional Affairs in consultation with the Immigration Law Practitioners' Association and the Refugee Children's Consortium shall establish an independent Review to consider the availability and effectiveness of legal representation and other forms of independent advocacy for unaccompanied or separated children.
- **12.6** The Law Society and the Legal Services Commission should include a module on representing unaccompanied children in the curriculum for the Immigration Accreditation Process.
- **12.7** The Legal Services Commission should permit a tolerance of 15% where solicitors are representing unaccompanied or separated children.
- **12.8** The revised merits test for Controlled Legal Representation should also apply to former or age disputed unaccompanied or separated children.
- **12.9** The Department of Constitutional Affairs should arrange appropriate training for all Immigration Judges, Designated Judges, or Senior Immigration Judges who hear appeals from unaccompanied or separated children or from disputed age unaccompanied or separated children.
- **12.10** The resolution of an age dispute should be treated as a preliminary issue in an asylum appeal and if the evidence indicates that an unaccompanied or separated child has been wrongfully treated as an adult, the Secretary of State for the Home Department should be asked to re-determine his or her initial application according to the appropriate guidelines.

Chapter 13

Appeals: Processes and Outcomes

Child friendly environment

Child friendly environments during the adjudication process have been officially encouraged since 2004.⁵¹ Suggestions to create a less intimidating atmosphere include adjudicators sitting around a table with the child or moving the hearing to their chambers, and the requirement to consider the appropriateness of cross examination of the child. Despite such guidance there is little evidence that adjudicators or immigration judges did alter the way they conducted children's appeals. Children as young as 13 were permitted to give evidence

and adjudicators rarely prevented the child from being cross examined by Home Office Presenting Officers.

Child centred decision making

Of great concern is the finding that even where the atmosphere of the hearing may have been more child friendly, the majority of adjudicators did not adopt a child centred framework when arriving at decisions. Scarce consideration was given to a child's difficulty in remembering detailed circumstances relating to their departure or travel. Adjudicators often failed to apply the benefit of the doubt — in breach of the Chief Adjudicator's Guidance⁵² and the Immigration Rules.⁵³ There is concern that adjudicators have failed to take children's appeals as seriously as adults because they have already been granted discretionary leave to remain until they reach 18. Specific training of adjudicators on issues relating to unaccompanied and separated children's appeals was only introduced in 2005. However it was only one case study within a more general training course.

Role of home office presenting officers

Where an unaccompanied or separated child is not legally represented at the appeal the Home Office Presenting Officers (HOPOs) play a crucial role. There has been considerable resistance from HOPOs to differentiate between adults and unaccompanied or separated children, with cross examination of the children regularly requested and allowed. HOPOs have expected children as young as nine to give evidence.⁵⁴

Immigration Appeal Tribunal

Prior to the reform of the Immigration Appeal Tribunal (IAT) into a single tier, an appeal could be made to a three person tribunal which could provide legal guidance to adjudicators. This system operated for 12 years but no records relating to the appeals of

unaccompanied or separated children were maintained. Though a theoretical right of appeal exists to the Court of Appeal and House of Lords there have been no reported decisions of substantive asylum appeals by unaccompanied or separated children. Following the reform to the IAT, the Immigration Judges will have a pivotal role in decision making.

Recommendations

- **13.1** The Home Office in conjunction with UNHCR, the Refugee Children's Consortium and the Immigration Law Practitioners' Association should devise a course to prepare Home Office Presenting Officers for representing the Secretary of State for the Home Department at appeals by unaccompanied or separated children.
- **13.2** The Home Office should ensure that no Home Office Presenting Officer is allocated an appeal by an unaccompanied or separated child until he or she has attended any such course.
- **13.3** The Home Office should prepare written guidance for Home Office Presenting Officers on how to represent the Secretary of State for the Home Department at appeals by unaccompanied or separated children in compliance with best practice as established by UNHCR, the Separated Children in Europe programme, and the Immigration Law Practitioners' Association.
- **13.4** The Department of Constitutional Affairs and the Home Office should collect statistics about the number of unaccompanied or separated children appealing against an initial refusal to grant them asylum, the grounds upon which such appeals were brought, and the outcome of these reports and the basis upon which they were allowed or dismissed.



Endnotes

- 1 It is no longer possible to apply for asylum by post — all applicants now have to attend to be screened.
- 2 Figures presented to the UASC's User Group for UASC nationalities where females account for more than 50% of applicants and from which the U.K. has received more than 10 female applications.
- 3 See The Channel Tunnel (International Arrangements) Order 1993 SI 1993/1813; the Channel Tunnel (Miscellaneous Provisions) Order 1994 SI 1994/1405; and the Nationality, Immigration and Asylum (Juxtaposed Controls) Order 2003 SI 2003/2818.
- 4 Under para 316A of the Immigration Rules HC 395.
- 5 Under para 40 of the Immigration Rules HC 395.
- 6 See the chapter on trafficking to be added to the U.K. Immigration Service's *Best Practice : Unaccompanied Minors : Unaccompanied asylum and non asylum seeking children*.
- 7 UK Immigration Service. *Best Practice Unaccompanied Children : Unaccompanied asylum or non asylum seeking children*. 1 January 2004. Para 5.1.
- 8 Comment by Lisa Nandy, the Children's Society, 2005.
- 9 Ibid, Endnote 7, para 1.1.
- 10 A procedure where nationals of certain countries are detained at Oakington Reception Centre for around a week whilst an initial decision is reached in relation to their asylum applications.
- 11 A procedure where male asylum seekers from certain countries are detained at an immigration removal centre whilst an initial decision is reached on their asylum applications within five days, and an accelerated appeal hearing is then heard within the centre itself.
- 12 A centre used to detain adults and accompanied children for periods of between seven and 10 days in order to consider their applications for asylum using an accelerated determination procedure.
- 13 A five-day process for assessing the initial asylum application with an expedited appeal hearing conducted within the removal centre.
- 14 Under para 16 of Schedule 2 to the Immigration Act 1971 if he or she fell within a category of person deemed to be suitable for detention.
- 15 There was also at least one instance of an age disputed unaccompanied or separated child being detained in the high security unit there. Interview with Heather Violett, Immigration Advisory Service Team Leader at Oakington Reception Centre, 2004.
- 16 If a child had previously been the responsibility of another local authority, it will resume responsibility for that child. If no local authority has been involved, the local authority undertaking the age assessment will assume responsibility.
- 17 Information provided by Adrian Matthews, Children's Legal Centre, 2004.
- 18 Which came into force on 22 September 2004.
- 19 At college doing the equivalent of A levels or HND courses.
- 20 A coalition of non-governmental organizations working to support either children or asylum seekers and/or refugees.
- 21 Cm 5860 (September 2003).



- 22 Information provided by Ailish King Fisher, Assistant Director, Children and Family Asylum Policy Team, Asylum Appeal Policy Directorate, 2004.
- 23 By the Refugee Children's Consortium, who believe that unaccompanied children must be guaranteed the right to the assistance of a guardian when instructing a legal representative and throughout the asylum determination process, in their Parliamentary Briefing for a debate which took place in parliament on 23 February 2005 in response to the Government's Five Year Strategy for asylum and immigration, "Controlling Our Borders: Making migration work for Britain."
- 24 A number of other changes were made to ensure compliance with this Directive.
- 25 Many parents appear to have lied to their children in order to persuade them to leave without them and ensure that they agree to go when the parent his or herself cannot leave for political or practical reasons.
- 26 Where there was a local enforcement office unaccompanied or separated children were encouraged to apply there. In places such as Norwich this enabled a good relationship to be established between the local authority accommodating the unaccompanied or separated child and the immigration officers at the local enforcement office. It also meant that social services could assess the child's needs and his or her age before the application for asylum was even made.
- 27 Level 2 & 3 Screening Forms are currently rarely used. Level 2 forms were previously used to ascertain whether an adult or age disputed child had claimed asylum as soon as reasonably practicable for the purposes of s55 of the Nationality, Immigration and Asylum Act 2002. Level 3 forms were used when there was concern about trafficking or other criminality.
- 28 Letter to ILPA from IND, 22 December 2003.
- 29 Operational Processes. *Processing Applications from Children*, C5, "Special Types of Cases," para 7.2.
- 30 Comment by the U.K. Country Coordinator based on comments by unaccompanied or separated children she had represented.
- 31 Views provided by legal representatives with children in their case load.

- 32 It was produced by the Asylum Processing and Procedures Unit in consultation with operational and policy staff and Home Office legal advisers. No external organizations were consulted.
- 33 In contrast, the accompanying Completion Notes are available in 34 different languages.
- 34 What training there is has been provided historically by the ILPA and a small number of lawyers involved in *Putting Children First: A Guide for Immigration Practitioners*, Legal Action Group, 2002 and *Working with children and young people subject to immigration control: Guidelines for best practice*, ILPA, 2004.
- 35 See Chapter 8.
- 36 Immigration Rules HC 395, para 352.
- 37 Although the Home Office states that it uses strict criteria when employing interpreters, legal representatives regularly comment on the lack of linguistic ability of many of the interpreters used. They often lack the vocabulary to deal with political concepts and do not convey more subtle meanings or translate into full and stylistically correct English sentences.
- 38 This policy has varied over the years as the IND has been reorganized and then reorganized again. There were originally two or more children's teams which were then broken up and case workers assigned to generic teams. More recently they have been re-formed. There are now two teams with 20 case workers in each team based in London and in Liverpool. There is also another team in London which can be called upon to meet additional demand. It has not been possible to ascertain whether the separated children referred to in this research had their applications determined by a dedicated case worker.
- 39 Immigration Rules HC 395, para 351.
- 40 This is also a recommendation made by UNHCR in London as a result of its Quality Initiative Project, in which it reviewed 2% of all initial decisions made by the IND between May 2004 and January 2005.
- 41 UNHCR. *Handbook on Procedures and Criteria for Determining Refugee Status*. 1992.
- 42 Separated Children in Europe Programme. *Statement of Good Practice*. October 2004.
- 43 ILPA. *Working with children and young people subject to immigration control: Guidelines for best practice*. November 2004.
- 44 IND. "Unaccompanied Asylum Seeking Children Information Note" Draft. 2004. Para 13.
- 45 Who have already applied for asylum in another European country and who are without a parent or legal guardian present in the U.K. and have not been permitted to make an asylum appeal on humanitarian grounds.
- 46 Nationality, Immigration and Asylum Act 2002, s83.
- 47 From 1 October 2004 countries included: Albania, Bangladesh, Bulgaria, Jamaica, Macedonia, Moldova, Romania, Serbia and Montenegro (which includes Kosovo), and Sri Lanka (Bangladesh was removed from the list in 2005). As of August 2005 non-suspensive countries were also added to the list including Brazil, Bolivia, Ecuador, India, South Africa, and Ukraine. Mongolia, Ghana, and Nigeria became non-suspensive appeals countries on 24 October 2005.
- 48 To qualify for protection under the ECHR, the child would have to show that a breach of rights was imminent, which would be impossible because of the discretionary leave.
- 49 *R on the application of B v. the London Borough of Merton* [2003] EWHC 1689 (Admin).
- 50 Adjudicator Guidance Note No. 8. *Unaccompanied Children*. April 2004. Para 3.4, stating that "Where the age of the child is in dispute, [you should] consider making directions for appropriate expert evidence."
- 51 Ibid, Endnote 50, para 4.4.
- 52 Ibid, Endnote 50, para 5.4.
- 53 Immigration Rules HC 395, para 351.
- 54 Information provided by Margaret Phelan, Barrister at Renaissance Chambers.

Glossary of Terms

ADSS = Association of Directors of Social Services

AIT = Asylum and Immigration Tribunal

APU = Asylum Policy Unit

ASU = Asylum Screening Unit

BAAF = British Association for Adoption and Fostering

BID = Bail for Immigration Detainees

CIPU = Country Information and Policy Unit

CRC = United Nations Convention on the Rights of the Child

DRC = Democratic Republic of Congo

ECHR = European Convention on Human Rights

EEC = European Economic Area

ELR = Exceptional Leave to Remain

FGM = Female Genital Mutilation

HOPO = Home Office Presenting Officer

IAS = Immigration Advisory Service

IAT = Immigration Appeal Tribunal

ICMC = International Catholic Migration Commission

ILPA = Immigration Law Practitioners' Association

IND = Immigration and Nationality Directorate

IOM = International Organization for Migration

LAC = Local Authority Circular

NASS = National Asylum Support Service

NGO = Non-Governmental Organization

NSA = Non-Suspensive Appeal

NSPCC = National Society for the Prevention of Cruelty to Children

RCC = Refugee Children's Consortium

SEF = Statement of Evidence Form

UASC = Unaccompanied Asylum Seeking Children

UN = United Nations

UNHCR = United Nations High Commissioner for Refugees

UNICEF = United Nations International Emergency Fund

The Refugee Convention

United Nations Convention relating to the Status of Refugees 1951 (as amended)

Smuggling Protocol

Protocol Against the Smuggling of Migrants by Land, Sea and Air

Trafficking Protocol

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

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