



# ALWAYS MIGRANTS SOMETIMES CHILDREN

A MAPPING OF THE RECEPTION AND PROTECTION OF UNACCOMPANIED CHILDREN IN THE UNITED KINGDOM



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# ACRONYMS AND ABBREVIATIONS

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<b>ACPO</b>	–	Association of Chief Police Officers
<b>ADCS</b>	–	Association of Directors of Children’s Services
<b>AFRUCA</b>	–	Africans Unite Against Child Abuse
<b>APPG</b>	–	All Party Parliamentary Group; these groups bring together Members of Parliament from all parties to address specific topics
<b>ATMG</b>	–	the Anti-Trafficking Monitoring Group, a coalition of non-governmental organisations established to monitor compliance with the Council of Europe’s Convention against Trafficking
<b>BAAF</b>	–	British Association for Adoption and Fostering
<b>Baswo</b>	–	Black Association of Women Step Out (an NGO based in Wales)
<b>BID</b>	–	Bail for Immigration Detainees
<b>B &amp; B</b>	–	Bed and Breakfast private overnight accommodation, often in a hotel
<b>CAFCASS</b>	–	Children and Family Court Advisory and Support Service, statutory body designed to assist in care, contact and adoption proceedings to assess and promote the best interests of the child
<b>CPS</b>	–	Crown Prosecution Service
<b>CTAC</b>	–	Child Trafficking Advice Centre, run by the charity the NSPCC
<b>DfE</b>	–	Department for Education, government department with responsibility for education policy and practice
<b>ECHR</b>	–	European Convention of Human Rights
<b>ECPAT UK</b>	–	End Child Prostitution and Child Pornography and Trafficking of Children for Sexual Purposes (UK)
<b>ECRE</b>	–	European Council on Refugee and Exiles (originally stood for End Child Prostitution in Asian Tourism)
<b>ERPUM</b>	–	European Return Platform for Unaccompanied Minors
<b>G4S</b>	–	a private security company, previously Group 4 Securicor, which tenders for government contracts to run services with a public function, from immigration removals to detention centres
<b>GLA</b>	–	Gangmasters Licensing Authority
<b>GP</b>	–	General Practitioner; doctors providing primary, entry-point medical care
<b>IAGCI</b>	–	Independent Advisory Group on Country Information, which advises on the content of UKBA Country of Origin information

<b>ILPA</b> –	Immigration Law Practitioners Association
<b>IRO</b> –	Independent Reviewing Officer; an independent partner involved with care planning for looked after children alongside the local authority’s social workers
<b>LASPO</b> –	Legal Aid Sentencing and Punishment of Offenders Act 2012
<b>MARAC</b> –	Multi-agency Risk Assessment Conference
<b>MASH</b> –	Multi-Agency Safeguarding Hub; bring together actors from police, health, education and local authorities to share information on individual cases
<b>MP</b> –	Member of Parliament
<b>NAGALRO</b> –	The Professional Association for Children’s Guardians, Family Court Reporters and Independent Social Workers
<b>NCA</b> –	the National Crime Agency, which runs the UK Missing Person’s Bureau and the UK Human Trafficking Centre
<b>NGO</b> –	non-governmental association
<b>NHS</b> –	National Health Service, publicly funded healthcare
<b>NSPCC</b> –	National Society for the Prevention of Cruelty to Children, a UK children’s charity
<b>OCC</b> –	Office of the Children’s Commissioner for England
<b>OFSTED</b> –	Office for Standards in Education, Children’s Services and Skills
<b>OISC</b> –	Office of the Immigration Services Commissioner
<b>OSCE</b> –	the Organisation for Security and Co-Operation in Europe
<b>OFSTED</b> –	Office for Standards in Education, Children’s Services and Skills; the monitoring body for education and childcare services
<b>Reflex</b> –	a multi-agency taskforce on organised immigration crime
<b>SOCA</b> –	Serious Organised Crime Agency
<b>UKBA</b> –	the UK Border Agency, succeeded by the UK Border Force and UK Visas and Immigration
<b>UKHTC</b> –	UK Human Trafficking Centre; works with the National Crime Agency to take a strategic approach to trafficking as organised crime and as part of the National Referral Mechanism to identify victims of trafficking

# GLOSSARY

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<b>Achieving Best Evidence interview</b> –	interviews with children and vulnerable witnesses which are recorded in the presence of a specially trained social worker and police officer for use later in the investigation and/or prosecution
<b>Asylum Screening Unit</b> –	at the outset of an international protection case the Asylum Screening Unit undertake an initial interview for UK Visas and Immigration
<b>Barrister</b> –	a court advocate and lawyer regulated by the Bar Standards Board
<b>Benefit fraud</b> –	intentional falsehood, i.e. using a false identity, in order to obtain social security benefits to which one is otherwise not entitled
<b>Bill</b> –	before an Act of Parliament becomes law it passes through Parliament for scrutiny in the form of a Bill
<b>Bio-data</b> –	distinctive personal information, in particular finger prints, but in other policing contexts also retina scans and DNA
<b>Borough</b> –	an administrative division, usually linked with a local authority area with a local Council
<b>Cannabis farms</b> –	illegal high-intensity cannabis growing facilities, often in adapted domestic houses, to which young people may be trafficked to tend the plants or oversee the premises
<b>Civil society</b> –	non governmental organisations and institutions that are distinct from government and business
<b>Country guidance cases</b> –	
<b>Cross bencher</b> –	a member of the House of Lords who is not aligned to any political party
<b>Cross-party</b> –	involving all political parties
<b>Debt bondage</b> –	forced labour where a person pledges to work as security for or to repay a debt
<b>Enhanced CRB checks</b> –	now also known as DBS checks, these are police checks carried out which disclose previous convictions for people who intend to work with vulnerable adults or children
<b>Fast track procedure</b> –	an administrative fast track for some protection claimants – rarely children – where an applicant may be detained while their case is decided
<b>Foster care</b> –	where an unaccompanied or separated child is placed in a private home with a certified carer, either by the local authority or through a private fostering arrangement
<b>Freedom of Information request</b> –	under the Freedom of Information Act 2000 which entitles an individual to have access to recorded information held by a public sector organisation

<b>Government departments</b> –	teams that operate under the direction of government ministers to carry out the executive, administrative and policy aspects of government
<b>Guardian ad litem</b> –	a court appointed independent guardian, usually appointed to avoid a potential conflict of interest between a child and their parents
<b>Home study report</b> –	an assessment carried out by a social worker as part of the adoption process
<b>House of Commons</b> –	the first of the Houses of Parliament, made up of 650 elected Members of Parliament who consider and propose new legislation
<b>House of Lords</b> –	the second of the Houses of Parliament, shares the role of making and shaping laws by acting as a house of experts to scrutinise legislation
<b>Istanbul Protocol</b> –	UN Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>Judicial College</b> –	College established by national governments to provide training for judges and members of legal tribunals
<b>Juju ceremony</b> –	rituals predominantly undertaken in West Africa which can be used as a control mechanism by traffickers, to lead trafficking victims to believe they will be cursed if they try to escape
<b>Key worker</b> –	usually a local authority employee who is a child’s main point of contact
<b>Kinship care</b> –	where a relative, who is not the child’s birth parent, cares for a child
<b>Leave to remain</b> –	immigration permission to reside in the UK
<b>Leaving care support</b> –	where a looked after child (who is or has spent time in the care of the local authority) reaches 18 they are entitled to ongoing support and assistance
<b>National Police Improvement Agency</b> –	closed in 2013 this agency was previously responsible for reviewing police processes and procedures and identifying best practice
<b>Parental responsibility</b> –	birth mothers and those other people set down by law who are entitled to parental rights and responsibilities for a child
<b>Parliamentarians</b> –	Members of Parliament
<b>Peers</b> –	members of the House of Lords
<b>Pilot</b> –	an experimental project that may result in wider reaching change subject to a positive evaluation
<b>Prima facie</b> –	a Latin expression used to signify that ‘on first examination’ evidence appears a certain way, subject to later rebuttal
<b>Private fostering</b> –	a child care placement in a private home other than that arranged by the local authority, for example often arranged by a child’s relatives

<b>Semi-Independent Unit</b> –	a children’s home where staff members are available, but young people are encouraged to develop independent living skills by predominantly caring for themselves
<b>Social work assistant</b> –	an employee or agency worker who assists qualified social workers
<b>Solicitor</b> –	a lawyer who conducts litigation and is regulated by the Solicitor’s Regulation Authority
<b>Special needs</b> –	a requirement for additional support, usually due to a disability and/or learning difficulty
<b>Subject access request</b> –	a request for personal information under the Data Protection Act 1998
<b>Supported lodgings</b> –	designed to be supportive accommodation with an approved provider to allow care leavers to develop the independent living skills they need to enter adulthood successfully
<b>Supported housing</b> –	schemes run to allow vulnerable people to live in the community, often as short term schemes to transition into mainstream housing, e.g. often for adults with disabilities, substance abuse issues or who are fleeing domestic abuse
<b>Third Country Unit</b> –	in Dublin Convention cases, and certain third country immigration removals, these Units manage cases for UK Visas and Immigration
<b>UK Human Trafficking Centre</b> –	works under the National Crime Agency to combat trafficking as organised crime and as a Competent Authority for the trafficking National Referral Mechanism – the UK’s mechanism for identifying victims of trafficking following the requirements of the Council of Europe Trafficking Convention
<b>Unaccompanied migrant child</b> –	a migrant who is under the age of 18 and either not in the care of a parent or legal guardian at the time of entry, left unaccompanied after entry or who does not have a family member or legal guardian willing or able to care for them in the arrival country
<b>Welfare benefits</b> –	mainstream national social security benefits, such as unemployment benefits to subsidise basic accommodation and subsistence



# EXECUTIVE SUMMARY

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In the year ending in March 2014, 1,288 unaccompanied migrant children applied for asylum in the United Kingdom. This was a significant decrease from a high point in 2002, when 6,200 of these children applied for asylum. However, at the same time actors have become more expert in identifying children who have been trafficked into the United Kingdom. In addition, the potential scale of the numbers of undocumented unaccompanied migrant children living in the United Kingdom has become a little clearer. This report has addressed the needs of all of these groups of children.

The situation in the United Kingdom is also made more complex by the fact that there are three separate devolved administrations in the United Kingdom, which take the form of a Welsh Assembly, a Scottish Parliament and a Northern Ireland Assembly. They are responsible for policing and children's services, whilst the United Kingdom parliament remains responsible for immigration control. Scotland and Northern Ireland also have separate court systems. At the same time, civil society is very active on issues relating to unaccompanied and trafficked migrant children and its campaigns have had a direct effect on legislation and policy development. There are also a number of statutory and informal bodies and meetings which include representatives from NGOs and have benefitted from their particular expertise.

All jurisdictions within the UK respect the obligations contained in the UN Convention on the Rights of the Child. But it is only in the Welsh Assembly that ministers are obliged to have due regard to the UNCRC when exercising any of their ministerial functions, even when these are financial.

The report was written at a time of considerable change in relation to the identification of and response to trafficked children. A Modern Slavery Bill, which will apply in England and Wales, is being debated in the UK Parliament. Draft bills are also under discussion in the Scottish parliament and the Northern Ireland Assembly. The UK government has established a trial for child advocates for trafficking children in 23 local authority areas in England and is reviewing the National Referral Mechanism, which operates for trafficked children throughout the UK.

The research for the report identified that actors in the UK are increasingly aware that unaccompanied migrant children are trafficked and exploited for a wide range of reasons and not just for sexual exploitation. This has led to a better understanding of the complex needs of children who have been trafficked to be exploited for the purposes of, for example, street crime, cannabis factories and benefit fraud.

The general concern in the UK about child sexual exploitation has also led to a greater awareness of the large number of unaccompanied and trafficked migrant children who go missing from care. This in turn has led to a successful pilot project which suggests that children will be better protected from all forms of exploitation if they are placed in specialist foster care, as opposed to children's homes. Multi-agency Safeguarding Hubs are also being established in local authority areas in England and Wales, which co-locate key child protection actors, police officers, social and health care workers and representatives from education and probation services. These work in tandem with Local Safeguarding Children Boards in England and Wales. Similar work is being undertaken by Child Protection Committees in Scotland and the National Safeguarding Board in Northern Ireland.

UK Visas and Immigration is responsible for deciding on whether unaccompanied migrant children are entitled to leave to remain in the United Kingdom. The same process is used to decide whether they are entitled to refugee status, Humanitarian Protection, protection under the European Convention on Human Rights or leave on compassionate grounds. In practice, relatively few unaccompanied migrant children are granted asylum or

Humanitarian Protection and the majority are merely granted leave to the age of 17 ½ on the basis of their being children. The process does not address their needs for a durable solution which would address all of their needs under the UNCRC.

As unaccompanied migrant children are not provided with legal guardians, lawyers have to play a pivotal role in ensuring that these children obtain appropriate accommodation and support and that their applications for international protection are properly made. As a consequence, lawyers play an unusually prominent role in information-gathering and challenges to statutory bodies caring for these children.

A large amount of research has been undertaken in the UK in relation to deficits in the determination process, which have had an adverse impact on unaccompanied migrant children. There is also an on-going dialogue between UK Visas and Immigration and lawyers and NGOs at stake-holders meetings about how to improve the process.

This process is assisted by the developments being made in the Family Court and in criminal proceedings to ensure that children and other vulnerable parties can better participate in legal and judicial proceedings. This is an on-going process and some of the developments are reflected in the UK Tool on *Standards to Ensure that Unaccompanied Migrant Children are able to Fully Participate: A Tool to Assist Actors in Legal and Judicial Proceedings*.

## **CHAPTER I: INTRODUCTION**

**I.0** This UK report is part of the EU funded CONNECT project and considers the roles and responsibilities of actors, and the ways in which they work together, to respond to the situation of unaccompanied children of third country origin in England, Wales, Scotland and Northern Ireland.

### **BACKGROUND TO THE PROJECT**

**I.1** Save the Children Sweden together with UNHCR's Bureau for Europe, NIDOS in the Netherlands, Coram Children's Legal Centre in the UK, Save the Children Italy, Don Calabria, the Italian Ministry of Labour and Social Policies in Italy and the County Administration in Västra Götaland in Sweden, have received funding from the EU for a 12 month project, ending in September 2014. In the UK Garden Court Chambers have been the main implementing partner.

**I.2** The CONNECT Project concerns reception, protection and integration policies for unaccompanied children. It is funded by the EU under a call for proposals for pilot projects on unaccompanied minors (2012), the funds for which had been allocated by the European Parliament. The CONNECT project focuses on how actors work individually and together to respond to the rights of these children and fulfil their EU law obligations. By mapping practice in the Netherlands, Italy, Sweden and the UK and the development of tools, the ultimate purpose of the CONNECT project is to contribute to concrete and practical measures that support actors better to address the needs and rights of these children.

**I.3** The Project enables common challenges and noteworthy practices at a practical and operational level to be shared across Member States. It is intended to contribute to the ongoing transposition and implementation of recent EU obligations on asylum, migration and trafficking by Member States. These EU provisions contain improved provisions for unaccompanied children and Member States need to address how actors are mandated and equipped, and how they can work together, in order properly to implement these EU provisions. There has also been considerable development of regional practical measures of support for

actors, involving both the EU agencies, such as the Fundamental Rights Agency and the European Asylum Support Office, and other stakeholders. And more generally, the increasing focus on child rights and strengthening child protection systems at international and EU level (including through the imminent publication of a Commission Communication on integrated child protection systems) provides further momentum at a regional level for reinforcing modes of coordination and cooperation between actors.

**1.4** The CONNECT Project delivered five practical outputs as follows:

- the Project developed an EU Reference Tool which sets out the body of EU law and policy which relates to unaccompanied migrant children. The EU Reference Document should serve as an important support for policy makers and practitioners alike;
- The Project mapped how actors work, individually and in cooperation with each other, in four countries in the EU (the Netherlands, Italy, Sweden and the UK). The national reports set out the findings in each country, identifying challenges and highlighting noteworthy practice;
- A comparative report identifies common challenges across the four countries and national practice from one country that might inspire good practice across the region;
- The Project developed five practical tools addressing key aspects of actors' work together. Each tool has been developed by a national partner and the CONNECT tools aim to increase actors' skills and stimulate cooperation between them and be used by actors in other jurisdictions. They can be used individually or in a complimentary way across a number of issues, including: first encounter, reception, guidance to actors working with children, promoting child participation, and ensuring decision-making procedures better fulfil the rights of the child to be heard.

## **SCOPE OF MAPPING**

**1.5** The CONNECT mapping surveyed the general legal, policy and administrative context which addresses how actors engage with the situation of unaccompanied migrant children. This includes considering what bodies of law are applicable, and what national strategies or coordination mechanisms are in place. The mapping also identified the actors typically involved, their qualifications and specialised tools, and how they may cooperate with each other. Given the focus of the project on better implementation of EU legal obligations, the mapping focuses on those actors who have formal roles, particularly those with statutory responsibilities towards and professional relationships with unaccompanied migrant children, rather than informal actors who may also play an important role in the lives of these children. In particular, it reviewed how actors respond to three priority issues, namely, (a) identifying and responding to situations of extra-vulnerability, including trafficking or trauma, (b) preventing and responding to disappearances of children from care, and (c) properly informing status protection procedures.

## **METHODOLOGY**

**1.6** The mapping explored notable aspects of the national situation through a desk study of existing literature and interviews with key stakeholders. The limited timeframe for the mapping and its relatively general scope means that the findings are illustrative of the national situation, rather than providing a comprehensive analysis. The goal of the mapping was to find opportunities and practical means for improvements across the region, highlighting how better to equip actors and help them work together. The research did not incorporate consultation with children. However the literature review did seek to examine reports that had addressed the views of children. The priority area of exploring information gathering processes also reviewed how actors engage with children to understand their circumstances. In addition the CONNECT tools also in a variety of ways to contribute to the ability of actors to engage directly with children.

## SPECIFIC FEATURES OF UK REPORT

- 1.7** The UK report looks at how actors meet their general legal obligations towards unaccompanied migrant children, which derive from UK Law, and considers whether they do so in a manner that is consistent with the rights of unaccompanied migrant children, which derive from the 1989 UN Convention on the Rights of the Child, the European Charter of Fundamental Rights, and relevant EU asylum and trafficking directives. The UK Mapping Report then considers the three particular areas of interest, which were identified as common themes to be explored by all project partners.
- 1.8** The Report has been written during a time of considerable debate, proposed legislative change, and policy development in relation to a number of issues which are of significant concern to actors working with unaccompanied migrant children. This is partly because there is an increasing awareness amongst parliamentarians, statutory bodies and civil society, of the international obligations owed to these children. It is also because innovative local practice is informing more general developments. Therefore, the researcher also explored the extent to which on-going and proposed research and pilot projects were likely to lead to changes in legislation and policy.
- 1.9** It was decided that it would be impossible to capture the diversity of legislation, policy and practice being developed in England, Wales, Scotland and Northern Ireland by conducting a few face to face interviews with actors involved in the process. As a consequence, the researcher augmented the information gathered in the literature review by organising or attending a number of relevant seminars or round table discussions in England. This put her in touch with a wide number of actors, who in turn suggested other actors who may have relevant information to contribute. However, given the very short time frame for researching and drafting the UK Mapping Report, it is accepted that it does not provide a comprehensive review of all policies and developments presently taking place in the United Kingdom. Instead, it aims to highlight those which have attracted sufficient interest to be known to a number of key actors.
- 1.10** The researcher worked closely with members of the Refugee Children's Consortium and its member organisations on the basis that some of these NGOs had members and projects in areas outside of London and could, therefore, give a wider geographic perspective. In addition, the researcher relied on her own experience of research and practice with unaccompanied migrant children to identify some key actors in England, Wales, Scotland and Northern Ireland. These individuals were sent additional questions by email, and some of them were interviewed over the telephone or in face to face interviews. The UK Project is very grateful to all the actors who were able to discuss this UK Mapping Report with the researcher, or who were present at meetings or seminars which she attended. Their views have been incorporated in the Report but not personally attributed.
- 1.11** The time scale for the project did not allow for unaccompanied migrant children to be prepared for, and assisted to, participate in the information gathering exercise. However, the literature review, which formed the starting point for the Mapping Process, included a number of reports which were based, at least in part, on views directly expressed by unaccompanied migrant children. Where these views were relevant to the particular issues addressed in Chapters 3 to 5 of this report, they were included.

## CHAPTER 2: SETTING THE CONTEXT

### A STATISTICAL OVERVIEW

**2.0** It is accepted that statistics do not necessarily provide a true picture of social phenomena. However, they are used here to indicate the progress made to date by the United Kingdom government in quantifying the number of unaccompanied migrant children who may be in need of assistance in England, Wales, Scotland and Northern Ireland.

**2.1** Official migration statistics are provided on a quarterly and annual basis by the UK Government's Home Office and National Statistics Office. However, this data only captures the number of unaccompanied migrant children who apply for asylum and, therefore, does not reflect the true number of unaccompanied migrant children entering and remaining in the United Kingdom. Nevertheless they do provide a basis upon which to monitor the reception and protections given to this particular sub-set of unaccompanied migrant children.

**2.2** There were 1,288 asylum applications from unaccompanied asylum-seeking children in the year ending March 2014, an increase of 15% from the year ending March 2013, which was 1,121. These applications represent 5% of all applications in the year ending March 2014. Overall there was a drop in decisions granted from 77% of decisions in the year ending March 2013, to 67% in the year ending March 2014<sup>1</sup>. In 2012 28,000 individuals applied for asylum in the United Kingdom and only four other EU countries recorded more applications. 5% (or 1,125) of these applications were from unaccompanied migrant children: 83% (or 936) of the applications were from boys and 17% (or 189) were from girls. The percentage of girls applying for asylum has fallen from a decade ago. In 2003 and 2004, 33% of applications were from girls. Research at that time suggested that many of the girls may have been trafficked to the United Kingdom<sup>2</sup>. Since then the United Kingdom has introduced a National Referral Mechanism for victims of child trafficking and this may account for some of this reduction. It may also be because recently more unaccompanied migrant children have been arriving from countries within which very few girls apply for asylum. For example, in the first half of 2012 just over two fifths of applications were from boys from Afghanistan (22%) and Albania (20%). Similarly in the first half of 2013, 13% of applicants were boys from Afghanistan and 35% were boys Albania.

**2.3** The statistics also show that many fewer unaccompanied migrant children now apply for asylum in the United Kingdom. This is both in raw numbers and as a percentage of all asylum applications. For example, in 2002 there were 6,200 applications for asylum from unaccompanied migrant children and this made up 7.3% of all asylum applications. Numbers then decreased but remained at around 3,000 for some years, before falling to the current level. This has had a significant impact on the services provided for these children. Most local authorities have now closed their asylum seeking children teams and, therefore, these children are no longer likely to be assigned a social worker with the level of experience and skills usually gained in these specialist teams. It also means that fewer foster carers will have had experience in providing for the specific needs of unaccompanied migrant children. The Independent Chief Inspector of Borders and Immigration has also noted a similar trend within the UK Visas and Immigration department. In his 2013 report<sup>3</sup> he noted that unaccompanied migrant children are now a relatively small proportion of asylum applications, so many staff work full-time on adults' cases and do not need specialist training in relation to unaccompanied children. He noted that in February 2013 only 12 out of 29.5 asylum decision makers in the Midlands were specially trained, and in March 2013 only 36.9 of 133.5 asylum decision-makers based in London were specially trained to consider applications from unaccompanied migrant children.

<sup>1</sup> Paragraph 8.6 link- <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2014/immigration-statistics-january-to-march-2014#asylum>

<sup>2</sup> Seeking Asylum Alone: Unaccompanied and separated children and refugee protection in the UK, Jacqueline Bhabha and Nadine Finch, Harvard University Committee on Human Rights Studies (November 2006)

<sup>3</sup> Inspection into the Handling of Asylum Applications made by Unaccompanied Children

**2.4** There is also one other very important trend which emerges from a review of statistics. This is that only a very small percentage of unaccompanied children apply for asylum at a port of entry. For example, in 2012, 128 children applied at port compared to 997 after entry. The same pattern emerged in 2013, when 123 children applied at port and 1051 after entry. This reflects the historic pattern of applications. For example, in 2002, 1,240 children applied on entry and 4,995 after entry, and in 2004, 507 applied on entry and 2,380 after entry. This has a significant impact on the procedures and processes which can be developed to ensure that these children are provided with suitable reception facilities and appropriate international protection. As the vast majority of children apply after entry to the United Kingdom, it is not possible to rely on border officials or social workers located at ports to identify and protect these children. Instead, all actors involved in the child protection and immigration control systems must be trained and provided with the mandate to identify and, ideally, protect these children.

**2.5** Various civil servants and police officers within the UK Home Office also collect data about the number of unaccompanied migrant children who are being trafficked into the United Kingdom. However, it is widely acknowledged by formal actors, NGOs and parliamentarians that these figures are a gross underestimate, and only represent a snapshot of a much wider trade. In 2013 the UK Human Trafficking Centre, which is part of the Serious Crime Agency, published a report <sup>4</sup> which found that of the 2,255 potential victims of human trafficking who were identified in the United Kingdom in 2012, 24% (or 549) were children. This is discussed in more detail in Chapter 4 of the UK Mapping Report.

**2.6** In addition, lawyers working in the Family Court in the United Kingdom have reported on the very large number of foreign national children who are now the subject of child protection proceedings. In many of these cases, the Court will decide that it would not safeguard and promote the welfare of these children to be returned to the care of their parents or family. Therefore, these children then become unaccompanied migrant children. There is no published data to indicate the size of this further sub-group. This is partly because they rarely come to the adverse attention of UK Visas and Immigration. Instead the Secretary of State for the Home Department has published a policy which states that, if a local authority decides that it would be in a foreign national child's best interests to be placed in foster care in the United Kingdom for child protection reasons under a final care order, she will grant that child limited leave to remain in the United Kingdom for an initial period of four years. If the child is still in foster care at the end of that time, she will then grant the child indefinite leave to remain.

**2.7** There is also a further sub-set of unaccompanied migrant children which is often overlooked. These are children who are sent to the United Kingdom on their own to stay with distant relatives or acquaintances in the hope that the child will gain educational and economic advantages. Between 26th August 2003 and 23rd November 2003, 1,904 unaccompanied migrant children were identified at Heathrow Airport in *Operation Paladin Child* <sup>5</sup>, which was led by the Metropolitan Police, and supported by the London Borough of Hillingdon and the NSPCC. They often enter as visitors and then remain without leave. If they come to the attention of a local authority, it will assess and monitor the placement, which will be described as a private fostering arrangement. NGOs, such as BAAF, have researched into these arrangements and believe that they often mask situations of domestic servitude and benefit fraud, and that some of these children are victims of child trafficking.

<sup>4</sup> A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012 UKHTC and DOCA, August 2013<sup>2</sup> Seeking Asylum Alone: Unaccompanied and separated children and refugee protection in the UK, Jacqueline Bhabha and Nadine Finch, Harvard University Committee on Human Rights Studies (November 2006)

<sup>5</sup> *Paladin Child: The Safeguarding Children Strand of Maxim* funded by Reflex: A Partnership Study of Child Migration to the UK via London Heathrow, Reflex & Metropolitan Police (2004)

<sup>6</sup> [2011] UKSC 4



## THE INTERNATIONAL LEGAL CONTEXT

**2.8** The United Kingdom has signed and ratified the UN Convention on the Rights of the Child and its three Protocols on the involvement of children in armed conflict, the sale of children, child prostitution and child pornography, and a communications procedure. It has not incorporated them into the law of the United Kingdom but in the case of *ZH (Tanzania) v Secretary of State for the Home Department*<sup>6</sup>, the UK's Supreme Court recognised that Article 3 of the UNCRC was a binding obligation in international law. It also noted that the spirit, if not the precise language of Article 3, had been translated into national law by Section 11 of the Children Act 2004 and Section 55 of the Borders, Citizenship and Immigration Act 2009. The UNCRC and its various articles are regularly referred to in policy published by the Home Office and the Department of Education and relied on in courts and tribunals in the United Kingdom.

**2.9** Furthermore, in the case of *Zoumbas v Secretary of State for the Home Department*<sup>7</sup> it was held that:

- (a) the best interests of a child were an integral part of the proportionality assessment under article 8 of the ECHR;
- (b) in making that assessment, the child's best interests had to be a primary consideration, although not always the only primary consideration; and the child's best interests did not of themselves have the status of the paramount consideration;
- (c) although the best interests of a child could be outweighed by the cumulative effect of other considerations, no other consideration could be treated as inherently more significant;
- (d) while different judges might approach the question of a child's best interests in different ways, it was important to ask oneself the right questions in an orderly manner to avoid the risk that the child's best interests might be undervalued when other important considerations were in play;
- (e) it was important to have a clear idea of a child's circumstances and of what was in his or her best interests before one asked oneself whether those interests were outweighed by the force of other considerations;
- (f) to that end, there was no substitute for a careful examination of all relevant factors when the interests of a child were involved in an article 8 assessment;
- (g) a child had not to be blamed for matters for which he or she was not responsible, such as the conduct of a parent.

**2.10** Both Section 11 of the Children Act 2004<sup>8</sup> and Section 55 of the Borders, Citizenship and Immigration Act 2009, refer to the need to safeguard and promote the welfare of the child and not to a child's best interests, and actors have a tendency to concentrate on the child's welfare needs and may not recognise the unaccompanied migrant child as a rights bearer. There is also often an assumption by UK Visas and Immigration, social workers and judges in immigration cases, that it is always in an unaccompanied migrant child's best interest to be returned to the care of his or her parents in his or her country of origin, while too little attention is paid to other risks which may arise if this takes place.

**2.11** However the National Assembly for Wales has taken a number of steps to incorporate the UNCRC into the areas of law which fall within its jurisdiction<sup>9</sup>. In 2011 it adopted the Rights of Children and Young People (Wales) Measure with unanimous cross-party support. This placed a duty on all Welsh ministers to have due regard to the substantive rights and obligations within the UN Convention on the Rights of the Child and its

<sup>6</sup> [2011] UKSC 4

<sup>7</sup> [2011] UKSC 74

<sup>8</sup> And equivalent legislation in Scotland and Northern Ireland

<sup>9</sup> This does not include the implementation of immigration law but does include child protection and other children's services and education

optional protocols. Section 2 of the Measure also requires ministers to publish a Children's Rights Scheme on a regular basis<sup>10</sup>. The Welsh Government also maintains a dedicated UNCRC site on its staff intranet and provides on-line and face to face training in children's rights to its staff. In addition, its legal officers have been provided with specialist training. All of its staff must apply a Child Rights Impact Assessment where a decision or scheme will affect children. The Children's Commissioner for Wales can also review how Welsh ministers exercise their functions.

- 2.12** From May 2014, Welsh Ministers have been under enhanced obligations, and now have to have due regard to the UNCRC when exercising any of their ministerial functions. This means that they now have to consider children's rights when making spending decisions, creating policies, and changing the law.
- 2.13** In addition, the UK also applies the UN Convention on the Status of Refugees, and there are detailed provisions as to how applications should be considered in Part 11 of the Immigration Rules and in the UK Refugee or Person in Need of International Protection (Qualifications) Regulations 2006. The United Kingdom also implements the UN Convention on the Status of Stateless Persons.
- 2.14** The UK is also a member state of the Council of Europe and has incorporated the majority of the provisions of the European Convention on Human Rights into national law when it passed the Human Rights Act 1998. In addition, it has ratified the Council of Europe Convention on Action against Trafficking in Human Beings and has adopted a number of policies in order to meet its obligations under this Convention. Some of these are referred to in Chapter 4 below.
- 2.15** The UK respects the right of free movement within the European Union and has incorporated it into UK law through the Immigration (European Economic Area) Regulations 2006. But the UK has reserved a right to decide not to opt into directives within the area of Justice and Home Affairs (JHA). It did not opt into the Return or Family Reunification Directives and has decided not to opt into the recast Asylum Acquis. It remains opted into the original Asylum Reception Conditions Directive (2005), the Asylum Qualification Directive (2006), and the Asylum Procedure Directive (2005). Both the Government and the courts also accept that the UK is obliged to comply with the provisions contained in the EU Charter of Fundamental Rights and, in particular, the best interests principle contained in Article 24.

## THE NATIONAL CONTEXT

- 2.16** Within the UK there are three separate legal jurisdictions, England and Wales, Scotland and Northern Ireland. They have their own legal court systems and police forces and Scottish law, in particular, is very different from the law practised in the other two jurisdictions. The Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly also have their own devolved administrations which have responsibility through their own local departments for the provisions of education, health, and local authority children's services. This means that there are national variations as to how these services are delivered, but the core duties owed to unaccompanied migrant children do not significantly differ and, where they do, this will be mentioned in Chapters 3 to 5.
- 2.17** However, the UK parliament remains responsible for immigration control and immigration legislation, and this applies throughout the UK. The UK Parliament is made up of an elected House of Commons and an appointed House of Lords. The majority of the Members of Parliament in the House of Commons are from the Conservative and Lib-Dem parties, which form the present coalition government. However, the balance of power is much more fluid in the House of Lords. Some peers are bound by party policy, but there are also a

<sup>10</sup> *Children's Rights Scheme: Arrangements for having due regard to the UNCRC when Welsh ministers exercise any of their functions*, Welsh Government



large number of independent peers (known as cross-benchers). In addition, there are a number of bishops from the Church of England who are very active on social welfare issues.

- 2.18** The Government puts new legislation to parliament in the form of bills, which are drafts for proposed acts of parliament, and members of the House of Commons and House of Lords can then propose amendments. In the House of Lords, it is not at all uncommon for amendments to be put by members who are politically affiliated to the parties making up the Coalition Government. Members of both houses also work closely with charities and NGOs promoting the views of civil society on social issues. These include NGOs such as the Children's Society, Barnardos, ILPA, BID, ECPAT UK, AFRUCA and Coram Children's Legal Centre.
- 2.19** These NGOs lobby individual members of both the House of Commons and House of Lords to support or oppose different measures or amendments in a particular bill. They also assist them to set up Parliamentary Inquiries into issues of concern. One recent example was the *Parliamentary Inquiry into Asylum Support for Children and Young People*, which was chaired by Sarah Teather M.P. and supported by the Children's Society. They also work closely with All Party Parliamentary Groups. These are informal cross-party groups made of members from both the House of Commons and the House of Lords. They have no official status but do produce significant reports which influence legislative change. For example, there are APPGs on LookedAfter Children and Care Leavers, Refugees, Human Trafficking and Modern Slavery, and Runaway and Missing Children and Adults.

## LEGISLATION RELATING TO UNACCOMPANIED MIGRANT CHILDREN

- 2.20** Child care legislation provides social workers and other actors with duties to safeguard and promote the day to day welfare of all children who have been separated from their parents<sup>11</sup>. There are also a myriad of immigration acts, regulations and rules, which direct the manner in which the Secretary of State for the Home Department and her caseworkers will consider any application for asylum or subsidiary protection from an unaccompanied migrant child. In addition, there is a large amount of criminal law relating to unlawful entry, the use of forged documents, and offences such the cultivation of cannabis, street crime and human trafficking<sup>12</sup>. Government departments also issue statutory guidance to assist their employees in implementing relevant legislation. In addition, they may issue policy instructions and guidance to caseworkers. This is particularly the case in relation to the implementation of immigration law due to its growing complexity.

## LEGISLATION AND POLICY RELATING TO RECEPTION AND CARE

- 2.21** In principle, unaccompanied migrant children are entitled to the same care and support from local authority children's services teams as any other child in the United Kingdom. Individual local authorities in England and Wales have a duty to accommodate and support unaccompanied migrant children under section 20 of the Children Act 1989<sup>13</sup> on the same basis as any other children who are homeless and have no-one who is exercising parental responsibility for them. This duty initially arises when a child is geographically in a local authority's area, but in some cases the child will subsequently be placed in the area of another local authority. This may be because it is necessary to share out this responsibility and ensure that local authorities in whose areas seaports and airports are situated do not have to support a disproportionate number of unaccompanied migrant children. In other cases it will be because there are no appropriate foster placements, children's homes<sup>14</sup> or supported housing in one particular local authority area.

<sup>11</sup> [This group of Acts include the Children Act 1989 and the Children Act 2004, which apply to England and Wales, the Children (Scotland) Act 1995, which applies in Scotland, and the Children (Northern Ireland) Order 1995 and Children (Leaving Care) Act Northern Ireland 2002, which apply in Northern Ireland

<sup>12</sup> [And equivalent legislation in Scotland and Northern Ireland

<sup>13</sup> Or the Children (Scotland) Act 1995 and Children (Northern) Ireland Order 1995

<sup>14</sup> Very few local authorities now have children's homes due to concerns about the safety of children in these homes and the number who go missing and do not thrive

- 2.22** Most local authorities place unaccompanied migrant children who are under 16, or who have special needs, or who are particularly traumatised, in foster care. Children over 16 are placed in supported housing. This will usually be in a house shared with other unaccompanied migrant children of the same age. A social worker or social work assistant will either call in once a day or may in some cases be resident there. Special provision for children who may have been trafficked is being developed but is still very limited and will be discussed in Chapter 4 below. Unaccompanied migrant children will continue to be entitled to support and accommodation when they reach 18 if they qualify for leaving care support, and this support should continue until they actually leave the United Kingdom or are granted leave to remain.
- 2.23** Local authorities also have a general duty arising from Section 17 of the Children Act 1989<sup>15</sup> to safeguard and promote the welfare of children within their area who are in need, and a further duty under Section 11 of the Children Act 2004<sup>16</sup> to make arrangements for ensuring their functions are discharged having regard to the need to safeguard and promote the welfare of children. These duties apply to all children irrespective of whether or not they are foreign nationals or subject to immigration control.
- 2.24** Section 10 of the Children Act 2004<sup>17</sup> also obliges the local authority to make arrangements to promote co-operation with and between other actors who also have child protection duties. These include the police, local probation boards, youth offending teams, health authorities, schools and colleges.
- 2.25** However, there are certain features of the current system which do distinguish unaccompanied migrant children from other children looked after by local authorities. For example, where a child is an asylum seeker and is referred by the UK Visas and Immigration department to a local authority for support, that local authority will have to keep in contact with UK Visas and Immigration and confirm that the child is still in its care in order to qualify for a financial contribution towards the child's accommodation and support. This means that there will be on-going contact between UK Visa and Immigration and the local authority and, if a child is not granted leave to remain after his or her eighteenth birthday, his or her whereabouts will be known to UK Visas and Immigration and it will be relatively easy for it to detain and remove him or her. This happened in December 2013 to a number of former unaccompanied migrant children from Albania, who were being accommodated by local authorities. Their accommodation was raided early in the morning and they were removed to Albania.
- 2.26** In addition, social workers from local authorities are now working with UK Visas and Immigration at certain ports and at Asylum Screening Units in order to offer on-the-spot age assessments in relation to asylum-seeking children. They are also consulted by UK Visas and Immigration about individual unaccompanied migrant children. A number of lawyers and NGOs are concerned that these processes have tended to encourage social workers to become reliant on UK Visas and Immigration both financially and in relation to the extent to which they should believe the child's account of past persecution. This may lead to individual children losing trust in their social worker.

## AGE DISPUTES

- 2.27** It is also the case that a significant number of unaccompanied migrant children still have their age disputed by a local authority. The numbers are not as large as they were a few years ago but are still of concern to lawyers and NGOs. For example, in 2012, 337 individuals who applied for asylum as unaccompanied migrant children had their age disputed. It is interesting to note that 28% (or 82) were from Afghanistan, 15% (or 50) were from Albania, and 14% (or 47) were from Vietnam. This correlates with the countries from which more unaccompanied migrant children were arriving. As a consequence, some lawyers and NGOs expressed

<sup>15</sup> Or similar provision in Scotland and Northern Ireland

<sup>16</sup> Or similar provision in Scotland and Northern Ireland

<sup>17</sup> Or similar provision in Scotland and Northern Ireland

concern that the very fact that a larger number of children were coming from these countries was being misinterpreted by UK Visas and Immigration and some social workers, as evidence that they were lying about their age in order to access better accommodation and services than they would have been provided with as adults. There was also concern that a culture of disbelief existed in UK Visas and Immigration and some local authorities about applicants from certain countries. This is particularly current in the case of children arriving from Albania. At one recent meeting one social worker from a local authority, which accommodates many of these children, was heard to comment that none of these children had any protection needs and were treating the United Kingdom as a holiday destination. Historically there has also been a great deal of cynicism about applications from Afghan children.

**2.28** The Joint Committee on Human Rights' report on *Human Rights of Unaccompanied Migrant Children and Young People in the UK*<sup>18</sup> also noted that there remained a concern that the data relating to age disputes is still not accurate, as UK Visas and Immigration is not recording those it considers to be significantly over the age of 18 and who it does not automatically refer to a local authority children's services department under its current policy. This issue was taken up in the Independent Chief Inspector of Borders and Immigration's report on *An Inspection into the Home Office's Handling of Asylum Applications Made by Unaccompanied Children: February – June 2013*<sup>19</sup>. He also noted that there was no validated statistical analysis of the number of individuals who were found not to be children at first encounter by the Home Office, and who were not referred to a local authority. He said that he had been told by the Asylum Screening Unit that it was to run a pilot designed to collect data and improve management information on age disputes. However, he concluded that a wider national system is needed and recommended that the Home Office develops validated statistics for all cases where asylum applicants claim to be children.

**2.29** Lawyers and NGOs continue to be concerned about the significantly adverse effects of an inaccurate age assessment. If an immigration officer or a social worker concludes that an asylum seeker is over 18, he or she will be referred to the Home Office for accommodation and support. If the age assessment has not been accurate, this will result in a child being accommodated in shared accommodation with adults and being placed at risk of abuse and exploitation. In addition, a decision that a child has lied about his or her age may lead to the totality of his or her account being doubted. In such circumstances the child may be detained in an immigration detention centre with adults and have his or her application for protection considered in the Detained Fast Track Process. During this procedure an applicant has to apply for protection on Day 1, a decision is reached by UK Visas and Immigration on Day 3, an appeal hearing takes place on Day 9 and the First-Tier Tribunal Judge gives his or her determination on the appeal on Day 11. (This is the only circumstance in which an unaccompanied migrant child will be subjected to a fast track process, as it is accepted that it takes much longer to assist an unaccompanied migrant child to prepare an application for protection or an appeal. It is also the only circumstance in which an unaccompanied migrant child will be placed in immigration detention.)

**2.30** Furthermore, the success rate in the fast track process is very low. For example, in 2012, of 2,482 applications considered under the Detained Fast Track Process only 74 individuals were recognised as refugees and two others were granted Humanitarian Protection or discretionary leave to remain.

## IMMIGRATION LAW

**2.31** Immigration control is the responsibility of the UK Home Office. Since April 2013 controls at ports of entry are maintained by its Border Force. There are also two other separate operational units within the Home Office. The first, UK Visas and Immigration, is responsible for applications for asylum and applications for

<sup>18</sup> House of Commons, HC 196, (12 June 2013)

<sup>19</sup> John Vine, (2013)

leave to enter and remain in the United Kingdom. The second, Immigration Enforcement, is responsible for investigating immigration offences and detaining and removing people with no leave to remain in the United Kingdom.

- 2.32** Unaccompanied migrant children are entitled to the same international protection as adults and, in addition, there is provision for these children to be granted limited leave to remain merely because they are children. Social workers advise most of these children to claim asylum, even if they are not likely to be entitled to protection under this Convention. This is partly because local authorities can claim a financial contribution towards the cost of accommodating an asylum seeking child.
- 2.33** As explained above, only a very small percentage of unaccompanied migrant children will have claimed asylum at a port of entry. Therefore, it may be a social worker from the local authority accommodating the child who will have to assist an unaccompanied migrant child to apply for asylum. In other cases the child may have been taken to the Asylum Screening Unit by a member of the community. All unaccompanied migrant children applying at an Asylum Screening Unit will be given an initial asylum screening interview, providing the completion of a welfare pro-forma confirms that the child is fit to be interviewed. Unaccompanied migrant children arriving at ports are not given an asylum screening unit and this has to be arranged for a later date.
- 2.34** The UK Border Agency instructions on *Processing an Asylum Application from a Child*<sup>20</sup> states that “the screening process is not the place to explore the claim for asylum”. But many lawyers and NGOs reported that caseworkers do go much further and ask children about their substantive asylum claims. This is of particular concern as at this stage the child is not likely to be represented by a lawyer or accompanied by an appropriate adult.
- 2.35** In 2010 Refugee and Migrant Justice<sup>21</sup> compiled a report about the Home Office’s practice of detaining children for questioning immediately on arrival in the Port of Dover<sup>22</sup>. A series of test cases followed to challenge the practice of conducting initial entry interviews before referral to child welfare authorities<sup>23</sup>. The Court of Appeal subsequently found that a failure to refer the child to a local authority as soon as reasonably possible will mean that the Home Office is acting unlawfully<sup>24</sup>.
- 2.36** The child will also be provided with a Statement of Evidence Form to be returned to the Home Office within 20 days. This form is very similar to the one provided to adults, and only a few amendments have been made to make it more child-friendly. He or she will also have to attend a substantive asylum interview which may take place in a room which has been partially adapted to make it less threatening for a child. The child’s lawyer will then have five days in which to submit any further evidence in support of the child’s application. The Home Office caseworker will subsequently consider the child’s application, and first consideration will be given to whether he or she is entitled to refugee status.
- 2.37** The Home Office Guidance on *Processing an asylum application from a child*<sup>25</sup> sets out a timetable within which interviews should be conducted and a decision reached. However, lawyers and NGOs reported that this timetable is currently rarely met and that children’s cases are not being prioritised. Instead, unaccompanied migrant children are waiting for up to a year for their applications to be decided. This is particularly the case if the child may also be a victim of human trafficking or the child has previously been granted leave to remain as a child and is re-applying on asylum grounds. In a significant number of cases lawyers have had to bring a judicial review of the Home Office’s delay in the Administrative Court before a decision is actually made.

<sup>20</sup> Asylum Process Instructions, UK Visas and Immigration website

<sup>21</sup> A Government funded organisation which used to represent a large number of unaccompanied children before it went into administration due to not being able to meet its debts

<sup>22</sup> *Safe at Last: Children on the frontline of UK Border Control* (2010) (RMJ 2010)

<sup>23</sup> AN & FA v SSHD [2012] RECA Civ 1636

<sup>24</sup> In AN & FA (as above)

<sup>25</sup> See above

- 2.38** The Home Office Process Guidance also advises caseworkers about how to apply Section 55 of Borders, Citizenship and Immigration Act 2009 and Article 3 of the UNCRC. This guidance makes reference to relevant articles in the UNCRC and, at paragraph 1.3, it states that Article 3 obliges the Secretary of State for the Home Department to ensure that the best interests of the child are a primary consideration in all actions concerning the child. However, a number of lawyers and NGOs commented that refusal letters issued in response to applications for asylum (or other protection) by unaccompanied children rarely do more than pay lip service to the obligations arising from Section 55 and Article 3.
- 2.39** The Joint Committee on Human Rights 2013 report on the *Human Rights of Unaccompanied Migrant Children and Young People in the UK*<sup>26</sup> recommended that the “Government work with child welfare and safeguarding experts to develop a specific training programme to improve awareness and understanding of the UNCRC and its application to unaccompanied migrant children, particularly with respect to properly considering children’s best interests”. It also said that “such a programme, delivered by external providers, should be rolled out first to staff in frontline immigration and asylum roles, and to those in local authorities that deal regularly with unaccompanied migrant children. The programme should then be rolled out more widely as resources allow.” However, this recommendation was not accepted by the government in its response to the report. .
- 2.40** Many lawyers also complained about the failure by the Secretary of State for the Home Department to take into account child-specific country of origin information when considering applications. This was partly confirmed by the Independent Chief Inspector of Borders and Immigration in his report on *an Inspection into the Home Office’s Handling of Asylum Applications made by Unaccompanied Children: February – June 2013*, referred to above, where he found that in only 52% of his sample of determinations had such information been obtained and referred to.
- 2.41** If a caseworker decides that the child is not entitled to refugee status, he or she will consider whether there are substantial grounds for believing the child would face a real risk of serious harm on return to a country of origin. If this is the case the child will be granted Humanitarian Protection under paragraph 339C of the Immigration Rules. If an unaccompanied migrant child is not entitled to Humanitarian Protection the caseworker will consider whether returning the child to his or her country of origin would breach his or her rights under the European Convention of Human Rights. The principle basis for granting leave will be the fact that an unaccompanied migrant child may have lived in the UK for long enough for it to be accepted that his or her removal would be a disproportionate breach of his or her right to continue to enjoy a private life in the UK. Furthermore, if he or she has lived in the UK for more than seven years before reaching the age of 18, he or she will be entitled to limited leave to remain under paragraph 276ADE(iv) of the Immigration Rules. (In addition a former unaccompanied migrant child between the age of 18 and 25 may also become entitled to limited leave under paragraph 276ADE(v) of the Immigration Rules if he or she has lived in the United Kingdom for more than half of his or her life.) Other than in exceptional circumstances, the Home Office policy is that a child will usually be granted leave for 30 months at a time and will have to have limited leave to remain for 10 years before he or she becomes entitled to indefinite leave to remain<sup>27</sup>.
- 2.42** Finally if an unaccompanied migrant child does not qualify for protection or leave in any of the above categories but there are no adequate reception facilities in his or her country of origin, he or she will be granted limited leave to remain on this basis under paragraph 352ZC of the Immigration Rules for a period of 30 months or until he or she is 17½ years of age, whichever is the shorter period of time. Unaccompanied migrant children may also be entitled to a residence permit as victims of human trafficking, and this is addressed in Chapter 4 of this report.

<sup>26</sup> House of Commons, HC 196, (12 June 2013)

<sup>27</sup> C.f. Section 4 of Home Office Asylum Policy Instruction on Discretionary Leave

## CROSS BORDER AND TRANSNATIONAL CO-OPERATION

**2.43** The United Kingdom has opted into Dublin III. However, even before this the Home Office's Third Country Unit had stopped returning unaccompanied migrant children to the European State in which they may have previously applied for asylum. This was because UK lawyers had successfully challenged returning children to these states<sup>28</sup>. As a consequence, the Third Country Unit of UK Visas and Immigration should now decide whether it would be in an unaccompanied migrant child's best interest to be reunited with his or her family members, siblings or other relatives in another European country and, if this is not the case or he or she has no such family, it should consider the child's application for asylum within the UK.

**2.44** However, even before this judgment relatively few unaccompanied migrant children were returned under Dublin II. Statistics referred to in the case of *MA & Others* indicated that in 2005 only 103 unaccompanied children were removed under Dublin II, and in the other five years between 2004 and 2009 the number was between 25 and 80.

**2.45** The Third Country Unit also considers other countries such as the USA, Canada and Switzerland to be safe third countries. The Unit has adopted formal procedures, which must be complied with before any child is removed to a third country. In particular, the Unit should contact the local authority, who is accommodating the child, and the child's lawyer in order to ascertain whether there are any non-asylum reasons why a child should not be removed. The Unit should also meet with the local authority to check whether there is a risk that the child will abscond and whether he or she has any particular vulnerabilities. If a child is removed, the Unit should also ensure that the child's care plan and any age assessment is sent to the country to which he or she is to be removed. The child and his or her lawyer should also be given at least five days notice of any removal so that a legal challenge can be made if necessary.

**2.46** As a matter of policy the United Kingdom does not remove unaccompanied migrant children unless there are suitable reception arrangements in place in their countries of origin. On 8th April 2014 Lord Taylor of Holbeach, the Parliamentary Under Secretary of State for the Home Office, gave Parliament data for the removal of unaccompanied asylum seeking children between 1st October 2006 to 31st December 2010. The figures he gave for voluntary returns were:

Year of application	2006	2007	2008	2009	2010	Total
Total	7	28	23	14	14	86

The figures for enforced removals were:

Year of application	2006	2007	2008	2009	2010	Total
Total	9	29	28	21	9	96

**2.47** Some lawyers also reported that when unaccompanied migrant children are identified at ports, they may be placed with local authorities who will then contact children's services departments in the child's country of origin in order to facilitate their return without giving the child a proper opportunity to take legal advice, and that UK Visas and Immigration will condone this.

**2.48** In addition, in *Landing in Dover: The Immigration Process undergone by unaccompanied children arriving in Kent*<sup>29</sup> the Office of the Children's Commissioner for England detailed a practice at the port at Dover within which

<sup>28</sup> *MA & Others v Secretary of State for the Home Department* CJEU-648/11

<sup>29</sup> Office of the Children's Commissioner for England (January 2012)



children were being returned to France and Belgium within 24 hours under a “Gentleman’s Agreement” if they did not formally articulate a fear of persecution for Refugee Convention reasons.. A Freedom of Information request revealed that this agreement had been signed in Paris in 20th April 1995, and that the provisions of Dublin II had not been applied to these cases.

**2.49** The Home Office also operates juxtaposed controls at ports and rail stations in France and Belgium where immigration officers can stop unaccompanied migrant children embarking for the United Kingdom. No statistics are available about how many children are stopped.

**2.50** In 2010 the United Kingdom became one of four states who was participating in the ERPUM project , which was funded under the EU Returns Fund, to explore ways to return unaccompanied children to Afghanistan. The other states were Sweden, the Netherlands and Norway. Denmark and Belgium also had observer status. The first phase ended in 2012 and ERPUM II was then funded until 2014. This considered returning unaccompanied migrant children to Afghanistan and Iraq and an unspecified third country. This project did not result in any unaccompanied migrant children being returned from the United Kingdom.

**2.51** The Oxford University Refugee Studies Centre held a workshop on ERPUM on 3rd May 2013 and the workshop report contains further information about the project. The report also raised concerns regarding the project’s compatibility with the principles of the best interest of the child, the difficulties that exist in successfully tracing families in Afghanistan, the lack of a child protection system in Afghanistan, and the question of what might happen to children who are returned to temporary reception facilities in Kabul when their families had fled the country, had been killed, were unable to care for the child, or did not want to receive the child.

**2.52** The United Kingdom is now actively exploring returning unaccompanied migrant children to Albania. A Memorandum of Understanding was agreed with the Albanian Government in March 2013 on data sharing and access to information and the Albanian Government is now checking identity documents provided by Albanian unaccompanied migrant children on behalf of the UK Government. Two social workers from the London Borough of Croydon and officials from the Office of the Children’s Champion at the Home Office recently visited Albania. The Home Office is proposing returning unaccompanied migrant boys between the ages of 15 and 17 to Albania if they are refused asylum. If family reunification is not possible they will be returned to suitable reception facilities. No such returns have yet happened.

## **MAIN ACTORS IN RECEPTION AND PROTECTION:**

### **THE DEPARTMENT OF EDUCATION**

**2.53** The Department of Education in England, and its equivalent in Wales, Scotland and Northern Ireland, has overall responsibility for policies relating to children, which are then implemented by individual local authorities.

### **SOCIAL WORKERS**

**2.54** Each unaccompanied migrant child should be allocated a local authority social worker who will provide him or her with a care plan and meet and support him or her on a regular basis. In practice, many of these children have to rely on any social worker who happens to be on duty on a particular day, or will have a succession of allocated social workers who rarely have time to work with them. Few social workers take an active part in the process by which the child may be granted asylum or other protection. Social workers do however play a pivotal, and sometimes negative, role in age disputes.

## INDEPENDENT SOCIAL WORKERS

**2.55** Independent social workers are also instructed by the Family Court and local authorities to do specific reports. In particular, they are used to undertake home study reports where a child's parent or family is resident in a foreign country. NAGALRO is their professional association and it organises regular conferences and training events.

## FOSTER CARERS

**2.56** Foster carers look after most unaccompanied migrant children who are under 16. They do so in their own homes on behalf of the local authority that has accommodated the child. They will usually have had basic training provided by a local authority. Some of them will also have been given advice or attended specialist training provided by BAAF for foster carers working with unaccompanied migrant children and/or children who are victims of human trafficking.

## INDEPENDENT REVIEWING OFFICERS

**2.57** Unaccompanied migrant children will be provided with regular reviews as looked after children. The review is chaired by an Independent Reviewing Officer in England and Wales. He or she is employed by the same local authority but who is not the child's allocated social worker.

## ADVOCATES

**2.58** Unaccompanied migrant children are not provided with legal guardians at any point during their residence in the United Kingdom. It is only if they are the subject to an application for a care order in the Family Court, due to actions perpetrated by their own parents, that they will be granted a *guardian ad litem*, and this will only be for the purpose and continuation of the care proceedings. Some of these children will be assisted by a worker from the Refugee Council's Children's Panel or an advocate from a children's charity. However, these advocates have no statutory powers and few resources.

## DOCTORS

**2.59** Unaccompanied migrant children who are asylum seekers, refugees, who have been recognised as victims of trafficking or who are accommodated by a local authority, are entitled to free NHS services from GPs and at NHS hospitals.

## THE HOME OFFICE

**2.60** The Home Office is the Government department with overall responsibility for immigration, crime prevention, combating human trafficking and running young offenders institutions.

## UK VISAS AND IMMIGRATION

**2.61** Caseworkers in the UK Visas and Immigration department, which is part of the Home Office, are responsible for considering applications from unaccompanied migrant children for asylum and other forms of international protection.



## THE POLICE

- 2.62** Police officers have wide child protection duties and are members of Local Safeguarding Children Boards. They are also centrally involved in issues relating to unaccompanied migrant children who go missing or may have been victim of human trafficking.

## CROWN PROSECUTION SERVICE

- 2.63** The Crown Prosecution Service is responsible for deciding whether to prosecute an offender and bringing the prosecution in the criminal court. It is currently developing further policies and procedures for unaccompanied migrant children who have been charged with criminal offences connected to their exploitation as victims of child trafficking or who have to appear as witnesses for the prosecution.

## YOUTH OFFENDING TEAMS

- 2.64** If an unaccompanied migrant child has been charged or convicted of a criminal offence, his or her case will be allocated to a social worker within a multi-agency youth offending team. These teams are co-ordinated by the appropriate local authority and are overseen by the national Youth Justice Board.

## LAWYERS

- 2.65** The system is not as clear cut as it used to be, but in the United Kingdom an unaccompanied child may have two lawyers involved in his or her case. The first may be a solicitor who takes instructions, prepares the case, and is responsible for applications and correspondence. If the case goes to court the solicitor may then instruct a barrister to represent the child in the court or tribunal and also to give further legal advice if the case is a complex one. The situation is further complicated by the fact that lawyers are generally only permitted to practice in one of the three legal jurisdictions. Although there are procedures by which, for example, a barrister who is qualified in England and Wales, can sit additional exams in order to practice in Scotland. Obtaining permission to practice in Northern Ireland does not require any further examinations but involves complex administrative procedures.
- 2.66** All solicitors are regulated by the Solicitors Regulatory Authority and are required to have a legal qualification and professional training and experience. Barristers are required to hold a professional legal qualification and are regulated by the Bar Standards Board. The Immigration Law Practitioner's Association runs voluntary specialist training courses.

## INTERPRETERS

- 2.67** When an unaccompanied migrant child appears in a tribunal or court, interpreters will be provided at public expense. The Government has let a contract to one provider which is causing a lot of controversy, as both lawyers and courts believe that the interpreters supplied by this company are often not of a sufficiently high quality. Other actors have to make their own arrangements for interpreters when interviewing an unaccompanied migrant child.

## THE JUDICIARY

- 2.68** Unaccompanied migrant children may appear before judges in the First-Tier Tribunal (Immigration and Asylum Chamber), the Upper Tribunal (Immigration and Asylum Chamber), the Family Court, all levels of the criminal court, the civil and criminal court of appeal, the Administrative Court or even the UK

Supreme Court. Judges in England and Wales are employed by the Ministry of Justice and similar bodies in Scotland and Northern Ireland.

- 2.69** Each of these jurisdictions recognizes the principle of separation of powers and the national governments, and the UK Parliament does not have the power to interfere with a legal decisions by a judge or his or her exercise of judicial discretion.
- 2.70** If an unaccompanied migrant child is refused asylum, Humanitarian Protection or leave under the ECHR, he or she will be entitled to appeal to the First Tier Tribunal (Immigration and Asylum Chamber) and, if this appeal is dismissed, he or she may then be able to appeal on a point of law to the Upper Tribunal (Immigration and Asylum Chamber), the Court of Appeal and in rare cases the UK Supreme Court. If his or her age is disputed, this will be a matter of administrative law and he or she will have to make a claim for a judicial review of the decision to the Administrative Court in the first instance. However, if there is any substance in the claim, the Administrative Court will usually transfer the hearing of the claim to the Upper Tribunal (Immigration and Asylum Chamber).
- 2.71** Where there is a delay in reaching a decision on an application for international protection or a child is not recognized as a victim of human trafficking under the NRM, he or she can also apply for a judicial review of this decision to the Administrative Court. In some cases the Court will transfer the claim to the Upper Tribunal (Immigration and Asylum Chamber) for a full hearing.

## **CHILDREN'S COMMISSIONERS**

- 2.72** Separate Children's Commissioners for England, Wales, Scotland and Northern Ireland are appointed under the Children Act 2004, the Children's Commissioner for Wales Act 2001, the Commissioner for Children and Young People (Scotland) Act 2003 and the Commissioner for Children and Young People (Northern Ireland) Order 2003. They have statutory powers to promote and protect the rights of children within their particular country. They also promote awareness of the views and interests of children and consider the potential effects of government policy proposals for legislation on the rights of children.

## **INDEPENDENT INSPECTOR OF BORDERS AND IMMIGRATION**

- 2.73** The Inspector provides independent scrutiny of all UK borders and immigration function, and reports directly to the Secretary of State for the Home Department. He undertakes thematic reports and has powers of inspection.

## **LOCAL CO-OPERATION**

- 2.74** Section 10 of the Children Act 2004 requires local authorities in England and Wales to establish Local Safeguarding Children Boards. In Scotland the same role is played by Child Protection Committees and in Northern Ireland a statutory multi-agency Safeguarding Board was established by the Department of Health, Social Services and Public Safety in 2012. This was a response to a realisation that a child was more likely to be protected when agencies work in an all-inclusive, co-ordinated and consistent way. Representatives from relevant statutory bodies such as the Police Service of Northern Ireland, the Probation Board, the Youth Justice Agency and the Health and Social Care Trusts sit on this board. The statute also provides between three and five places for independent voluntary organisations and three of these places are currently being taken up by the NSPCC, Barnardos Northern Ireland and the Children's Legal Centre. Two of their priorities are children who go missing and child sexual abuse, which are of general relevance to trafficked children.

## NATIONAL CO-ORDINATION

- 2.75** A number of senior members of professions which have regular contact with unaccompanied migrant children, have national co-ordinating bodies which discuss issues of interest and devise appropriate policy and training. These include the Association of Directors of Children’s Services and the Association of Chief Police Officers. They are regularly consulted by the UK Government and are active in relevant policy debates.
- 2.76** There are also a number of NGO lead bodies who play a similar and very important co-ordinating role within civil society. They include the Refugee Children’s Consortium and the Anti-Trafficking Monitoring Group. There are also hybrid groups which bring together formal and informal actors. On a formal level these include the Child Trafficking Information Sharing Forum, which is co-chaired by the Home Office, the NSPCC’s Child Trafficking Advice Centre and the National Asylum Stakeholder Forum Children’s Sub-group, which brings together officials from the Home Office and local authorities with representatives from NGOs and the Office of the Children’s Commissioner for England. On a more informal level the Trafficking Law and Policy Forum brings together police officers, lawyers, NGOs and social workers to discuss issues relating to human trafficking.

## CHAPTER 3: THE DISAPPEARANCE OF UNACCOMPANIED MIGRANT CHILDREN IN CARE

### INTRODUCTION

- 3.0** The *EU Action Plan on Unaccompanied Minors (2010-2014)*<sup>30</sup> noted that the disappearance of unaccompanied migrant children, who should have been in the care of national authorities, was an issue of concern. It went on to speculate that some children may have disappeared because they had become victims of child traffickers, whilst others may have absconded in order to join members of their families or communities. The situation in the United Kingdom appears to be more complex as unaccompanied migrant children may disappear at many different stages of their residence in the United Kingdom. In addition, the reasons for their disappearance are likely to have more than one cause. The limited data available also suggests that patterns of disappearance often reflect the child’s nationality and are heavily influenced by whether the child had initially been trafficked into or within the United Kingdom.
- 3.1** Furthermore, as the care of unaccompanied migrant children is embedded in the United Kingdom’s wider child protection system, the response to any disappearance both mirrors the fact that they are children in care and that at the same time they are children who are subject to immigration control. It is also part of a wider concern within the United Kingdom about the high percentage of children who go missing from care and who have been targeted for child sexual exploitation by gangs.

### DEFINITION

- 3.2** In reports and discussions in the UK children are referred to as having “gone missing” not as “having disappeared”. In January 2023 a new definition was adopted by ACPO, which best explains the meaning given to this term. It states that anyone whose whereabouts cannot be established, where the circumstances are out of character or the context suggests the person may be the subject of a crime or at risk of harm to themselves or another, is potentially “missing”.

<sup>30</sup> Com/2010/2013 Final

<sup>31</sup> Office of the Children’s Commissioner for England (January 2012)

## STATISTICS

- 3.3** In 2013 the European Commission – Directorate General for Justice commissioned a report on *Missing Children in the European Union: Mapping, data collection and statistics*<sup>31</sup>. It noted that although data was being collected on missing unaccompanied migrant children in the United Kingdom, this was not being collated at a national level. This is a fair analysis of the current situation.
- 3.4** Both the National Crime Agency and the Department of Education, which has ultimate responsibility for children in care in England and Wales, are collecting data. But the figures include both migrant and non-migrant children and the basis upon which a child is categorised as missing, differs.
- 3.5** On 31st March 2013 there were 68,110 children who were being looked after by local authority children's services in England<sup>32</sup>, 5,770 in Wales<sup>33</sup> and 2,807 in Northern Ireland<sup>34</sup>. Furthermore, on 31st July 2013 there were 16,041 children who were being looked after by local authority children's services in Scotland<sup>35</sup>. These figures included unaccompanied migrant children who had been accommodated by local authorities. In 2012, the UK Missing Persons Bureau, which is part of the UK National Crime Agency, estimated that around 10,000 children go missing from care each year for some period of time<sup>36</sup>. This was based on 17,000 separate incidents relating to 5,000 individual children. However, in 2011 the local authorities had only reported 930 incidents of children going missing from care for more than 24 hours to the Department of Education<sup>37</sup>. In addition, local authorities are only required to make a report when a child in their own care goes missing. They do not have to take into account children living in their local authority who go missing, but who are the legal responsibility of other local authorities<sup>38</sup>.
- 3.6** It is even more difficult to quantify how many unaccompanied migrant children go missing from care. The Home Office collects data on the number of unaccompanied asylum-seeking children who are in the care of individual local authorities within the United Kingdom as this is the basis upon which it gives financial assistance to these local authorities, as a contribution towards the cost of these children's accommodation and other assistance. For example, on 31st March 2013, 1,860 of the children who were looked after in England, were also seeking asylum. On the same date there were 34<sup>39</sup> asylum seeking children in<sup>40</sup> Scotland, and 35<sup>41</sup> in Wales. It was more difficult to obtain accurate statistics for Northern Ireland, but between 1st January 2011 and 30th June 2012 only 8 unaccompanied children applied for asylum in Northern Ireland<sup>42</sup>. However, there are a number of other children who are subject to immigration control who will also be in the care of local authorities. These include children who have become orphans because they have been abandoned here by a foreign national parent, had a parent who died or who have become subject of child protection proceedings. In some such proceedings it also becomes clear during the proceedings that certain children are not children of the family because they have either been smuggled or trafficked into the United Kingdom for the purpose of domestic servitude or benefit fraud. No Government body is collecting specific statistics on these children or on whether they go missing from care.

<sup>31</sup> ISBN: 978-92-79-28859-3

<sup>32</sup> Department of Education statistics 11.12.2013

<sup>33</sup> Welsh Government Stats Wales

<sup>34</sup> Northern Ireland Statistics and Research Agency

<sup>35</sup> The Scottish Government – statistics are collected in Scotland on a different annual cycle to the other three nations

<sup>36</sup> Children Missing from Care (2012)

<sup>37</sup> House of Commons Written Answer 10641, 16 May 2012, Catherine McKinnell MP – local authorities are only obliged to report data on missing children to the Department of Education at the end of each year

<sup>38</sup> This often happens when a local authority cannot find an appropriate placement for a child within its own geographic area

<sup>39</sup> This is thought to be an underestimate as some local authorities in Scotland do not register asylum seeking children with the Home Office

<sup>40</sup> <https://www.gov.uk/government/publications/unaccompanied-asylum-seeking-children-in-scotland-between-2011-and-2013/unaccompanied-asylum-seeking-children-in-scotland-between-2011-and-2013>

<sup>41</sup> <https://stats.wales.gov.uk/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-in-Need> click on "summary of children in need data at 31 march 2013", open the downloaded app, and choose the fourth title called "children in need by asylum seeker"

<sup>42</sup> *Refugees and Asylum Seekers in Northern Ireland. Northern Ireland Assembly Research and Information Service, Research Paper, 06.06.2014*

**3.7** There are some emerging statistics in relation to unaccompanied migrant children who are also victims of child trafficking. For example, the House of Commons Home Affairs Committee has concluded that around 60% of these suspected child victims in local authority care go missing<sup>43</sup>. In addition, it is estimated that almost two thirds of these children are never found<sup>44</sup>. A Save the Children memorandum in 2008 noted that its own, and ECPAT UK's research, had found that in 183 (55%) of the cases of child trafficking examined, the child identified had gone missing. It also noted that the UK government had made similar findings<sup>45</sup>, and that in 52 (64%) of known cases of child trafficking, the children had gone missing. It added that these children had gone missing from a wide range of living situations but that many were in inadequate emergency accommodation. Others were housed in shared accommodation with other young adults, which left them vulnerable to a trafficker abducting them or abusing his or her position of power. It was also estimated that two thirds of these children were never found. In addition, most of these victims went missing within one week of being in care and many of them within 48 hours.

**3.8** Furthermore, the NSPCC's Child Trafficking Advice Centre's records show that 161 of the 715 children who came to its attention between 13th September 2007 to 19th April 2012, had been reported as missing at some point. Of these children, 73 remained missing at the end of this period and 26 had been found. 11 had returned to care of their own accord and the outcome for 18 of them was unknown. It also noted that 58% of the trafficked children who went missing had been exploited for criminal purposes, including street crime and cannabis cultivation, and that 64 of these children were Vietnamese, 33 were Chinese and 12 were Nigerian<sup>46</sup>.

## THE WIDER NATIONAL CONTEXT

**3.9** A recent parliamentary inquiry recognised that children in care are amongst the most vulnerable groups in society and that, as a consequence, when they go missing they are in great danger of being physically or sexually abused and/or exploited<sup>47</sup>. The inquiry was a response to a large number of high profile cases involving children in care who had been groomed and/or trafficked within the England and Wales to be sexually exploited. It was more difficult to obtain data for Scotland but some actors believed that not so many children were going missing as child protection procedures were more robust.

**3.10** At the same time actors have continued to be concerned about the number of children being trafficked to the United Kingdom and have begun to realise that not only are victims of child trafficking likely to be abducted by former traffickers but that they are also very vulnerable, as unaccompanied migrant children in care, to further exploitation.

## CHILDREN WHO SEEK TO JOIN MEMBERS OF THEIR FAMILY OR COMMUNITY

**3.12** Lawyers and NGOs reported that there is very little evidence to suggest that unaccompanied migrant children go missing from local authority care in order to join members of their family or community elsewhere in the United Kingdom or Europe. One lawyer, who has represented these children for ten years, said that she could not recall any case in which this happened. Lawyers and NGOs speculated that this was because the United Kingdom was often the country of choice when a child started his or her journey. As it is also located off the coast of continental Europe and the journey to it is arduous and expensive, they said that they presumed that these children would have travelled directly to the state in which their family or parents were living if they had wished to join them there.

<sup>43</sup> *The Trade in Human Beings: Human Trafficking in the UK Sixth Report of Session 2008-2009*, Volume 1, London, House of Commons

<sup>44</sup> *Strategic Threat Assessment: Child Trafficking in the UK* CEOP (2010)

<sup>45</sup> *Scoping Report on Missing and Abducted Children*, CEOP, 2011

<sup>46</sup> *NSPCC Response to APPG on Runaway and Missing Children and Adults*

<sup>47</sup> *Report from the joint inquiry into children who go missing from care*, the All Party Parliamentary Group for Runaway and Missing Children and Adults and the All Party Parliamentary Group for Looked After Children and Care Leavers, June 2012

**3.13** There are some unaccompanied migrant children who do locate a relative after arriving in the United Kingdom and in these situations the local authority will assess the suitability of that relative to care for the child. If the assessment is positive and the relative is a grandparent, uncle, aunt, brother, sister or step-parent, the child will be placed with them under a kinship care arrangement whilst the child continues his or her application for protection in the United Kingdom. If the relative is more remote the local authority should undertake a private fostering assessment. This is not always done which potentially places these children at risk of exploitation.

**3.14** NGOs and lawyers did remember incidents of unaccompanied migrant children being arrested at ports such as Dover when they were being taken out of the country but they were not on their own when doing so. They were generally girls being trafficked for sexual exploitation elsewhere in Europe. One lawyer has also had a case when a young girl had been trafficked from London to Dublin for the purposes of domestic servitude.

### **CHILDREN WHO SEEK TO AVOID REMOVAL FROM THE UNITED KINGDOM**

**3.15** Lawyers and NGOs also reported that there is very little evidence that unaccompanied migrant children go missing from care when an application for asylum or other status is refused or an appeal is dismissed and they are still children. One experienced lawyer, who has represented unaccompanied migrant children for ten years, said that she could only recall a handful of children going missing for this reason.

**3.16** This may be because children are generally permitted to remain in the UK until they become adults and as they approach 18 they will be able to apply for further leave to remain. It generally takes the Home Office months, if not years, to decide on such applications. They will also be entitled to appeal against any refusal of further leave and again it may be months before any appeal hearing. During this time they will usually continue to be entitled to accommodation and support under leaving care provisions contained in the Children Act 1989, or its equivalent in Scotland and Northern Ireland, even if they have become 18. Therefore, most former unaccompanied children will wait until any decisions arising from applications or appeals have been made before contemplating leaving local authority care.

**3.17** However, there is some evidence that some of these children may become more anxious about being removed to his or her country of origin and go missing. In April 2014, the Office of the Children's Commissioner<sup>48</sup> provided details of interviews conducted in three local authorities in different parts of England covering port and non-port areas. The resulting data suggested that in areas where a number of former unaccompanied migrant children had been removed by force, other young people, who had become 18, did go missing before UK Visas and Immigration reached decisions to remove them.

**3.18** But the actual numbers of these young people who are removed by force is relatively small. There were only 99 in 2010, 179 in 2011, 94 in 2012 and 67 in 2013. However, UK Visas and Immigration are working with the Foreign and Commonwealth Office on new family tracing arrangements for children from Albania<sup>49</sup> and Bangladesh<sup>50</sup>. Therefore, numbers of children and young people who are removed by force may increase in the future.

### **CHILDREN WHO ARE ABDUCTED BY THEIR FORMER TRAFFICKERS**

**3.19** Children from certain communities may go missing due to being abducted by their human traffickers. This phenomenon was first identified in the United Kingdom in 1995 when West Sussex County Council noted that a significant number of Nigerian girls were claiming asylum at Gatwick Airport and being

<sup>48</sup> *What's going to happen tomorrow? Unaccompanied children refused asylum*

<sup>49</sup> Identity checking and family tracing via the Albanian Authorities UK

<sup>50</sup> *Family tracing assessments from Foreign and Commonwealth Office in Bangladesh UK Visas and Immigration (29.01.2014)*



accommodated by the local authority but were subsequently going missing<sup>51</sup>. During Operation Newbridge, a joint operation mounted by the police, the immigration service and the local authority in 1995, it was discovered that Nigerian organised criminal gangs were trafficking Nigerian girls into the United Kingdom through Gatwick Airport, and subsequently other airports, with the intention of exploiting them in prostitution in the United Kingdom or in other European countries such as Italy and Holland. The gangs' modus operandi was to instruct them to claim asylum on arrival in the knowledge that the girls would be accommodated by local authorities. The gangs also provided the girls with a mobile telephone number which they were told to call a few days later. They had previously been subjected to "juju" ceremonies and, therefore, were terrified that if they did not telephone the gang they would suffer death or serious injury. They were then "collected" by their traffickers, who thereby avoided any chance of detection at a port<sup>52</sup>.

**3.20** Subsequent research by ECPAT UK also revealed that traffickers were using other local authorities for initial accommodation for children who they were trafficking into the United Kingdom<sup>53</sup>. In 2009 the Home Affairs Select Committee report on *Human Trafficking* also noted that it was alarmed by accounts of traffickers using local authority care homes as "holding pens" for their victims. Witnesses had told the Committee that this was partly due to a lack of awareness of the indicators of child trafficking and partly because of a lack of strategies to protect these children, such as placing them away from the area in which they had been found.

**3.21** More recently research has shown that Chinese and Vietnamese children also regularly go missing shortly after being accommodated in local authority care. The Office of the Children's Commissioner for England told the APPG *Inquiry into children who go missing from care* that it was her view that "given that virtually all of the Vietnamese children who arrived in Kent in 2010 went missing and the only ones recovered (to date) were those found working in cannabis factories, the OCC is of the view that all unaccompanied Vietnamese children should be regarded, prima facie, as having been trafficked".

**3.22** As many of these children go missing before the local authority has the time to do a full assessment of their identity and needs, CEOP and ACPO have recommended that photos, passport numbers, nationality, fingerprints and DNA of children, who may have been trafficked, are taken immediately upon identification<sup>54</sup>.

## **CHILDREN WHO ARE EXPLOITED AT A LATER STAGE**

**3.23** Other unaccompanied migrant children do not go missing so quickly but appear to have been targeted for exploitation after having been in care for a longer period of time. For example, in one case a sixteen year old Nigerian girl was placed in semi-independent unit and went missing within days. A Nigerian woman had approached her and said that she would help her. She persuaded her to board a train with her and took her to Germany where she was placed in a brothel. Luckily for her this was raided by the police and she was returned to care in the United Kingdom<sup>55</sup>.

**3.24** Other actors mentioned Afghan and Vietnamese boys making contact with their own communities because they were lonely or isolated in their accommodation and their concerns that these boys were then persuaded to leave their accommodation by adults who intended to exploit them. Others were said to be victims of debt bondage and to have gone missing in order to earn money in whatever situation that may be available to them in order to send money back to their country of origin.

<sup>51</sup> *Cause for Concern: London Social Services and Child Trafficking*, Caron Somerset, ECPAT UK (2004)

<sup>52</sup> *Ibid*

<sup>53</sup> *Missing Out: A study of child trafficking in the North-West, North-East and West Midlands*, Christine Beddoe, UCPAT UK (2007)

<sup>54</sup> Family tracing assessments from Foreign and Commonwealth Office in Bangladesh UK Visas and Immigration (29.01.2014)

<sup>55</sup> Oral evidence given to the Inquiry by The Children's Society

## REACTION TO CHILDREN WHO GO MISSING

- 3.25** The NSPCC's Child Trafficking Advice Centre compiled very useful statistics on trafficked children who go missing from care, which it submitted to the APPG on Runaway and Missing Children and Adults in April 2012. It was particularly concerned that in 44 cases of missing children which came to its notice, the child had not been reported as missing by the local authority. In another 32 cases the child had not been missing by the police. In 17 cases the child had been listed as someone who had committed a criminal or immigration offence. This is one indication of incidents in which unaccompanied migrant children are not offered the same protection as other children in care.
- 3.26** In its 2010 *Guidance on the Management, Recording and Investigation of Missing Persons* the National Police Improvement Agency advised police officers to consider whether a child is intentionally missing and seeking to avoid immigration processes or repatriation, but at the same time to investigate whether there are any suspicious circumstances surrounding their disappearance, which suggest that he or she is a victim of human trafficking.

## PREVENTING CHILDREN GOING MISSING

- 3.27** Police officers and lawyers stressed the need to obtain information relating to a child who may have been trafficked as soon as possible if they are to be successfully protected from going missing. The Department of Education for England confirmed this in its *Statutory Guidance on children who run away or go missing from home or care* in January 2014.

## SAFE ACCOMMODATION

- 3.28** The *London Safeguarding Trafficked Children Guidance*, issued by the London Safeguarding Children Board in 2011, states that a trafficked child should be placed out of borough if this is in their best interests in order to ensure that it is more difficult for their trafficker to locate or contact him or her. The APPG for Runaway and Missing Children and Adults and the APPG for Looked After Children and Care Leavers' Report from its *Joint Inquiry into children who go missing from care* in June 2012 also noted that the evidence received by the Inquiry unanimously argued that the best solution to help trafficked children break the contact with their traffickers and prevent them from going back, was specialist foster care. It concluded that this was because these carers were trained to identify and respond to specific issues and needs of trafficked children and to know how to keep them safe.
- 3.29** A number of local authorities do place children outside of the area in which they were previously exploited or discovered as victims of child trafficking. However, they rarely have access to foster carers outside of the local authority's own geographic area who are specifically trained to protect these children or have sufficient knowledge of their particular needs. In other cases children under 16 will be placed with whichever foster carer has space to accommodate them and there is no requirement for the foster carer to have had any training about caring for victims of child trafficking. This can often lead to a child being further traumatised or stigmatised. One girl who had been trafficked for sexual exploitation was placed in a family where the father in the family was instructed by his wife to ensure that he was never in a room on his own with this child. The child interpreted this as a belief by the family that she had consented to her prostitution and that, therefore, she would try to seduce the father.
- 3.30** However, the evidence submitted to the Inquiry showed that, as yet, there is very limited provision of specialist accommodation and that instead many trafficked children were being accommodated in provision such as B&Bs, hostels and supported lodgings, which do not give them the level of supervision and specialist



support needed to prevent them going missing from care. Barnardos noted that “child trafficking is a hidden problem enhanced by a culture of disbelief and a lack of awareness amongst members of the public and practitioners. As a consequence, children are put at risk in unsuitable accommodation rather than being given the specialist protection they need”. Two other charities, ILPA and the Children’s Society, also noted that budget constraints in local authorities and a culture that prioritises immigration control and criminal prosecution over child protection combined with a lack of specialist accommodation or foster care, contributed to the inadequate support that these children receive.

**3.31** ECPAT UK has campaigned for the provision of safe accommodation for child victims of trafficking for many years and published *On the Safe Side: Principles for the safe accommodation of child victims of human trafficking*<sup>56</sup> in 2011. This report concluded that safe accommodation is a concept which encompasses more than the mere provision of adequate placements and includes the consideration of the child’s physical, psychological, legal, language and security needs<sup>57</sup>. It also outlined ten principles for the safe accommodation of child victims of human trafficking. One of these principles recognised that safety measures should be implemented to reduce a child’s risk of going missing.

**3.32** Barnardos recently ran a pilot project within which they placed children at risk of sexual exploitation and trafficking in specialist foster care placements. The project was evaluated by the University of Bedfordshire<sup>58</sup> and it found that these specialist placements did meet the needs of this group of children and did offer effective protection. This pilot has now been extended and Barnardos is recruiting suitably qualified foster carers and running the scheme from its own funds.

## SECURE ACCOMMODATION

**3.33** An expert group convened by the All Party Parliamentary Group for Runaway and Missing Children and Adults and the All Party Parliamentary Group for Looked After Children and Care Leavers discussed whether trafficked children should be placed in secure accommodation, once they were identified, in order to protect them from being abducted or re-trafficked by their traffickers. However, the consensus was that this could be counter-productive, as traffickers often told children that they would be arrested and detained if they sought assistance from the police or a local authority social worker. Therefore, if they were held in secure accommodation this would tend to substantiate this assertion and discourage them from seeking assistance from other actors, who may assist them. In addition, the experts agreed that there was no legal basis for placing them in such accommodation. In most cases they would not have committed a criminal offence for which they should be held responsible, and in England and Wales Section 25 of the Children Act 1989 only provides the Family Court with the power to place a child, who is looked after by a local authority, in secure accommodation if he or she has a history of absconding from care and is likely to abscond in the future and suffer significant harm. The experts agreed the risk was primarily that a trafficked child would be re-trafficked or deceived or forced into a situation of exploitation, not that he or she would abscond.

## THE NEED FOR A LEGAL GUARDIAN

**3.34** Many actors giving evidence to the APPG Joint Inquiry into *Children Going Missing from Care*<sup>59</sup> noted that the provision of a legal advocate or guardian was essential to the protection of children who had been trafficked in the past or who were at risk of being trafficked in the future. In particular, ECPAT UK noted that the provision of a legal guardian would “assist in severing their links with traffickers and provide a secure

<sup>56</sup> ISBN 13 978-0-9553760-6-1

<sup>57</sup> *On the Safe Side: Principles for the safe accommodation of child victims of trafficking* ECPAT UK (2011)

<sup>58</sup> *Evaluation of Barnardos Safe Accommodation Project for Sexually Exploited and Trafficked Young People*

<sup>59</sup> APPG on runaway and missing children and adults and APPG on looked after children and care leavers (June 2012)

foundation to begin what, for many, will be a long and traumatic recovery”. Many other NGOs, and in particular member organisations of the Refugee Children’s Consortium, take the position that all unaccompanied migrant children should be provided with a legal guardian because children may not initially be correctly identified as children at risk of being trafficked. UNICEF UK and The Children’s Society have also argued that such provision is cost effective and would save costs incurred by a range of statutory bodies<sup>60</sup>.

**3.35** The Government has commenced a year-long trial, which will provide child trafficking advocates to migrant and British trafficked children in 23 local authority areas in England. This will be looked at by the University of Bedfordshire, and will be evaluated after a year.

## **ACTORS WITH PRIMARY RESPONSIBILITY:**

### **THE DEPARTMENT OF EDUCATION**

**3.36** The DfE, in conjunction with the Home Office, issued comprehensive practice guidance about the identification and care of trafficked children in 2001, which was entitled *Safeguarding Children Who May Have Been Trafficked*. It provides useful information for social workers, immigration officers and other actors with child protection duties. It has recently updated this guidance and made it statutory<sup>61</sup>. In January 2014 the DfE also published guidance in relation to missing children<sup>62</sup>.

### **OFSTED**

**3.37** The Office for Standards in Education, Children’s Services and Skills is a non-ministerial government department. It is responsible for inspecting local authority children’s services, including foster care and children’s homes. One of the aspects it takes into account when rating a local authority is the experiences and progress of children who go missing from care and those at risk of sexual exploitation and trafficking. Only a small minority of unaccompanied migrant children are placed in children’s homes as many local authorities do not use such facilities. However, the quality of the inspections carried out by OFSTED in relation to children’s home were placed in doubt by police officers who gave evidence to the recent APPG *Inquiry into children going missing from care*. In particular, one officer from West Mercia police stated that “the current OFSTED inspection regime seems to focus on a tick box culture but ....you need a holistic examination of how the home is performing, the quality of staff and what the outcomes are for the children”. The ACPO also reported that OFSTED is not willing to share data about children going missing with it, and that this prevents good co-operative safeguarding practice.

### **LOCAL AUTHORITY SOCIAL WORKERS**

**3.38** Section 17 of the Children Act 1989<sup>63</sup> and Section 11 of the Children Act 2004<sup>64</sup> oblige a local authority have regard to the need to safeguard and promote the welfare of any child in need. As part of this duty a social worker must decide within 24 hours whether a child requires protection, but usually has up to 45 days to complete a full assessment of the child’s particular needs<sup>65</sup>. But paragraph 74 of the DfE’s *Statutory Guidance on Children who run away or go missing from home or care, which applies in England*, states that where a child may be a victim of trafficking an assessment should be carried out immediately. The assessment should seek to

<sup>60</sup> *Cost benefit appraisal of legal guardianship for unaccompanied and separated migrant children in England and Wales (June 2014)*

<sup>61</sup> *Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children (July 2014)*

<sup>62</sup> *Statutory guidance on children who run away or go missing from home or care*

<sup>63</sup> And equivalent legislation in Scotland and Northern Ireland

<sup>64</sup> And equivalent legislation in Scotland and Northern Ireland

<sup>65</sup> *Working Together to Safeguard Children A guide to inter-agency work to safeguard and promote the welfare of children* Statutory Guidance published by the Department of Education, March 2013

establish relevant details about the child's background before he or she came to the United Kingdom, form an understanding of why he or she came, and analysis the child's vulnerability to remaining under the influence of traffickers.

**3.39** It also states that the social worker should work in close co-operation with the UK Human Trafficking Centre and immigration staff familiar with patterns of trafficking in the United Kingdom. In addition, the social worker should consider whether the child needs to be in a safe place before any assessment is conducted. The guidance also requires social workers to share information with the police and those undertaking any assessment under the National Referral Mechanism in order to ensure that the child is provided with maximum protection. However, the outcome of this guidance often depends on the level of training and experience of the individual social worker. The utility of the present NRM system has also been placed in question in Scotland<sup>66</sup>.

**3.40** In 2013 OFSTED published a report on *Missing Children*<sup>67</sup>. It inspected twelve local authorities and found that they gave variable attention to the needs of children at risk of trafficking. They identified one local authority which had established a specialist team, strengthened its risk assessment process, and formed close contact with the police both within and outside its own local area. It noted that this local authority was better able to ensure that these children did not go missing and if they did the local authority had the information necessary to try to track and search for them. In other local authorities such processes were not in place.

## **FOSTER CARERS AND CHILDREN'S HOMES**

**3.41** In England the Department of Education *Statutory Guidance on children who run away or go missing from home or care*<sup>68</sup> states that foster carers and children's homes must report any child who goes missing from their care to the police and to their local authority after taking all reasonable steps to find the child.

## **LOCAL SAFEGUARDING CHILDREN BOARDS**

**3.42** Local Safeguarding Children Boards in England and Wales and Child Protection Committees in Scotland and the Safeguarding Board in Northern Ireland have been established to co-ordinate multi-agency safeguarding work. Each LSCB should have a trafficking co-ordinator. In addition boards such as the London Safeguarding Children Board have established their own procedures for Safeguarding Children Missing from Care and Home. These explicitly recognise that unaccompanied migrant children are due the same protection as any other children in care.

## **NATIONAL MISSING PERSONS HELPLINE**

**3.43** The Helpline is funded by English and Scottish local authorities and acts as a specialist service for social services. It has adopted an information sharing agreement with the relevant social services.

## **THE POLICE**

**3.44** Police officers are also under a duty arising from Section 11 of the Children Act 2004<sup>69</sup> to have regard to the need to safeguard and promote the welfare of all children in the United Kingdom when exercising their

<sup>66</sup> *Scotland: A Safe Place for Human Traffickers: A scoping study into the nature and extent of child trafficking in Scotland, Scotland's Commissioner for Children and Young People and the University of the Highlands and Islands, Perth College (2011)*

<sup>67</sup> 08 February 2013

<sup>68</sup> Updated 24.01.2014

<sup>69</sup> And equivalent legislation in Scotland and Northern Ireland

duties to prevent crime and protect victims of crime. If the missing person is a child in local authority care, the police will expect the child's social worker and/or foster carer to take all reasonable steps to find the child before making a report to the police, as they may have good intelligence about the child's friends, movements and general state of mind.

**3.45** A police officer should also conduct an initial 'Safe and Well' interview with a child who is found after being missing to check for any indications that he or she has suffered harm, where and with whom he or she had been, and to give him or her an opportunity to disclose any offending by or against them. However, in 2013 in its report on *Missing Children*, OFSTED cast doubt on whether these interviews were being carried out on a regular basis and whether, if they were, the necessary information was being shared with local authority children's services.

**3.46** The police also play a leading role in identifying whether a child missing from care is a victim of trafficking. The National Police Improvement Agency<sup>70</sup> previously produced detailed guidance<sup>71</sup>. It recognised that if a child goes missing from care this may be linked to serious crime such as trafficking. In addition it noted that some children may be unknowing victims of crime, exploitation and trafficking, which raises the level of risk of further incidents in the future.

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## **NATIONAL CRIME AGENCY**

**3.47** The NCA runs the UK Missing Persons Bureau as a resource for both police forces and the public in general. ACPO's 2009 Code of Practice requires police officers to send details of any child who is still missing after 72 hours to the Bureau. Members of the public can also make referrals to the Bureau through a dedicated phone line, by text or on the Bureau's website. Referrals can also be made about children who have gone missing abroad.

## **MISSING PEOPLE**

**3.48** Missing People is a UK Charity which provides a 24 hour helpline for members of the public looking for children and adults who are missing. It works closely with the police but has not undertaken any particular work on unaccompanied migrant children who go missing from care. The NSPCC's Child Trafficking Advice Centre also has a Police Liaison Officer, who contacts the Home Office, the National Police Improvement Agency and CEOP, when a trafficked child is missing.

## **MULTI-AGENCY CO-OPERATION**

**3.49** The ACPO lead officer on missing people told the APPG *Inquiry into children who go missing from care*, that more police forces need to adopt a multi-agency response to children going missing from care. He also described how some police forces had established a Multi-Agency Safeguarding Hub, which was staffed by professionals from a range of agencies including police, probation, fire, ambulance, health, education and social care in order to share information to ensure early identification of potential significant harm and with an emphasis

<sup>70</sup> This agency closed in 2013 and its responsibilities were transferred to the Home Office, SOCA or the College of Policing

<sup>71</sup> Guidance on the Management, Recording and Investigation of Missing Persons (2010)

on triggering interventions to support the child. He also explained that a MASH is a response to a wide range of safeguarding issues relating to any child who goes missing from care but also provides essential protection for unaccompanied migrant children who are at risk of going missing. The ACPO lead also noted that “the police response to trafficked/exploited children must be part of a multi-agency response with the emphasis being on partnership to safeguard the child effectively when it is first appreciated that the child is trafficked and before the child goes missing”.

**3.50** A number of individual police forces have established a MASH and are sharing relevant information with other actors in order to develop profiles which may assist them to locate missing children in the future. The London Borough of Hillingdon’s Service Manager for Safeguarding Children, told the APPG *Inquiry into children who go missing from care* that the number of unaccompanied migrant children who had gone missing from its care had reduced from 79 in 2007 to 8 in 2009 after it adopted a similar multi-agency approach. Its model operated at strategic, policy and operational levels, and involved a partnership with law enforcement agencies.

## CHAPTER 4: EXTRA VULNERABILITY

### INTRODUCTION

**4.0** This chapter will discuss which actors are involved in identifying and responding to characteristics of extra vulnerability in unaccompanied migrant children. Such extra vulnerability may arise from being a victim of human trafficking and/or suffering from trauma, ill health or a disability. The chapter also discusses whether there are sufficient systems in place to respond to the particular extra vulnerabilities of individual unaccompanied migrant children, and how the different actors, who may play a part in these systems, are qualified, resourced and mandated. It also considers the extent to which they co-operate effectively with each other.

### CHILDREN WHO MAY BE VICTIMS OF HUMAN TRAFFICKING

**4.1** All professionals involved in tackling child trafficking accept that the extent of this phenomenon is unknown<sup>72</sup>. This is partly because it results from organised international crime and, therefore, it is only when such crimes are detected and its victims are rescued that the true number of children involved can be quantified. In addition, by its very nature the “trade” depends on children being brought into the United Kingdom illegally without the knowledge of border and immigration officers or wider child protection systems. Therefore, current statistics are likely to be a gross under-estimation of the true number of victims. In particular, the statistics produced within the National Referral Mechanism system should be viewed with caution as it is known that many social workers do not refer children in their care into the NRM due to concerns about whether this is in the child’s best interests. This is because it does not give trafficked children access to any further assistance and protection and exposes them to the potential trauma of an additional determination procedure.

**4.2** The statistics included below do not reflect a comprehensive picture of the numbers of unaccompanied migrant children who are trafficked into the United Kingdom but do indicate the breadth of the variety of exploitation, which the children may experience, and the main countries from which they are likely to have been trafficked.

**4.3** On 28th January 2014, the National Crime Agency published its Human Trafficking: National Referral Mechanism Statistics for July – September 2013. These revealed that during this period 105 children were referred into the NRM because of concerns that they may be victims of child trafficking. 80 (or 76%) came from the 12 particular countries, which “produced” the highest number of child victims. 22 were from

<sup>72</sup> Centre for Social Justice Slavery Working Group (2013) *It happens here: equipping the United Kingdom to fight modern slavery: a policy report by the Slavery Working Group, Centre for Social Justice and Inter-Departmental Ministerial Group on Human Trafficking* (2012). See also First annual report of the Inter-Departmental Ministerial Group on Human Trafficking, Cm 8421, October 2012.

Vietnam, 10 from Albania, 5 from China, 5 from Ghana, 5 from Romania, 4 from Nigeria, 3 from Pakistan, 2 from Congo, 2 from Jamaica, 2 from Slovakia and 2 from Somalia. (There were also 18 from the UK itself.) 36 of these referrals related to sexual exploitation, 35 to labour exploitation, 13 to domestic servitude and 21 were unknown. 63 (or 60%) were girls and 42 (or 40%) were boys. There was also a discrepancy between the numbers identified in different parts of the UK and in this period only 8 children were identified in Wales<sup>73</sup>, 10 in Northern Ireland and 20 in Scotland<sup>74</sup>. This does not necessarily mean that the systems put in place by these devolved administrations are less robust, but may simply reflect the areas of operation by criminal gangs.

**4.4** The NSPCC's Child Trafficking Advice Centre, which was established in November 2007, also compiles its own statistics<sup>75</sup> based upon child victims who come to its notice. Between November 2007 and October 2012 CTAC dealt with 785 cases. Of these 427 were girls, 327 were boys and in 31 cases the child's gender was not disclosed by the actor seeking advice.

**4.5** The data also revealed that:

176 children were trafficked for sexual exploitation

160 children were trafficked for criminal activity

71 children were trafficked for domestic servitude

49 children were trafficked for labour exploitation.

40% were from Asia

34% from Africa

23% from Europe

1% from South America

1% from the Caribbean and

1% from the Mediterranean.

**4.6** The UK Human Trafficking Centre also gathers intelligence held by itself, information from the NRM database, and information from police forces, UK Visas and Immigration, the Gangmasters Licensing Authority (GLA) and NGOs. Its 2013 report found that 2,255 potential victims of human trafficking were identified in the UK in 2012 and of these 24% (or 549) were children. Of these children:

28% (or 152) were victims of sexual exploitation

24% (or 132) were victims of criminal exploitation – 42% (or 56) for cannabis cultivation and 41% (or 55) for benefit fraud

6% (or 35) had been held in domestic servitude

3% (or 18) were victims of other labour exploitation

1 child was a victim of organ harvesting

7% (or 37) had suffered multiple exploitation and in

32% (or 174) the type of exploitation was unknown

<sup>73</sup> For more information on child trafficking in Wales see *Bordering on Concern: Child Trafficking in Wales* ECPAT UK (commissioned by the Office of the Children's Commissioner for Wales (2009) and *Knowing No Boundaries: Local Solutions to an International Crime: Trafficking of Women and Children in Wales* Joyce Watson AM, Chair of Cross Party Working Group on Trafficking of Women and Children in Wales (2010)

<sup>74</sup> For more information see *Inquiry into Human Trafficking in Scotland*, Equality and Human Rights Commission, 26.11.2011

<sup>75</sup> [http://nspcc.org.uk?Inform/resourcesforprofessionals/childtrafficking/child-trafficking-statistics\\_wda96895.html#nspcc](http://nspcc.org.uk?Inform/resourcesforprofessionals/childtrafficking/child-trafficking-statistics_wda96895.html#nspcc)



In addition,

19% (or 103) of these children were from Vietnam

14% (or 78) were from Nigeria

9% (or 43) were from Slovakia

7% (or 39) were from Romania

7% (or 39) were from the UK

**4.7** However, The Children's Society, the Refugee Council<sup>76</sup> and OFSTEDI<sup>77</sup> remain concerned that in practice many unaccompanied migrant children, who were victims of child trafficking, are not identified. If this is the case they would not be reported to the UKHTC and they would merely be referred to UK Visas and Immigration as children who are subject to immigration control. They also noted that although the Home Office and Department of Education had issued guidance on *Safeguarding a child who may have been trafficked in 2011*<sup>78</sup> in 2011, this guidance was not being implemented by some local authorities, who had little experience of children who had been trafficked. In other areas, good multi-agency practice has been developed. For example, in one area of England four Local Safeguarding Children Boards have co-operated to produce a *Protocol for safeguarding trafficked children within Hampshire, the Isle of Wight, Portsmouth and Southampton*<sup>79</sup>. Under this protocol the Hampshire Constabulary uses section 46(1) of the Children Act 1989 to remove a child who may have been trafficked from the location in which he or she had been found and place him or her in suitable accommodation. Once the child has been referred to a local children's services department, it will then be under a duty, under section 47 of the Children Act 1989, to conduct an investigation into whether it should take any action to safeguard and promote the child's welfare. In the London Borough of Hillingdon and in Kent the establishment by Local Safeguarding Children Boards of trafficking sub-groups has also led to a significant reduction in the number of trafficked children who are not identified or who go missing from local authority care. In both these areas these sub-groups are made up of representatives from children's services, the police, the health and education services and other statutory bodies and also a representatives from ECPAT (UK).

**4.8** Anglesey County Council in Wales has also established a multi-agency anti-human trafficking group as a response to the risk of trafficking occurring because of the presence of the port of Holyhead, the construction of a new nuclear power station and rural industries which use migrant labour. In Cardiff, its Anti-Human Trafficking Forum has piloted the use of Multi-Agency Risk Assessment Conference to combat human trafficking and this is now being rolled out across Wales. The MARAC is led by Bawso and involves a number of multi-agency partners. In Northern Ireland there are protocols between the Police Service of Northern Ireland and the different Health and Social Care Trusts which ensure that different actors know their individual responsibilities for trafficked children.

## LEGAL OBLIGATIONS

**4.9** The UK is obliged by the EU Directive *on preventing and combating trafficking in human beings and protecting its victims* to recognise that the recruitment, transportation, transfer, harbouring or reception, including the exchange or transfer of control over a child for the purposes of exploitation, amounts to an offence of child trafficking. The UK also accepts that exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of

<sup>76</sup> Still at Risk (2013)

<sup>77</sup> Missing Children (2013)

<sup>78</sup> Department of Education & The Home Office, 18.10.11

<sup>79</sup> April 2011

organs. In addition, in the case of *R v L and Others*<sup>80</sup> the Court of Appeal (Criminal Division) found that weight must be given to paragraph (8) of the preamble to the Directive which states that children are more vulnerable than adults and, therefore, at greater risk of becoming victims of trafficking in human beings and that a child's best interests must be treated as a primary consideration in accordance with Article 24 of the EU Charter of Fundamental Rights and Article 3 of the 1989 United Nations Convention on the Rights of the Child.

- 4.10** Article 35 of the UNCRC also says that States Parties shall take all appropriate national, bilateral and multilateral measures to prevent child trafficking. In addition, the UK has adopted a number of policies in order to meet its obligations under the Council of Europe's *Convention on Action against trafficking in human beings*. The UK Government has established an Inter-departmental Ministerial Group on Human Trafficking which monitors policies and practices to combat human trafficking across government departments and the three devolved administrations in Wales, Scotland and Northern Ireland<sup>81</sup>. One of its roles is to monitor the progress of *Human Trafficking: The Strategy*, which was published in 2011. Practice in Wales is also of particular interest. The Welsh Government has appointed a national Anti-Human Trafficking Co-ordinator and an Anti-Trafficking Leadership Group and Delivery Plan. The Leadership Group includes representatives from ACPO Cymru, the Home Office, the National Crime Agency, the GLA, the CPS, the Youth Justice Board, Bawso and the Children's Commissioner for Wales. There is also a North-West Wales Regional Anti-Trafficking Co-ordinator and Anti Human-Trafficking Fora in Gwent, South Wales and West Bay. In addition, the Welsh Government has an Anti-Slavery website to disseminate information and has set up Anti-Human Trafficking Fora in Swent, South Wales and West Bay.
- 4.11** The Modern Slavery Bill before the UK Parliament will only apply to England and Wales. But Lord Morrow has introduced a private members bill in the Northern Ireland Assembly, which is entitled the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill and it was largely supported by the Northern Ireland Justice Committee in April 2014 and will be debated in the Northern Ireland Assembly. The Northern Irish Department of Justice also published a Human Trafficking Action Plan for 2013-2014. There is also an Immigration and Human Trafficking Sub-group of the Organised Crime Task Force.
- 4.12** In Scotland there is cross-party support for a Human Trafficking (Scotland) Bill, which was adopted by the Scottish Justice Minister in March 2014. He has also confirmed that it will be debated before the end of the current Scottish parliamentary session, which should be in May 2016. The Bill will require the Scottish Parliament to publish a Strategy for Scotland on Human Trafficking and has a number of proposals for enhanced protection for the victims of human trafficking. The Scottish Government also held a Trafficking in Human Beings Summit in October 2012 and has established an Anti-Trafficking Progress Group<sup>82</sup>.
- 4.13** The UK has also ratified the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography. The Committee on the Rights of the Child reviewed the UK's compliance with this Protocol in June 2014. It stressed the need for the UK Government to provide independent guardians for child victims to ensure the best interest of the child was protected throughout the justice process. It also noted the need for a unified comprehensive and overarching national plan of action to implement the Optional Protocol throughout the UK, including Scotland and Northern Ireland.

## NATIONAL REFERRAL MECHANISM

- 4.14** In order to comply with its obligations under the Council of Europe Convention the UK Government established a National Referral Mechanism system in April 2008, which was located in the Home Office and which applied throughout the UK. The overall system is overseen by an NRM Oversight Review Group, which is comprised of representatives from relevant statutory bodies and a few NGOs, such as Barnardos and

<sup>80</sup> [2013] EWCA Crim 001

<sup>81</sup> The Welsh Assembly, the Northern Ireland Assembly and the Scottish Government, all of whom are elected on a national basis

<sup>82</sup> See also Scotland: *A safe place for child traffickers: A scoping study into the nature and extent of child trafficking in Scotland*, Scotland's Commissioner for Children and Young People and the University of the Highlands and Islands, Perth College (March 2011)



the NSPCC's Child Trafficking Advice Centre. Children's services, the police, immigration and border officers and a number of NGOs are "first responders" who can refer children into the NRM. Where a child is a subject to immigration control he or she is then referred to UK Visas and Immigration, which acts as a "a competent authority" for the purposes of the NRM and reaches an initial decision as to whether there are reasonable grounds to believe that the child is a victim of human trafficking.

- 4.15** If this is the case UK Visas and Immigration will grant the child temporary admission for a recovery and reflexion period of 45 days. In practice it will be longer as delay is currently common place in all decision making procedures in the Home Office. The competent authority will then decide on a balance of probabilities whether there is sufficient evidence to make a conclusive decision that the child is a victim.
- 4.16** However, most actors agree that the NRM for unaccompanied migrant children has not achieved its potential. For example, only 438 children were referred into the NRM between April 2009 and June 2011 because many local authorities do not believe that UK Visas and Immigration applies the correct legal definitions when considering whether a child is a victim of human trafficking and does not provide a child with any additional protection and assistance. The particular shortcomings have been detailed by GRETA in its *Report concerning the implementation of the Council of Europe's Convention on Action against Trafficking in Human Beings*<sup>83</sup> in September 2012, the Anti-Trafficking Monitoring Group's report *Hidden in plain sight: Three years on: updated analysis of UK measures to protect trafficked persons*<sup>84</sup> in October 2013 and the Centre for Social Justice's report, *It Happens Here: Equipping the United Kingdom to Fight Modern Slavery* in March 2013.
- 4.17** Many lawyers and NGOs noted that despite the fact that UK Visas and Immigration has now established a "trafficking hub" of case workers to consider referrals under the NRM, evidence still indicates that case workers are confusing their obligations under the Anti-Trafficking Convention with their obligations under the Refugee Convention and that this has a very negative effect on their decision making capabilities. This is a view shared by the police and other professionals and the parliamentary Report of the Modern Slavery Evidence Review, entitled *Establishing Britain as a World Leader in the fight against Modern Slavery*, dated 16th December 2013, recommended that responsibility for making decisions under the NRM should be removed from UK Visas and Immigration. The Joint Committee on the *Draft Modern Slavery Bill* subsequently published a report on the Draft Modern Slavery Bill on 8th April 2014. It also recommended that officials with responsibility for determining immigration claims should not take decisions on modern day slavery victimhood as there was an inherent conflict of interest in such an arrangement.
- 4.18** The Government is now undertaking a review of the NRM which will be completed in October 2014. In August 2014 the Anti-Trafficking Monitoring Group presented the results of its research into the working of the current NRM system for children and made some concrete proposals for a new system for children<sup>85</sup>. It argued that the children's NRM system was best placed within the wider child protection system. Therefore, it suggested that it could be embedded in a local Multi-Agency Safeguarding Hub or a Local Safeguarding Children Board. This would enable the process to build on the expertise of all child protection actors. In addition, by co-locating the NRM with systems designed to identify children, who were being physically or mentally abused or who were being subjected to child sexual exploitation, it may be possible to identify children who had been abused but who had not yet been identified as trafficked children.
- 4.19** A similar proposal had been made in Scotland in the past. It was referred to as the "Glasgow Model" and suggested that NRM decisions should be made by child protection conferences organised by children's services but attended by all other statutory actors who had contact with the child. Significantly, it also suggested that the trafficked child would be assisted to participate in the decision making process by pre-recording an audio statement or DVD which would be played at the conference.

<sup>83</sup> First evaluation round, GRETA (2012) 6, Strasbourg, 12 September 2012

<sup>84</sup> The Anti-Trafficking Monitoring Group, Anti-Slavery International, October 2013

<sup>85</sup> *Proposal for a revised National Referral Mechanism (NRM) for Children*, The Anti-Trafficking Monitoring Group, August 2014

- 4.20** In Northern Ireland a statutory multi-agency Safeguarding Board was established by its Department of Health, Social Services and Public Safety in 2012. Representatives from relevant statutory bodies, such as the Police Service of Northern Ireland, the Probation Board, the Youth Justice Agency and the Health and Social Care Trusts sit on this Board along with representatives from to five independent voluntary organisations. Three of these places are currently occupied by the NSPCC, Barnardos Northern Ireland and the Children’s Legal Centre. Child Sexual Exploitation is one of its safeguarding priorities but it has yet to focus on child trafficking. This is despite the fact that in September 2011 Barnardos Northern Ireland had published a report<sup>86</sup> recommending that the Safeguarding Board for Northern Ireland should have strategic oversight for separated and trafficked children.
- 4.21** The Government is also considering placing the NRM on a statutory basis. If it does, NGOs will be arguing that it must take the approach advocated by the Organisation for Security and Co-operation in Europe’s Office for Democratic Institutions and Human Rights in 2004. In particular, they will be saying that the OSCE’s publication on *National Referral Mechanisms: Joining the Efforts to Protect the Rights of Trafficked Persons*<sup>87</sup> was correct to call for a multi-agency approach to ensure that the NRM had actors with relevant expertise to counter human trafficking across the various fields touched upon by this phenomena.
- 4.22** The UK is also part of a project funded by the European Commission’s Prevention of and Fight against Crime Programme on *Improving Co-ordination and Accountability: Towards Romanian Unaccompanied Minors’ Safety*. Part of this project will develop tools and guides to assist identification of victims, which can be incorporated into the UK NRM and be shared and aligned with local and national protection frameworks in Romania.

## AGE DISPUTES

- 4.23** The UK recognises that in Article 8.1 of the UNCRC States Parties undertook to respect the right of the child to preserve his or her identity and that an intrinsic part of this is his or her age and date of birth. It also takes into account the fact that paragraph 31(i) of the UN Committee on the Rights of the Child’s General Comment No. 6 on *Treatment of unaccompanied and separated children outside their country of origin* states that age assessments should not only take into account the physical appearance of the individual[but 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; 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, he or she should be treated as such.
- 4.24** These obligations are very important when a child may be a victim of human trafficking as, if a child if wrongly assessed as an adult, none of the protections available to children, such as safe accommodation, will be provided. In fact, if wrongly assessed to be an adult, the child may not even be identified as a victim of trafficking because he or she may not be able to prove the means used to traffic him or her to the UK. As a consequence, he or she may also even find him or herself being wrongly prosecuted for actions which arose from the fact that he or she was a victim of child trafficking.
- 4.25** The UK Crown Prosecution Service has adopted a policy<sup>88</sup> to meet its obligations under Article 10.3 of the Council of Europe Convention on Action Against Trafficking in Human Being, which states that where a trafficking child’s age is disputed he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his or her age.
- 4.26** It is also widely accepted in the United Kingdom that the Royal College of Paediatrics and Child Health was correct when it advised in its November 1999 report<sup>89</sup> that “age determination is extremely difficult to do with

<sup>86</sup> *Separated children and child trafficking in Northern Ireland: Believe in Children*, Barnardos Northern Ireland, September 2011

<sup>87</sup> *A Practical Handbook*, ODIHR/OSCE (2004)

<sup>88</sup> *Guidance on the Prosecution of Defendants (Children and Adults) Charged with Offences who might be Trafficked Victims* Crown Prosecution Service (2011)

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. There may also be difficulties in determining whether a young person who might be as old as 23, could, in fact, be under the age of 18. [Therefore] age determination is an inexact science and the margin of error can sometimes be as much as 5 years either side”.

**4.27** Furthermore, in the case of *A v London Borough of Croydon and Secretary of State for the Home Department (as an interested party)*<sup>90</sup> Dr. Stern, a consultant paediatrician emeritus to the Guy’s and St Thomas’ Hospitals Trust, gave evidence, which was accepted by the Court. He advised the court that “height is particularly difficult to use as a reliable indication of age since much will depend on the height of each parent” He also said that in his view there was “no reliable scientific basis for the estimation of age” and “all the factors relied on to assess age in reality can only assess maturity and maturity and chronological age are two different things”.

**4.28** The medical profession in the United Kingdom is also united in its opposition to the use of all forms of x-rays, including dental x-rays, to assess the age of unaccompanied or trafficked children. The basis of this is the fact that medical ethics do not permit the use of radiation for non-medical procedures due to the potential risks this may pose to the child’s health. The Royal College of Paediatrics and Child Health is planning to undertake some further research into the role which the medical profession can play in holistic age assessments. The Association of Directors of Children’s Services has also now brought together two multi-disciplinary groups to consider how the methodology employed to undertake age assessments can be improved and these two groups are due to report back at the end of 2014.

## **NON-PROSECUTION OF CHILD VICTIMS OF HUMAN TRAFFICKING**

**4.29** Article 8 of EU Directive *on preventing and combating trafficking in human beings* states that Member States shall take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities, which they have been compelled to commit as a direct consequence of being subjected to trafficking. Lawyers representing children who had been trafficked were concerned that the wording of this Article did not assist their particular clients, as children do not have to prove that they have been subject to compulsion to establish that they have been trafficked. This issue was raised in the Court of Appeal (Criminal Division) in the United Kingdom in *L & Others* [2013] EWCA Crim 991 and the Court of Appeal held that the correct test was whether the offence committed by the child was consequent on or integral to the exploitation for which he or she had been trafficked. (In *L & Others* three of the appeals concerned Vietnamese children found in cannabis farms and prosecuted for the production of a controlled drug under the Misuse of Drugs Act 1971 due to their presence there even if they had been trafficked for the purposes of exploitation in these cannabis farms.). In this case, lawyers also relied on UNICEF’s 2006 *Guidelines on the Protection of Child Victims of Trafficking*, which stated that judicial authorities should ensure that child victims are not subjected to criminal procedures or sanctions for offences related to their situations as trafficked persons including violations of migration laws.

**4.30** The UK Modern Slavery Bill does not contain a non-prosecution clause but merely provides a limited defence in Clause 39. This is particularly problematic for a child who has been trafficked as he or she will have to show that he or she has been compelled to do the act, which constituted the offence. The *Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill* before the Northern Ireland Assembly does contain a non-prosecution clause which is still being debated. The consultation on the Human Trafficking (Scotland) Bill also suggested that such a clause would be necessary in Scotland.

<sup>89</sup> The Health of Refugee Children – Guidelines for Paediatricians

<sup>90</sup> [2009] EWHC 939 (Admin)

## LEGAL GUARDIANS

**4.31** Paragraph 70(c) of the UN Committee on the Rights of the Child's 2008 Recommendations asked the United Kingdom to consider the appointment of guardians for all unaccompanied migrant children. No such guardians have yet been appointed but Clause 41 of the Modern Slavery Bill, which is presently before the UK Parliament, is an enabling clause which provides the Secretary of State for the Home Department with the power to establish a system of child trafficking advocates in the future. Whether she will do so will be dependent upon the success of a trial child trafficking advocates scheme, which commences in September 2014. It will be run in 23 local authority areas in England by Barnardos. This trial will be evaluated by a team from the University of Bedfordshire, which includes four independent trafficking experts. The advocates will support and advise trafficked children but they will not have the legal authority to act on a child's behalf in legal or judicial matters and will not be able to require statutory bodies to provide these children with services if they do not do so.

**4.32** The UK Government believes that the child trafficking advocate scheme is an adequate response to Article 10.4 of the Council of Europe's Convention on Action against Trafficking in Human Beings, which was brought into force in the United Kingdom, on 1st April 2009. This states that: as soon as an unaccompanied child is identified as a victim of human trafficking, each Party shall provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of the child. However, the Refugee Children's Consortium, the Anti-Trafficking Monitoring Group and the Immigration Legal Practitioners Group say that unaccompanied and separated and trafficked children will only be properly protected and represented if they are provided with a legal guardian of the type being recommended by the EU Fundamental Rights Agency in its *Guardianship for children deprived of parental care: A handbook to reinforce a guardianship system to cater for the specific needs of child victims of trafficking*<sup>91</sup>. Its recommendations include:

1. An independent guardianship service, which employs a legal guardian to work with each trafficked child and which would be responsible for monitoring the support provided by the individual guardian to each trafficked child and providing these guardians with regular and appropriate information and training.
2. Individual guardians with sufficient background information about child trafficking to enable him or her to understand the child's history and protection needs.
3. Individual guardians which have been selected on the basis that they have an appropriate level of knowledge and experience of human trafficking, the child protection system, child development, child psychology, the health care and educational system, international children's rights and human rights law and that they have been the subject of enhanced CRB checks.
4. A guardian with an over-riding duty to act in the child's best interests at all times.
5. Organisations and individuals, such as local authority social workers, whose interests may conflict with those of the child should not be appointed as guardians.
6. National law should define the authority responsible for guardianship and this authority should be held responsible and accountable for the acts of individual guardians.
8. Guardians should be an integral part of the wider national child protection system.
9. Guardians should respect the child's right to be heard and to participate in decisions being made about him or her.

<sup>91</sup> FRA – the European Union Agency for Fundamental Rights, June 2014

- 4.33** The RCC, ECPAT (UK) and UNICEF UK have all been very active in advocating for full legal guardianship and have noted that the fact that a significant number of unaccompanied migrant children have been trafficked to the UK to be exploited as part of a criminal enterprise, increases the need for a legal guardian to protect their interests and liaise with the CPS, the Criminal Court and the police whether they were appearing as a victim to give evidence or have wrongfully been charged as a defendant.
- 4.34** The fact that the Modern Slavery Bill only contains an enabling clause and does not actually establish even a child trafficking advocate system and the fact that the Government has chosen to establish a trial child trafficking advocate scheme before the Bill is even law has confused the debate. However, a number of parliamentarians and NGOs will be seeking to use debates in the Modern Slavery Bill Committee and in the two houses of Parliament to distinguish between the powers held by a child trafficking advocate and a full legal guardian.
- 4.35** Meanwhile, in Northern Ireland, Lord Morrow<sup>92</sup> has used the Private Members Bill system to introduce a *Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill* in the Northern Ireland Assembly. This would provide trafficked children with legal guardianship and is supported by the Northern Ireland Department of Health, Social Services and Public Safety. His bill has been supported by the Northern Ireland Justice Committee and will subsequently be debated in the Northern Ireland Assembly.
- 4.36** A pilot guardianship service for all unaccompanied asylum seeking children in Scotland, funded by the Big Lottery Fund Scotland, the Paul Hamlyn Foundation and the Scottish Government, started in September 2010 and ran until the end of March 2013. It was based in Glasgow but eventually supported a few children who lived in other parts of Scotland. It was subsequently evaluated by the Universities of Swansea and Bedfordshire<sup>93</sup>. The evaluation noted that these guardians accompanied the children when they claimed asylum and helped them to be actively involved in decisions that affected their lives and helped them obtain the services which they needed. It was noted that there was initially friction between the guardians and those who already had statutory responsibility to the children. However, in the second year of the pilot scheme protocols were agreed with social services and the UK Border Agency and the scheme began to run more smoothly. It was also generally agreed by those involved in the service that the fact that most of the children lived in Glasgow and that the actors involved knew each other well assisted the scheme to work and that it may be more difficult to replicate it when numbers of children were larger and the scheme had to cover a larger geographic area.
- 4.37** In April 2013 the scheme was extended for a further three years. It continues to be run by the Scottish Refugee Council and the Aberlour Child Care Trust and is now exclusively funded by the Scottish Government. However, the service does not provide legal guardianship for these children and cannot ensure that other actors meet their statutory and international obligations towards the children.

## HEALTH CARE NEEDS

- 4.38** As soon as an unaccompanied migrant or trafficked child is identified, he or she should be provided with accommodation by the children's services department of the local authority area in which he or she was found. This will be under powers arising from Section 20 of the Children Act 1989<sup>94</sup> and the child will then become "looked after". The local authority will be under a statutory duty to safeguard and promote his or her welfare. Social workers in England and Wales are provided with statutory guidance on *Promoting the Health and Well-Being of Looked After Children*<sup>95</sup>. In particular, they have to refer each looked after child for an initial health assessment which must take place within four weeks. This will consider his or her physical, developmental and emotional health. Further assessments will also be scheduled on an annual basis.

<sup>92</sup> Northern Ireland Assembly Member for Fermanagh and South Tyrone

<sup>93</sup> *She endures with me: An evaluation of the Scottish Guardianship Service Pilot*, Heaven Crawley & Ravi K.S. Kohli (2012)

<sup>94</sup> And similar powers in Scotland and Northern Ireland



- 4.39** The Children (Scotland) Act 1995 is the legislative framework responsible for accommodating children. There is also *National Guidance for Child Protection in Scotland*, which has a section on specific steps to be taken when a child has been trafficked<sup>96</sup>. The Northern Ireland Assembly issued *Safeguarding Children: a cross-departmental statement on the protection of children and young people*<sup>97</sup> in 2009. This guidance recognises the role of Gateway Teams in Health and Social Care Trusts in identifying any unaccompanied migrant child's health needs.
- 4.40** In England and Wales health care staff including doctors and nurses in Looked After Children Teams, school nurses and health visitors have a statutory duty to promote and safeguard the welfare of looked after children which arises from the Children Act 2004. The need for these health care staff to have particular knowledge, skills, attitudes and training has been recognised in Public Health Guidance issued by the National Institute for Health and Care Excellence in October 2010<sup>98</sup>. This training may be provided by local health authorities, general health practices and hospitals. The content of the training will also be guided by the professional bodies representing different health care professionals. For example, in May 2012 the Royal College of Nurses and the Royal College of Paediatricians and Child Health published *Looked After Children: Knowledge, skills and competences of health care staff: Intercollegiate Role Framework*<sup>99</sup>.
- 4.41** The majority of the unaccompanied migrant children interviewed for a UNICEF UK report<sup>100</sup> in 2010 said that they had not experienced any difficulties registering with their local doctor's practice. In addition, they said that Kent County Council had arranged for a doctor to hold particular surgeries for them. However, accessing an interpreter was a common problem for unaccompanied migrant children attending appointments with local doctors or at hospital. Health professionals have a duty under the Equality Act 2010 to ensure that they do not discriminate against patients on grounds of race and this includes ensuring that they are provided with interpreting and translation services. But as a social worker in Kent said "accessing interpreters for health services is a bone of contention...the doctors don't like to provide interpreters, they expect us to do it but it's usually their job to do it and it takes our funding, which should be spent on something else".

## ATTITUDES TO MENTAL HEALTH

- 4.42** Access to appropriate mental health services may in some cases be prevented by the assumption on the part of social workers that unaccompanied migrant children are more resilient than other children, who are being looked after by local authorities, and that they can simply rely on inner resources of strength and capacity<sup>101</sup>. Unaccompanied migrant children may also not articulate mental health symptoms they may be experiencing. This may be because in their countries of origin those suffering from mental ill-health are stigmatised or subjected to radical and harmful treatment. Or it may simply be because the child does not recognise his or her feelings as symptoms of mental ill health and may believe that he or she is suffering from a physical illness. This is particularly the case when depression or trauma is having physical effects such as exhaustion, insomnia or lack of appetite.
- 4.43** As a consequence, unless social workers are given appropriate training they may not identify an unaccompanied migrant child's mental health needs and refer the child to appropriate mental health professionals. However, even if the child's social worker does make the appropriate referral, the unaccompanied migrant child may have to wait a long time before they receive appropriate treatment.

<sup>95</sup> Department for Education and Department of Health, 13.11.2009 - See also *Safeguarding Children: Working Together under the Children Act 2004*, published by the Welsh Government in 2006

<sup>96</sup> See paragraphs 562 - 571

<sup>97</sup> Issued by the Office of the First Minister and Office of the Deputy First Minister

<sup>98</sup> *Promoting the Quality of Life of Looked After Children and Young People*

<sup>99</sup> Also see *The Health of Refugee Children – Guidelines for Paediatricians*, The Royal College of Paediatrics and Child Health (1999)

<sup>100</sup> *Levelling the Playing Field: A UNICEF UK report into the provision of services to unaccompanied or separated migrant children in three local authority areas in England* (March 2010)

<sup>101</sup> *Promoting psycho-social well-being in unaccompanied young asylum seekers*, Kohli and Mather in *Child and Family Social Work* 2003, 8

This is particularly because in England and Wales the local Child and Adolescent Mental Health Services (CAMHS) are presently over-stretched and overwhelmed and are prioritising only the most urgent new cases. It is also because few local CAMHS have the necessary experience and skills to offer an adequate service.

- 4.44** Since 2004 the Welsh Government has based its policies in relation to children on the UNCRC and has recognised that one core right is an entitlement by every child to the best possible health. However, the All Wales Child Protection Review Group has accepted that specialist mental health services for unaccompanied migrant children and trafficked children still need to be developed<sup>102</sup>.
- 4.45** There are some specialist services which have been developed within the National Health Service in response to local demand. These include group and individual services offered to unaccompanied migrant children at the Tavistock Centre in London, which is part of the local health authority. There is also a small multi-disciplinary mental health team within Greater Glasgow & Clyde NHS, which aims to improve the capacity of local clinicians to meet the needs of asylum seekers of all ages. There are also a number of privately run services, which depend on charitable grants and donations but which employ fully qualified medical staff. Many of these are in London. For example, the Helen Bamber Foundation provides therapy for children (and adults) who have suffered a human rights violation and has treated a number of victims of human trafficking. There is also the Baobab Centre for Young Survivors in Exile, which provides a non-residential therapeutic community for children and young people who have experienced all forms of violence including being forced to serve as a child soldier. The Refugee Therapy Centre in East London also provides child and adolescent psychotherapy to unaccompanied migrant children.
- 4.46** In addition, Freedom from Torture (previously the Medical Foundation for the Care of Victims of Torture) specialises in individual and group therapy for children and adults who have experienced torture. It has a centre in London but it has also opened centres in Manchester, Newcastle, and Glasgow, which provide treatment for unaccompanied migrant children and Praxis Care provides services to children who are mentally ill or who suffer from learning disabilities in Northern Ireland and the North of England.

## **CHAPTER 5: THE ROLE OF INFORMATION IN STATUS DETERMINATION PROCESSES AND PROCEEDINGS**

### **INTRODUCTION**

- 5.1** Immigration control falls within the competence of the UK Parliament and the devolved administrations do not play any part in the determination of immigration status. Therefore policies and practice relating to status determination apply throughout England, Wales, Scotland and Northern Ireland. There are several different types of leave an unaccompanied migrant child may be granted if he or she seeks protection in the United Kingdom. He or she may be recognised as a refugee, granted Humanitarian Protection or be granted limited leave to remain in order to prevent a breach of the ECHR. In addition, he or she may be granted limited leave to remain on the basis that there are no adequate reception arrangements in place in his or her country of origin.
- 5.2** When the Secretary of State for the Home Department, through her case workers, considers whether a child is entitled to such protection consideration should first be given to the most sustainable type of protection, which is widely acknowledged to be refugee status. She should then consider other possible basis for granting leave. Her ability to reach an appropriate and durable decision largely depends on whether sufficient information is collected, exchanged and provided.

<sup>102</sup> *Safeguarding and Promoting the Welfare of Unaccompanied Asylum Seeking Children and Young People: All Wales Practice Guide, All Wales Child Protection Review Group, 09.08.2011*



- 5.3** The information gathering process does not stop when an initial decision is reached but continues if leave to remain, which an unaccompanied migrant child is entitled is refused and he or she has to appeal against this decision to the First-Tier Tribunal (Immigration and Asylum Chamber) and then any higher tribunal or court. In a significant number of cases, the information collected and submitted for any appeal will be more detailed and involve additional medical and other expert evidence.
- 5.4** The Immigration and Appeal Tribunals and the Court of Appeal are part of the UK's Common Law jurisdiction. As a consequence, appeals are adversarial in nature and the burden of proving his or her case will lie on the unaccompanied migrant child. In addition, the relevant tribunals and courts, before which the child appears, will take into account relevant national legislation, international law and any previous judgments and determinations made by more senior tribunals and courts with the power to make decisions which are binding on less senior tribunals and courts. This means that an unaccompanied migrant child will also need to be aware of and submit relevant case law at each stage of the legal process.
- 5.5** At the same time, there may be disputes about the manner in which decisions have been made by the Secretary of State for the Home Office or other professionals which have a direct effect on the child's application for protection. These may include an assessment that he or she is an adult and not an unaccompanied child or a significant delay in reaching a decision on the unaccompanied child's application. If this is the case "satellite" litigation may be initiated in the Administrative Court within the High Court and will require information which is cogent and of a high quality. This litigation will take the form of a judicial review of the initial decision and the Administrative Court will not consider the substantive merits of the unaccompanied migrant child's case. Instead, it will assess whether the manner in which the age assessment or other administrative decision, or failure to act, was lawful.

## **THE PRINCIPAL ACTORS INVOLVED IN GATHERING INFORMATION**

- 5.6** In the United Kingdom unaccompanied migrant children are not provided with legal guardians who assist them to put their case to the Secretary of State for the Home Department or any tribunal or court. A social worker, who may have been allocated to the child by a local authority is also unlikely to play a significant role in the status determination process. This is because he or she will not have the necessary training to offer assistance. In addition, few social work managers consider that this is an appropriate use of their time. Furthermore, as the process is adversarial, there are limitations on the extent to which the Secretary of State for the Home Department and her UK Visas and Immigration department can assist the child. However, in Scotland the new duties to get it right for every child, arising from the Children and Young People (Scotland) Act 2014, may lead to improvements there.
- 5.7** As a consequence, the child's lawyer tends to play a pivotal role in the information gathering process with other actors, such as social workers, foster carers, the police, judges and UK Visas and Immigration expecting him or her to provide relevant information about the child and his or her application for status. Therefore, the quality of the unaccompanied migrant child's lawyer may become a very important factor influencing whether the child is granted status. The evaluation of the Child Trafficking Advocate trial will be looking at whether the appointment of child trafficking advocates enhances the child's ability to gather relevant information.
- 5.8** Furthermore, if other actors understand that they too have a part to play in the information gathering process, which arises from their wider child protection duties, the quantity and quality of the information, which can be provided in the status determination process, will be greatly enhanced. |

## THE ROLE OF THE UNACCOMPANIED MIGRANT CHILD

- 5.9** Paragraph 339I of the Immigration Rules states that both children (and adults) are under a duty “to submit to the Secretary of State as soon as possible all material factors needed to substantiate the asylum claim or establish that he is a person eligible for humanitarian protection or substantiate the human rights claim”. Paragraph 352 of the Immigration Rules also provides caseworkers with the authority to interview any unaccompanied migrant child, who is over the age of 12. UK Visas and Immigration department caseworkers view the answers provided by the child in his or her screening and substantive interviews as a very important part of this material and they will form the basis of subsequent credibility findings in relation to the child’s account of past persecution or claimed risks. Where a child is young or traumatised the quality of his evidence may be poor and his lawyer may have to submit expert evidence to explain why this is the case.
- 5.10** The Immigration Rules emphasise that in asylum interviews: “the child shall be allowed to express himself in his own way and at his own speed. If he appears tired or distressed, the interview will be suspended.”<sup>103</sup> However, in its Quality Initiative work with the Home Office, UNHCR (UK) carried out an examination of decision-making in unaccompanied children’s cases. Its 6th QI Report in 2009 found that “the mixed ability amongst case owners to question a child appropriately and effectively at interview suggests a need for more thorough training and guidance”.

## THE PART PLAYED BY UK VISAS AND IMMIGRATION

- 5.11** Case workers in the UK Visa and Immigration department exercise powers delegated to them by the Secretary of State for the Home Department in order to reach decisions on applications for status made by unaccompanied migrant children (and other migrants). The Home Office’s own instructions on *Processing an asylum application from a child*<sup>104</sup>, which was issued on 16 April 2013, sets out instructions on obtaining additional information, emphasising the importance of multi-agency cooperation and the need to be “proactive in the pursuit and consideration of objective factors and information relating to the child’s claim” and the need to “consider evidence from a range of other sources such as information from other family members, accompanying adults or social workers” and “other agencies involved with the child which they are able to share and that may be relevant to the application”.<sup>105</sup> However, lawyers reported that this rarely happens, as in practice case workers do not actively seek out further evidence.
- 5.12** Paragraph 6.23 of the Process Instructions also states that “the screening process is not the place to explore the claim for asylum”. But there is widespread concern about the manner in which immigration officers do use the initial screening interview in order to obtain information about the child’s substantive claim for protection, even though he or she may not have been fully informed about the legal options available to him or her before that interview and may also not be legally represented at that stage. In addition, in its 2013 report on *The Human Rights of unaccompanied migrant children and young people in the UK*, the Parliamentary Joint Committee on Human Rights noted that “there is an insufficient focus on the needs of children when gathering information about them during the asylum and immigration process. This begins with screening, but the concerns we heard addressed the system more widely, including the substantive process of interviewing children and assessing their claims. The gathering of substantive information on a child’s claim for asylum or other protection should come well after the screening process, to allow children to be settled and to articulate their views properly. Guidance distinguishes clearly between the two stages of the process, but our evidence indicates that screening too often blurs into wider information-gathering. This must change, to bring children’s best interests to the fore.”<sup>106</sup>

<sup>103</sup> Immigration Rules , paragraph 352

<sup>104</sup> Asylum Process Instruction, UK Border Agency, 16.04.2013

<sup>105</sup> At 13.1

- 5.13** In January 2012 the Children’s Commissioner for England reported on the use of initial interviews in Dover, raising concern about the experiences of children<sup>107</sup>. In 2013 the Independent Chief Inspector of Borders and Immigration 2013<sup>108</sup> also noted ongoing concerns about the conduct of in-country screening interviews taking place at the main asylum screening office in Croydon and said that there was “an inconsistency in the content and timing of screening interviews. The content could differ according to which form was in use, whether an adult attended with the child, and whether staff fully understood the procedural implications of the differences. We were particularly concerned to find a number of instances where children were questioned at screening about the substance of their asylum claims, which is contrary to Home Office guidance.”<sup>109</sup>
- 5.14** The Independent Chief Inspector of Borders and Immigration also expressed concerns about “examples of behaviour by interviewers, which did not, from the transcript, appear child-friendly”, delays to interviews which kept children waiting for long periods and interview facilities, which were not always appropriate. The Inspectorate spoke to three groups of children who had been interviewed; in Scotland “of the five young people in Glasgow who told us about their interviews, four were broadly unhappy with them. One described not feeling that it was possible to tell their whole story and another said that the interviewer had not been friendly. The child, who was broadly content, was interviewed over two half days in their legal representative’s office, which they said made the process comfortable. The report went on to note that an increasing number of interviews in Glasgow are being held at non-Home Office locations.” This is also the case in Northern Ireland where solicitors are often able to interview the child themselves and then submit a written statement on his or her behalf.
- 5.15** In another positive development an experienced lawyer in London reported that in a number of cases she had been able to persuade caseworkers to accept a written statement she had taken from an unaccompanied migrant child instead of requiring them to attend for a substantive interview. Caseworkers may also be prepared to rely on an achieving best evidence interview conducted by a police officer and a social worker in child protection or criminal proceedings.
- 5.16** The Process Instruction also sets out guidance on child-specific forms of persecution and advises case workers to take into account the relevant provisions of the 1989 UNCRC and UNHCR’s guidelines on international protection<sup>110</sup>. However, lawyers reported that caseworkers rarely referred to such forms of persecution or to the UNCRC or UNHCR Guidance. They also noted that, although the Home Office had published statutory guidance<sup>111</sup> in May 2009 on the duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of unaccompanied migrant children, this was rarely followed in practice.

## TRAINING CASEWORKERS

- 5.17** Caseworkers in the UK Visas and Immigration department are not required to hold any formal professional or vocational qualifications, but are required to complete an internal ‘Asylum Foundation Training’ programme, which includes modules on working with interpreters, an interview simulation, understanding refugee law and assessing credibility. A caseworker must have successfully completed additional training on children before he or she can be allocated an application made by a child. The content of this training programme is not in the public domain but officials have said that it mirrors the Guidance on *Processing an*

<sup>106</sup> Paras 75 and 76

<sup>107</sup> Chapters 5 and 6, *Landing in Dover – The immigration process undergone by unaccompanied children arriving in Kent (2012)*

<sup>108</sup> *Inspection into the Handling of Asylum Applications made by Unaccompanied Children: February – June 2013*

<sup>109</sup> At page 5, para 5

<sup>110</sup> Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and /or 1967 Protocol relating to the Status of Refugees

<sup>111</sup> Every Child Matters: Change for Children

*asylum application from a child*<sup>112</sup>. Furthermore, in his 2013 Report<sup>113</sup> the Independent Chief Inspector of Borders and Immigration said<sup>114</sup> that it had three elements –

- (1) Keeping children safe – Tier 1 (Home Office e-learning) – a core module for all staff
- (2) Keeping children safe – Tier 2 (1-day classroom) – generic training delivered by a G4S
- (3) Keeping children safe – Tier 3 (2-day classroom) – delivered by experienced Home Office staff

**5.18** There are also continuing concerns about whether the training being received by caseworkers is adequate and effective. For example, UNHCR UK’s 6th Quality Initiative report<sup>115</sup> on Home Office decision-making in children’s cases noted the need for neutral and non-biased presentation of key refugee law concepts and the need for continued improvements to training on credibility assessments. It also said that improvements should include more thorough explanations of how to make a decision using techniques that incorporated a child’s individual characteristics, such as age and maturity, into the assessment. It added that it should also include more explanation and a practical application of refugee law concepts where child-specific considerations needed to be taken into account”.

## **COUNTRY OF ORIGIN INFORMATION**

**5.19** Paragraph 339JA of the Immigration Rules requires the Secretary of State for the Home Department to provide reliable and up-to-date information from various sources on the general situation in countries of origin and transit. This information is published in Country of Origin Information Reports and Operational Guidance Notes. However, these documents are largely based on desk research and rely heavily on information provided by the US State Department and international human rights organisations. The researchers do not undertake original research in relation to issues raised in a particular case. This was confirmed by a lawyer who has specialised in representing unaccompanied migrant children for ten years. She said that case workers had never obtained their own expert evidence in any case in which she had conducted. Another lawyer recalled only one incidence when a caseworker had even suggested that expert evidence may be useful.

**5.20** An Independent Advisory Group on Country Information was established in March 2009 by the Independent Chief Inspector of Borders and Immigration. The IAGCI can make recommendations designed to improve the manner in which information for these reports is gathered, structured and used but such recommendations are not binding on the Secretary of State for the Home Department. In 2012 an IAGCI thematic report by Kohli, Mitchell and Connolly<sup>116</sup>, examined the extent to which country of origin information reflected the situation of children in countries of origin and whether these countries respected children’s rights. In particular, the report recommended that Country of Origin Information Reports on children should follow a template based on the issues raised in the UN Committee on the Rights of the Child’s Periodic Reports and the rights contained in the UNCRC. It also highlighted the potential for such an approach to “provide a fuller understanding of risk and protective factors that contribute to a balanced understanding of the contexts from which children are claiming asylum”. It noted “considerable improvement in relation to the instructions” given to the researchers which “recommend authors use UNICEF data sources and the UNCRC as scaffolding around which the rest of the [children’s] section can grow”. The overall coverage of issues relevant to children has now improved but some lawyers still report that they find that the quality of the reports varies.

<sup>112</sup> Asylum Process Instruction, UK Border Agency, 16.03.2013

<sup>113</sup> *Inspection into the handling of asylum applications made by unaccompanied children: February – June 2013*

<sup>114</sup> Para 5.17

<sup>115</sup> Quality Initiative Project, Sixth Report to the Minister, UNHCR, London (April 2009)

<sup>116</sup> *An analysis of the coverage of issues related to children in Country of Origin Reports produced by the Home Office (October 2012)*

**5.21** In addition, an experienced lawyer who had represented unaccompanied migrant children for ten years said that decision letters drafted by case workers still did not give proper weight to country information (or expert evidence submitted on behalf of children). Instead they were usually standard refusal letter which failed to engage with the evidence submitted to support an individual child’s application. Another lawyer noted that in addition caseworkers also to give any consideration to child specific country evidence submitted on behalf of an unaccompanied migrant child and just relied on their own Country of Origin Information Reports and Operational Guidance Notes. A third said that proper weight was not given to expert medical evidence submitted in support of unaccompanied migrant children’s applications and that the only time that caseworkers did rely on expert evidence was when it was evidence from children’s services about a child’s age.

## **FAMILY TRACING**

**5.22** Article 22.2 of the UNCRC obliges the United Kingdom to co-operate in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations, co-operating with the United Nations, to protect and assist a child seeking asylum and to trace the parents or other members of the family of any refugee children in order to obtain information necessary for reunification with his or her family. However, it only needs to do so when it considers that such action is appropriate. This caveat is necessary as Article 9 of the UNCRC recognises that in some cases it may be in a child’s best interests to be separated from a parent.

**5.23** In addition, the obligation imposed by the UNCRC is to co-operate with tracing undertaken by the UN and non-governmental organisations. It does not impose this obligation on the State itself. In practice on an international level the two organisations, which are most involved in “family tracing”, are the Red Cross and Red Crescent. The British Red Cross makes it clear that it will not trace a child’s family for the British Government for immigration purposes but will only offer assistance to a child if he or she wishes to trace his or her family for other purposes.

**5.24** This should not be confused with the obligation under Article 19.3 of EU Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and Regulation 6 of the *Asylum Seekers (Reception Conditions)*. This places a duty on the United Kingdom to endeavour to trace members of an unaccompanied child’s family as soon as possible. This is a limited duty as it only requires the United Kingdom “to endeavour to” and does not require it “to locate” a child’s family. Article 19.3 also places this obligation within the wider duty to protect the unaccompanied child’s best interests. Therefore, in the light of General Comment No. 14 it can be inferred that a family should only be traced if this would be in the child’s best interests as confirmed by Article 9 of the UNCRC.

**5.25** Unfortunately this is not how the Article has been interpreted in the United Kingdom by the Home Office. The Home Office has tended to presume that it is always in a child’s best interests to be returned to his or her family and has often asserted that a child, who does not provide enough information for the Red Cross to trace his or her family, is trying to deceive the Home Office and does not have a serious fear of persecution or serious ill-treatment in his or her country of origin or habitual residence. In addition, the Home Office has failed to consider whether the mere fact that a child’s family has been traced is sufficient to ensure that it would be in his or her best interests to be returned to his or her family. This would not be an assumption, which would be acceptable in child protection or child abduction proceedings. In such proceedings a child would not be returned to his or her family without a rigorous “home study” being completed, which would consider whether it would be in a child’s best interests to be returned to live with his or her family. Such assessments are routinely carried out in international family cases in the Family Court in England and Wales and also in Scotland and Northern Ireland, which have different family court systems.

- 5.26** There have been a number of appeals which have asserted that the failure by the Secretary of State for the Home Department to trace a child's family rendered a decision on his or her application for asylum renders unlawful. These include *DS (Afghanistan) v Secretary of State for the Home Department*<sup>117</sup> and *HK (Afghanistan) v Secretary of State for the Home Department*<sup>118</sup>, *KA (Afghanistan) v Secretary of State for the Home Department*<sup>119</sup> [and *EU (Afghanistan) v Secretary of State for the Home Department* [2013] Imm AR 3<sup>120</sup>]. However, the Court of Appeal ultimately concluded that there was no systematic breach of the obligation to trace and that, therefore, no illegality had arisen.
- 5.27** The practical difficulties in effecting family tracing in a country such as Afghanistan are obvious as movement throughout the country is limited by the Taliban and other insurgents. In addition, the infrastructure is very limited and international organisations such as the Red Cross have been targeted by these insurgents and, therefore, cannot move freely around the country. However, as a consequence of these appeals a child's credibility has tended to be undermined by the fact that they have not co-operated with family tracing or have failed to provide sufficient information to provide the basis for successful tracing.
- 5.28** In the recent case of *AA (Afghanistan) v Secretary of State for the Home Department*<sup>121</sup> [the Court of Appeal went no further than finding that the Secretary of State had breached her duty to trace the Appellant's family by "failing to start the process in good time and to integrate it with the process of deciding the Appellant's asylum claim," and that, "there were at least some further questions that could and should have been asked beyond those included on the [Secretary of State's] tracing *pro forma*". *The UK Supreme Court will be giving further consideration to the question of family tracing early in 2015.*

## THE LAWYER

- 5.29** There is no national organisation which provides or appoints lawyers for unaccompanied migrant children to assist them to apply for protection or appeal against any refusal to grant them protection. In practice, when an unaccompanied migrant child is in the care of a local authority the child will usually be assisted by his or her social worker to find an appropriate local lawyer. In some cases the social worker or the child will ask the Refugee Council's Children's Panel to provide the name of a lawyer. In Scotland, the Scottish Guardianship Service has good links with local solicitors who have experience in representing unaccompanied migrant children.
- 5.30** The Law Society in England and Wales and the Law Society in Scotland run separate accreditation schemes for solicitors who wish to represent clients in immigration cases. Participation in these schemes is mandatory for solicitors who hold a legal aid contract, but only voluntary for solicitors who do not. The Law Society of Northern Ireland promotes a specialist understanding of child friendly justice but does not run any compulsory accreditation schemes.
- 5.31** An unaccompanied migrant child's lawyer has the primary responsibility for obtaining and collating the information the child needs to make a successful application for protection in the United Kingdom. The lawyer's first task will be to build up the necessary relationship of trust with the child. This is so that he or she can assist the child to provide as much information as he or she can about his or her history of persecution or exploitation and any risks he or she may face if returned to his or her country of origin. It is necessary for lawyers to factor in much more time to interview an unaccompanied migrant child so that the first meeting with the child is devoted to explaining the application process to the child and building the necessary trust to maximise disclosure by the child. It may also be necessary to use child appropriate procedures such as visual aids and a mixture of open ended or closed questions<sup>122</sup>.

<sup>117</sup> [2011] INLR 389, [2011] EWCA Civ 305

<sup>118</sup> [2012] EWCA Civ 315

<sup>119</sup> [2013] 1 WLR 615, [2012] EWCA Civ 1014

<sup>120</sup> [2013] EWCA Civ 32

<sup>121</sup> [2013] EWCA Civ 1625



- 5.32** The lawyer will then assist the child to complete the Home Office pro forma Statement of Evidence Form the child will have been provided with at his or her screening interview. He or she will also have to collect any further country and expert evidence necessary to support the child's application. The lawyer will also have to attend the child's substantive asylum interview, either in person or through a more junior employee of his or her firm. In addition, the lawyer will have to assist the child to obtain any additional information which may be relevant to the protection application. This may include assisting the child to obtain records held by other official actors using a subject access request. '.
- 5.33** Furthermore, where there is part of a child's case which requires additional explanation, a specialist children's solicitor may need to instruct an expert, who could be asked to comment on anything from the presence and impact of trauma to an explanation of inconsistencies in identity documentation. Expert reports can be presented as evidence to support children's claims at the initial application and at the appeal stage, where experts can also be called upon as witnesses<sup>123</sup>. Independent expert reports are within the scope of legal aid, but it is becoming much harder to obtain funding for these from the Legal Aid Agency.

## FREE LEGAL AID

- 5.34** Until April 2013 unaccompanied migrant children were entitled to free legal aid for any application for protection and any appeal against refusal of such protection as long as they met a means and merits test. Unaccompanied migrant children are not likely to have any financial assets of their own and, therefore, they easily meet the means test. However, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came in to force in April 2013 in England and Wales and removed an unaccompanied migrant child (or any other migrant's) entitlement to free legal aid for applications and appeals relating to protection under article 8 of the ECHR. This means if a child has been refused asylum or Humanitarian Protection but is granted limited leave to remain in order to avoid a breach of his or her private life rights under Article 8 or simply because he or she is under 17 ½, he or she will not be entitled to free legal aid to apply to extend this leave.
- 5.35** In some but not in all cases, if an unaccompanied migrant child remains in local authority care, the local authority will pay for representation in order to ensure that they meet their statutory duties to safeguard and promote the welfare of each child in its care. However, the standard of this representation may be questionable. In at least one local authority, its legal department decided to appoint an additional lawyer in its own legal department to represent all these children. Therefore, the advice and representation being provided is not independent of that local authority and unaccompanied migrant children are not being provided with any choice as to their legal representative.
- 5.36** Section 10 of LASPO does provide for free legal aid to be made available in exceptional cases, which are defined as cases where this is necessary to avoid a breach of European Community law or the ECHR. In practice this scheme has so far proved to be of very limited use to unaccompanied children and fewer than 3% of all applications for exceptional funding have been granted. The statutory guidance for the exceptional funding scheme makes no reference to unaccompanied migrant children and includes a presumption against granting legal aid in Article 8 immigration cases<sup>124</sup>.
- 5.37** LASPO does not apply to applications for asylum or Humanitarian Protection. However, other changes to the legal aid system brought in over the last few years mean that there are now very few solicitors firms who specialise in representing unaccompanied migrant children and, therefore, an unaccompanied migrant child may be referred to a solicitor who has little experience or expertise in this area.

<sup>122</sup> [The Immigration Law Practitioner's Association's Best Practice Guidance offers detailed assistance in developing appropriate child-friendly interviewing techniques, and appropriate facilities to ensure that the child is best enabled to contribute to the preparation of their claim and is properly prepared for formal interviews and at appeals, c.f. Chapter 4

<sup>123</sup> The general rules and obligations on the use of expert witnesses are set out in Part 35 of the Civil Procedure Rules; expert evidence is permitted in the First Tier Tribunal under 51(1) of the Asylum and Immigration Tribunal (Procedure) Rules

<sup>124</sup> Para 60 of the Lord Chancellor's Guidance on Exceptional Funding (non-inquests)



**5.38** In 2011, the Refugee Council<sup>125</sup> consulted children and children’s advisers about their experiences and found that “the quality of legal representation that separated children receive is extremely varied. Some will have quality advice throughout their application.... Communication is good and the child is kept informed and will be prepared for their contact with UKBA. Conversely some separated children receive a poor service, which fails to provide sound advice or address a child’s particular needs, and where communication between the legal representative and relevant others, and preparation for interviews, is virtually non-existent.” The Refugee Council was also part of a recent comparative research project into the provision of legal advice and representation, which indicated that the provision in the United Kingdom was becoming more restricted<sup>126</sup>.

## **TRAINING FOR LAWYERS AND REPRESENTATIVES**

**5.39** The Immigration Law Practitioners Association runs training courses and seminars for immigration lawyers. It is a criminal offence to offer immigration advice without proper registration, so a list of accredited non-solicitor or barrister immigration advisors is maintained by the Office of the Immigration Services Commissioner. Three different levels of accreditation are recognised by the OISC, but there is no specialist test that must be passed to demonstrate child-specific competencies.

## **THE REFUGEE COUNCIL’S CHILDREN’S PANEL**

**5.40** The Refugee Council's Panel works directly with unaccompanied migrant children, who are seeking asylum, to provide them with support and advice. It employs around fourteen advisors who speak many of the languages of the children they work with and works with approximately 1,000 children each year. The Refugee Council also works with Separated Children in Europe Programme, Save the Children UK, and UNHCR (London office). This partnership helps influence policy and practice from a UK perspective and also helps to produce good practice guidance on a range of issues effecting unaccompanied children in Europe.

## **EXPERT EVIDENCE OTHER THAN REPORTS FROM COUNTRY EXPERTS**

**5.41** Caseworkers from UK Visas and Immigration will not commission their own medical evidence but expert medical reports are commonly obtained by lawyers from consultant doctors or from specialist NGOs such as the Baobab Centre, Freedom from Torture or the Helen Bamber Foundation. Where an unaccompanied migrant child has been referred for a pre-assessment appointment or a full assessment is being prepared by the Helen Bamber Foundation or Freedom from Torture, caseworkers will suspend their consideration of the child’s application for protection until it is known if a report will be prepared and, if so, when it will be ready<sup>127</sup>. Where a medical report is being prepared by another organisation, the caseworker will use his or her discretion when considering whether to wait for any medical report<sup>128</sup>. At the appeal stage immigration judges will apply Presidential Guidance<sup>129</sup> and consider whether it is necessary for there to be expert advice about any disability or psychiatric or psychological conditions the appellant may suffer from and whether the case should be adjourned so that an expert report can be obtained.

**5.42** Medical experts will be expected to use internationally established tools when reaching their findings. For example, when providing reports about scarring, which may have arisen from torture, they will apply the Istanbul Protocol<sup>130</sup> and when providing an opinion on post-traumatic stress disorder or other psychological or psychiatric condition, they will refer to the appropriate DSM-IV standards<sup>131</sup>.

<sup>125</sup> *Lives in the Balance: The quality of immigration legal advice given to separated children seeking asylum*, Laura Brownlees and Terry Smith., Refugee Council (February 2011)

<sup>126</sup> *Right to Justice: Quality Legal Assistance for Unaccompanied Children*, ECRE (2014)

<sup>127</sup> *Medico-Legal Reports from the Helen Bamber Fund and the Medical Foundation Medico-Legal Report Service, Asylum Policy Instructions*, UK Visas and Immigration, 17.01.2014

<sup>128</sup> *Medical Evidence (Non-Medical Foundation) Cases, UK Visas and Immigration, 21.11.2008*

<sup>129</sup> *Children, vulnerable adults and sensitive appellants guidance*, Joint Presidential Guidance Note, No. 2 of 2010

**5.43** In addition, a lawyer may seek a report from an independent social worker about the effect of not being granted protection on the child’s development, educational and welfare needs.

## INTERPRETERS

**5.44** The UNHCR’s Sixth Quality Initiative Report<sup>132</sup> emphasised the importance of the quality of the interpreters provided by the Home Office for asylum interviews and said that this was “pivotal to eliciting information on the facts of an asylum applicant’s claim” and went on to recommend specialist training for interpreters<sup>133</sup>. The Home Office has let a contract to one private provider and there are currently a great many concerns about the quality of some of its interpreters.

## LEGAL GUARDIAN

**5.45** Unaccompanied migrant children are not provided with a legal guardian within the status determination process. The guardianship system piloted in Scotland did not provide unaccompanied asylum seeking children with legal guardians but the guardians did accompany the children through the asylum determination process. The evaluation of the pilot found that these guardians were able to prepare each child for his or her substantive asylum interview by talking them through the process from arrival at the UKBA offices to the completion of the interview and explain the types of questions to be expected at each stage. In some cases guardians also undertook a ‘dry run’ visit the UKBA offices so that the young person was more familiar with the environment in which the interview was held and, therefore, the child felt less intimidated. The guardians also talked to the children about their preferred venue for an interview and shared any concerns raised with the Social Worker whose responsibility it was to relay these concerns to UKBA.”<sup>134</sup>

**5.46** The Scottish Guardianship Service also took a proactive role to make sure that information held by different actors was available and was taken into account during the decision-making process. Guardians also met with social workers and the child’s lawyer on a regular basis. The evaluation report noted that there was “evidence that Guardianship has contributed to the decision making process by improving young people’s understanding and engagement in the process, by ensuring that as much information as possible is made available to UKBA case owners to enable them to make a well-informed decision and, perhaps most importantly, creating a context in which there is increased communication and information-sharing between all of the professionals involved in the asylum process.”<sup>135</sup>

**5.47** There is not yet a legal guardianship service for unaccompanied migrant children in Northern Ireland but a recent report<sup>136</sup> found that guardianship would work well as an independent and dedicated “whole” service that did not “belong” to any statutory service. It made no proposals for a guardianship service but proposals for a legal guardianship service are contained in the Human Trafficking and Exploitation (Further Provisions & Support for Victims) Bill currently being discussed in the Northern Ireland Assembly and these are supported by the Northern Ireland Department of Health, Social Services and Public Safety.

## FOSTER CARER

**5.48** Foster carers may attend a substantive asylum interview with a child and they can assist the child’s lawyer by helping to gather together relevant evidence, for example medical evidence from the child’s General Practitioner and information about the child’s education.

<sup>130</sup> *Manual of the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, Professional Training Series* |No. 8, UNHCR (2004)

<sup>131</sup> *Diagnostic & Statistical Manual of Mental Disorders*, Fourth Edition, American Psychiatric Association

<sup>132</sup> Quality Initiative Report, Sixth Report to the Minister, UNHCR, London, April 2009

<sup>133</sup> Para 3.5

<sup>134</sup> *She Endures With Me – an evaluation of the Scottish Guardianship Service Pilot* (2013) Crawley & Kohli

<sup>135</sup> section 8, p.86.

<sup>136</sup> *By Their Side and On Their Side: Reviewing the evidence for guardianship for separated children in Northern Ireland*, Ravi K.S. Kohli, Helen Connolly, Helen Beckett, February 2014

## ADVOCATES

**5.49** Coram Children’s Legal Centre’s 2013 report<sup>137</sup>, identified a number of child advocacy organisations like New Londoners, whose Young Refugees’ and Migrants’ Rights Project covers a number of London boroughs providing services to children aged between 13-19 subject to immigration control. They will often coordinate communication between different agencies and support solicitors by providing information about the young person.

## SOCIAL WORKERS

**5.50** Evidence from specialist children’s lawyers is that care planning by social workers remains inconsistent and social workers do not generally see themselves as responsible for the coordination of information about a child’s asylum claim. Although in some cases they will disclose the contents of a child’s case file to his or her lawyer. The Department for Education in England has issued guidance notes which social workers and other agents working with children should comply with when deciding to share information about a child<sup>138</sup>.

## AGE DISPUTES

**5.51** If the Home Office disputes an unaccompanied migrant child’s age, it will ask the local authority to assess the child’s age. They will follow guidance contained in the case *R (on the application of B) v London Borough of Merton*<sup>139</sup>. If the child disputes an age assessment he or she can bring a claim for judicial review in the Administrative Court. If there is any substance to the claim, the Administrative Court will refer the case to the Upper Tribunal (Immigration and Asylum Chamber) for a substantive hearing.

## THE JUDICIARY

**5.52** The appeal process is adversarial and the unaccompanied migrant child and his or her lawyer will have to establish that the child is entitled to protection. Once an appeal has been lodged, there is a case management process during which the immigration judge will give directions about any special measures that need to be put in place for the child as a vulnerable witness<sup>140</sup>. There is also specific guidance<sup>141</sup> the judge can give on the approach to take to unaccompanied migrant children. This includes the fact that a responsible adult should be present and any questions should be child-appropriate. Paragraph 3.13 of this guidance also requires judges to consider whether expert evidence is necessary, including evidence regarding the health and development of the child from a paediatrician, child psychologist, or specialist relating to the particular history of the child.

**5.53** The Immigration Judge will also be obliged to take into account any country guidance cases, which have been decided by the Upper Tribunal (Immigration and Asylum Chamber) 5.54 Where an unaccompanied migrant child is also a party in child protection proceedings in the Family Court there is an information sharing protocol<sup>142</sup> to assist judges in both jurisdictions to share evidence.

<sup>137</sup> *Navigating the System: advice provision for young refugees and migrants*, Coram Children’s Legal Centre, May 2012

<sup>138</sup> See for example, *Information Sharing: Guidance for practitioners and managers and Information Sharing: Further guidance on legal issues*, Department of Education, 01.10.2008

<sup>139</sup> [2003] EWHC 1689 (Admin)

<sup>140</sup> *Children, vulnerable adults and sensitive appellants guidance*, Joint Presidential Guidance Note No. 2 of 2010

<sup>141</sup> *Unaccompanied Children* Guidance No. 8, April 2004

<sup>142</sup> Protocol of 19 July 2013: Communications between judges of the Family Court and the Immigration & Asylum Chamber of the First Tier Tribunal and the Upper Tribunal, available on the Family Law website

## JUDICIAL TRAINING

**5.55** New Immigration Judges undergo an initial residential training course and shadowing period with other judges and are provided with general judicial handbooks through the Judicial College. The Tribunals' judiciary also design and deliver their own in-house training annually and provide residential training every other year, which all judges have to attend.

## REFLECTIONS

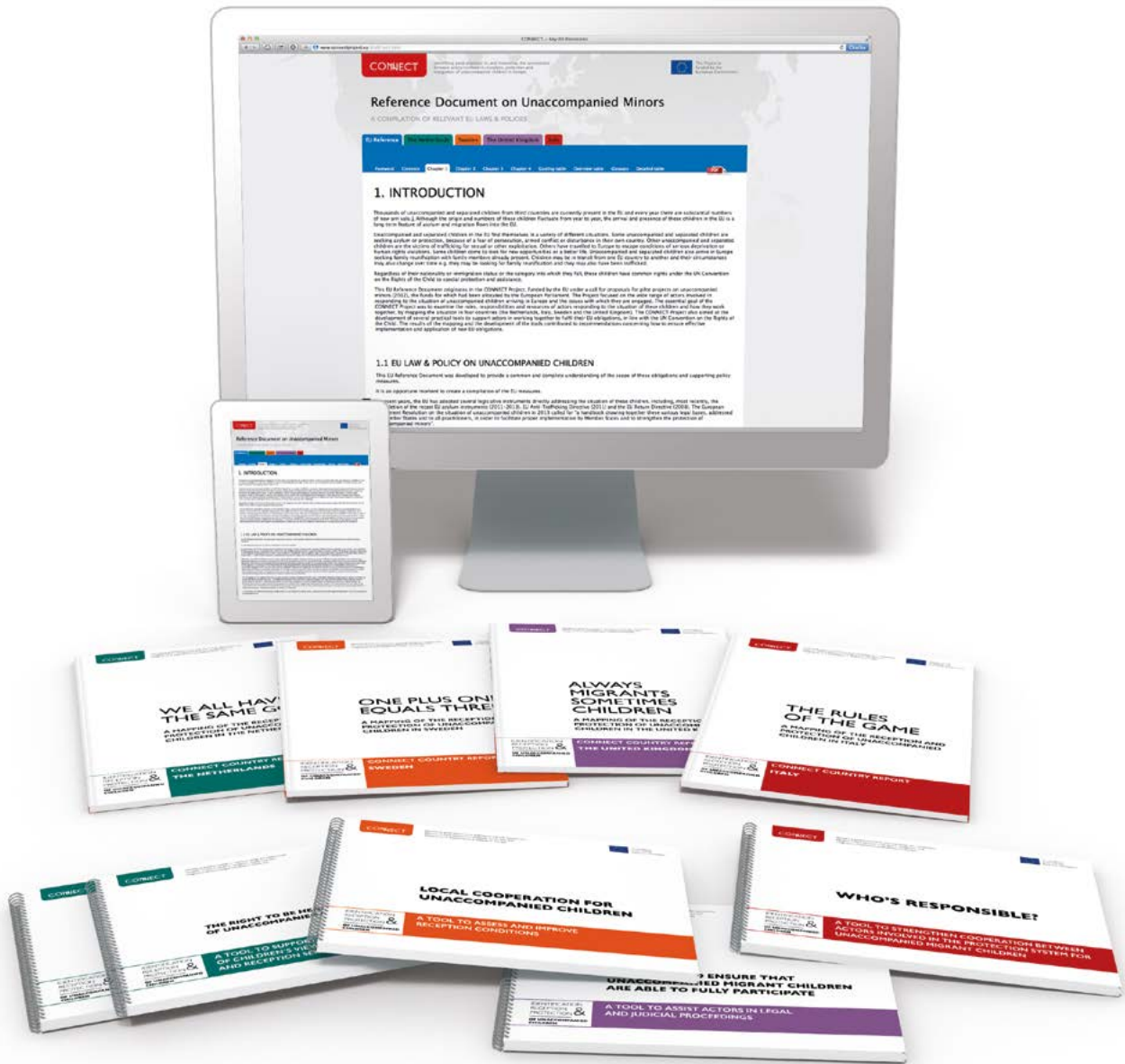
6. This brief research has identified a number of developments which suggest that multi-agency working practices have had a positive effect on the prospects of unaccompanied migrant children in the United Kingdom. These include:
  - (a) NGOs, lawyers and parliamentarians meeting together and debating proposals to introduce legislative changes which will provide better assistance and protection for children who have been trafficked;
  - (b) Multi-agency Safeguarding Hubs, which bring together children's services, the police, education and health services and civil society to ensure that unaccompanied migrant children do not go missing and that, if they do, they can more easily be located;
  - (c) Academics, lawyers and civil society working together on action research projects, which trial measures which may provide unaccompanied and trafficked migrant children with additional assistance and protection;
  - (d) Civil society, academia and lawyers working together to successfully advocate for unaccompanied migrant children being provided with independent adults to protect their best interests;
  - (e) Lawyers, civil society and statutory services working together to design a National Referral Mechanism which will better meet the needs of trafficked children;
  - (f) The Welsh Assembly making having regard to the provisions of the UNCRC as a statutory requirement in relation to all ministerial actions;
  - (g) Protocols being adopted in Northern Ireland to better protect unaccompanied and trafficked migrant children;
  - (h) Civil society and academia co-operating in Scotland to develop models for a new National Referral Mechanism which will embed it within a wider and robust child protection system.

**1st September 2014**

<sup>142</sup> Protocol of 19 July 2013: Communications between judges of *the Family Court and the Immigration & Asylum Chamber of the First Tier Tribunal and the Upper Tribunal*, available on the Family Law website



CONNECT



This report was produced within the context of the EU funded project CONNECT – “Identifying good practices in, and improving, the connections between actors involved in reception, protection and integration of unaccompanied children in Europe”.



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