



THE GOVERNMENT RESPONSE TO THE FIRST REPORT FROM THE
JOINT COMMITTEE ON HUMAN RIGHTS SESSION 2013-14 HL PAPER 9 / HC 196:

Human Rights of unaccompanied migrant children and young people in the UK

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

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ISBN: 9780101877824

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2615376 02/14

Printed on paper containing 75% recycled fibre content minimum

Government response to the Committee's First Report of Session 2013-2014: Human rights of unaccompanied migrant children and young people in the UK

The Government takes its responsibility to safeguard and promote the welfare of children very seriously, in line with existing legislation, case law, our public commitments and international obligations. The Government has a sustained track record of significant improvements in this area and has transformed its approach to children by ensuring that their best interests and human rights are fully protected whilst ensuring legitimate immigration functions are not compromised. Initiatives taken by the Government include:

- in December 2010 we published plans for ending the detention of children in a way which seeks to balance protecting the welfare of children with ensuring the departure of families who have no right to be in the UK. Our new staged approach to managing family returns places greater emphasis on engagement with families and, where families are held in pre-departure detention, we have worked with both statutory and non-statutory corporate partners to ensure that the conditions in which they are held fully meet their welfare needs;
- figures on children entering immigration detention are published monthly and quarterly. The presentation of these has recently been reviewed to make clearer what the different types of facility are and the purposes for which they are used. These changes were made with effect from 29 August 2013. Specifically, the presentation of figures on children entering detention has been amended to show the number of children entering accommodation designed specifically for families and those entering accommodation designed for adults. The chart and table published in *Immigration Statistics* shows Tinsley House immigration removal centre and Cedars pre-departure accommodation split out from other immigration removal centres and short-term holding facilities. From 28 November 2013, these have been further amended to show Tinsley House Family Unit separately, enabling the accommodation specifically for families with children to be separately identified from accommodation designed for adults;
- following the release of the 'Landing in Dover' report in January 2012 by the Office of the Children's Commissioner for England, we strengthened the arrival and screening process for unaccompanied asylum seeking children. The then UKBA accepted the Commissioner's main recommendation and agreed to delay the screening of unaccompanied minors, in cases in which their asylum claim is made at their first point of contact with the agency, for up

to 4 days to allow them a period of recuperation and to enable them to seek legal advice. As this new process has now been in place for 18 months, we are working with corporate partners to review the overall arrival and screening procedures to ensure that they continue to meet the needs of the child as well the requirements of the Home Office and local authorities;

- in July 2012 we introduced new Immigration Rules to provide a framework for considering applications under Article 8 of the European Convention on Human Rights, which relates to family and private life. We have brought consideration of the best interests of children into the Immigration Rules in order to ensure that we consistently meet our obligations when considering family cases. There is now a clear route for applications for leave based on a child's best interests. The interests of children have also been explicitly set out as a primary consideration in immigration cases involving removal decisions. We have also set out clearly how we believe the interests of children should be balanced against the Government's wider responsibilities for public safety and security and for the effective management of immigration. This has provided greater clarity and transparency around immigration decision-making in what is a difficult and sensitive area;
- in the field of trafficking, the Home Office has a vital role to play in disrupting child trafficking attempts abroad and detecting child trafficking both at the border and within the UK. Border and immigration staff are trained on child protection issues and human trafficking. Alerts and intelligence tools are also used to give officers the information they need to intervene. The Home Office is also one of the key agencies involved in the National Referral Mechanism (NRM), the UK's framework for identifying and supporting trafficking victims. Together with other front line agencies such as the police, local authorities and voluntary sector organisations the NRM shares information and expertise that can be used to identify victims and ensure that appropriate care is provided.

In every respect, immigration officials take seriously their responsibilities to safeguard and promote the welfare of children under section 55 of the Borders, Citizenship, and Immigration Act 2009 and in line with best interests and human rights requirements and will continue to do so as the Government seeks to make further improvements to the immigration system.

The best interests of the children

Recommendation 1: We recommend that the Government's guidance to those safeguarding and making decisions about the future of unaccompanied migrant children should reassert the primary need to uphold the welfare and

wellbeing of those children throughout their time in the United Kingdom, and to consider properly their best interests during the asylum and immigration process. Guidance should also call for consultation and cooperation with external experts who are able to provide assistance. (Paragraph 31)

Section 55 of the Borders, Citizenship, and Immigration Act 2009 places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. In November 2009, the UK Border Agency issued statutory guidance setting out the key arrangements through which it would discharge this duty and since then great strides have been made to safeguard and promote the welfare of unaccompanied migrant children and young people across the immigration and asylum system.

Recommendation 2: We recommend that the Government establish an independent advisory group, composed of experts from voluntary organisations, academia and practice, to provide guidance to Ministers about how to consider the best interests of unaccompanied migrant children most effectively. Its framework for scrutiny should be based on the UN Convention on the Rights of the Child (UNCRC) and applicable domestic duties, to ensure that the group's work is child-focused. (Paragraph 32)

Our focus is on dealing with tangible and practical problems, whilst ensuring that the best interests of children are a primary consideration in all immigration decisions affecting unaccompanied migrant children and young children.

We already work closely with a range of statutory and non-statutory corporate partners and have existing structures in place through which to explore and consider the welfare of unaccompanied children. For example, the Children's Sub-Group of the National Asylum Stakeholder Forum (NASF) seeks to identify issues and develop solutions with a view to improving the management and welfare of children as they pass through the immigration process. Organisations such as the Association of Directors of Children's Services (ADCS), Citizens UK, the Refugee Children's Consortium, Still Human Still Here, the Office of the Children's Commissioner (OCC) and NASF are also a regular and constant source of expertise and advice - and, indeed, professional challenge - on a range of issues such as the detention of children and the protection of children arriving at port. For example, we are currently working with the ADCS and a small group of other statutory and non-statutory partners – including the OCC and the Royal College of Paediatrics and Child Health - to address issues in the age assessment process. This is a process which underpins the management of children and is critical to the way in which individuals are dealt with in the immigration system.

We are fortunate in that our existing networks already allow us to receive the type of guidance envisaged by the Committee in its recommendation through both formal and informal structures and we do not, at present, consider that there is a need for significant change to these arrangements.

Recommendation 3: Finally, we recommend that the Government should evaluate the case for the establishment of a formal Best Interests Determination process. This evaluation should analyse the potential benefits of a new and formal process against the alternative of seeking to make improvements to the existing decision-making model. We would be content with either model, provided that the result is a system that brings the best interests of unaccompanied migrant children to the fore. (Paragraph 33)

In the light of the Committee's comments we will consider the case for establishing a Best Interests Determination process in the context of the existing immigration and asylum process. We are aware that the UN High Commissioner for Refugees (UNHCR) is producing guidance in this area, but are mindful that the range and complexity of cases involving unaccompanied children and young people means that any such process must be flexible rather than formal and bureaucratic. In carrying out this consideration we will take into account the views of experts across the statutory and voluntary sector – including those who have submitted evidence to the Committee – as we did, for example, when we consulted on ending the detention of children for immigration purposes.

Upholding the rights of unaccompanied migrant children

Recommendation 4: We recommend that the Government evaluate where responsibility for areas of policy concerning unaccompanied migrant children should best lie, to establish whether some policy areas would be more appropriately overseen by those responsible for safeguarding the welfare of unaccompanied migrant children. The Government should then transfer responsibility and funding accordingly. (Paragraph 44)

Recommendation 5: One area where it would be appropriate to transfer responsibility would be in the administration of grant funding to local authorities for the care of unaccompanied migrant children (see also paragraph 211). This should be wholly the responsibility of the Department of Education, to demonstrate that such funding is given in order to protect the wellbeing of children. A transfer of responsibilities would also be suitable should the Government follow our recommendation regarding the future role of the UK Human Trafficking Centre in the National Referral Mechanism (see paragraph 141). (Paragraph 45)

Recommendation 35: We recommend that the system for distributing grant funding to local authorities for the support of unaccompanied migrant children be administered by the Department for Education (see also paragraph 45). We recommend that such funding should be allocated according to the real costs that arise in safeguarding unaccompanied migrant children within each local authority area. (Paragraph 212)

The Government is responding to recommendations 4, 5 and 35 together. The Government does not consider that the evidence given to the Committee provided clear examples of where it would be helpful to move responsibility for particular policies. The welfare and safeguarding of unaccompanied migrant children has to be the responsibility of a range of agencies and government departments.

With respect to funding, some of the evidence appeared to suggest that the current Home Office grant provided to local authorities to cover their costs of supporting the children is inadequate. However, the current funding levels have been in place since October 2010. They were established following lengthy consultation and detailed analysis of expenditure patterns. The funding levels set were sufficient to cover total national expenditure on the care of the children at the time. The total level of funding provided has fallen in recent years, but only because the number of unaccompanied children supported has fallen. The amount of funding that can be claimed for each individual child is the same. The Government therefore has no plans to transfer funding responsibility to the Department for Education.

Recommendation 6: The Government should develop a strategy document for dealing with unaccompanied migrant children which outlines clear lines of responsibility and detailed service standards in relation to the protection, health and development of children, as well as long-term care planning in their best interests. The Department for Education should be tasked with co-ordinating the development and continuing oversight of the strategy, and appointing a national lead for its implementation. (Paragraph 47)

Unaccompanied migrant children are taken into the care of local authorities and are entitled to the same support and services as all looked after children. Local authorities have clearly defined duties and responsibilities for the care of children in their care, under the Children Act.

Each child must be allocated a social worker who will assess his or her needs and draw up a care plan which sets out how the authority intends to respond to the full range of the child's needs. Once this is done, the local authority should place the child with a carer (foster or residential) who has the necessary skills and experience to support him or her in a safe environment.

A range of regulations and guidance is in place to support looked after children and care leavers, including the “*Care Planning and Case Review Guidance*”, updated in 2010, and the Care Leavers (England) Regulations 2010 and guidance “*Planning Transition for Adulthood for Care Leavers*”. All children should have a regularly reviewed care plan.

Whilst there is a need to bring greater consistency to care and outcomes for looked after children, including unaccompanied migrant children, so that all local authorities work to the standards of the best, we do not believe there is a need to develop a strategy document. A major programme of reform is underway to improve the lives of looked after children, and over time this should lead to better outcomes for all looked after children.

Recommendation 7: We recommend 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. 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. (Paragraph 56)

Recommendation 8: We welcome the Government’s commitment to give greater consideration to the UNCRC in legislation and policymaking. We welcome also the provision in the Children and Families Bill which would expressly empower the Office of the Children’s Commissioner for England to monitor the implementation in England of the UNCRC, and to publish a report on that monitoring. We expect the Commissioner to be resourced accordingly. (Paragraph 57)

The Home Office provides training for its staff that covers the same concerns as the UNCRC but is specific to the context in which immigration staff encounter children which is in applying immigration law and policies. The advice of outside bodies with experience of safeguarding children was sought in preparing this training.

The work of local authority children’s services departments, and those in central Government that develop policy for vulnerable children, is underpinned by the Children Act, which is consistent with the rights highlighted under the UNCRC.

The Government fully supports the principles of the UN Convention on the Rights of the Child.

In December 2010 the then Department for Education Minister of State (on behalf of the whole Government) gave a commitment that we would “give due consideration to the UNCRC articles when making new policy and legislation”.

This commitment is being put into effect in various ways. For example, the new Cabinet Office guide to making legislation now advises all parts of Government to check that its draft legislation is in line with the UNCRC; Department for Education has embarked on a series of training sessions with other departments, supported by UNICEF; and we use the Home Affairs clearance process as a final check.

On funding, the Office of the Children’s Commissioner will have a sufficient budget which is commensurate with its responsibilities, whilst reflecting the pressures on public spending.

Recommendation 9: We recommend that the Government define the role of the Children’s Champion in the immigration authority, confirming that it is invested with a proactive duty of care to ensure that the agency meets its international and domestic obligations, and seeks expert input in exercising that duty. (Paragraph 58)

The role of the Children’s Champion is set out in the statutory guidance on making arrangements to safeguard and promote the welfare of children, issued under section 55 of the Borders Citizenship and Immigration Act 2009. That guidance says:

“ 2.9 There shall be a senior member of staff (the “Children’s Champion”) who is responsible to the Chief Executive of the UK Border Agency for promoting the duty to safeguard and promote the welfare of children throughout the UK Border Agency, for offering advice and support to UK Border Agency staff in issues related to children, and identifying and escalating issues of concern.

“ 2.10 Senior managers throughout the UK Border Agency remain directly responsible for monitoring the actions of their staff to safeguard and promote the welfare of children, This includes ensuring that children are listened to appropriately and concerns expressed about their or any other child’s welfare are taken seriously and responded to in an appropriate manner. In addition, an identified member of the senior civil service will have lead responsibility for promoting the duty within each business area.”

As the guidance makes clear, the primary responsibility for ensuring that the business meets its obligations in respect of children rests with senior managers in the business. The Children’s Champion is there to offer support, guidance and challenge, including heading up the network of senior children’s leads. The Children’s Champion is supported in this role by the Office of the Children’s

Champion which includes two senior social workers with extensive experience in the UK and internationally.

Under the new organisational arrangements, the Children's Champion's role extends across all areas of the Home Office which are carrying out functions covered by section 55 (primarily UK Visas and Immigration, Immigration Enforcement, and Border Force).

Recommendation 10: We also recommend that the UNCRC be used as a metric in departmental performance monitoring processes within Government for departments with policy responsibilities that relate to the safeguarding of unaccompanied migrant children. (Paragraph 59)

Recommendation 11: We do not express a view as to the merits of incorporating the UNCRC into domestic law at this stage. We urge the Government to keep under review the different approaches taken in recognising the UNCRC in the devolved jurisdictions, in order to evaluate the case for full incorporation. (Paragraph 65)

The Government fully supports the principles of the UN Convention on the Rights of the Child- see response to recommendation 7.

Protecting unaccompanied migrant children

Recommendation 12: The Government should ensure that there is a clear focus on welfare needs as well as immigration control when gathering information from unaccompanied migrant children relating to an asylum claim. There should be a clear and well-understood distinction between the screening process and substantive information-gathering. Screening a child should be expressly limited to gathering biographical and biometric data at the outset of a claim, while gathering information with which to assess a claim should begin only when children are settled and supported. Furthermore, children should be provided with proper access to interpreting facilities and rest periods, and should be engaged with in a way that takes proper account of their age, status and background. (Paragraph 78)

We are currently working with external partners, including local authorities, to review the procedures for gathering information from unaccompanied asylum seeking children on arrival. An age appropriate arrival pro-forma is being developed to ensure biometric and biographical data is collected as well as ensuring welfare and safeguarding needs are identified and addressed at the earliest opportunity.

Unaccompanied migrant children seeking asylum will continue to be supported and settled into care before any substantive information gathering process in relation to assessing their claim begins. It is our policy to consider a delay in screening to take into account the vulnerabilities of such children arriving in the country.

Recommendation 13: We recommend that the Government should record and publish statistics of all those who claim to be children whose age is disputed. This should include, but not be limited to:

- The number of asylum applicants who claim to be children but who are treated as adults by the immigration authorities on the ground that their appearance or demeanour very strongly suggest that they are significantly over 18;
- The number of cases where an individual claiming to be a child is placed in immigration detention, and any subsequent action in relation to those cases;
- The number of cases in which age is assessed by local authorities, and, in such cases, how many children are determined to be adults and how many are determined to be children;
- The number of cases that are challenged by judicial review, and the number of such challenges that are successful. (Paragraph 88)

This recommendation has several aspects to it and is partially accepted.

We are currently running a pilot, in the Home Office Asylum Screening Unit in Croydon, to record cases on our case information database, in which the Home Office considers that an individual who has claimed to be a child is significantly over the age of 18 and is therefore treated as an adult. If the pilot is successful, we will look to roll out the recording arrangements to the rest of the asylum process. We will then consider whether the data should be formally published.

Our policy is not to detain children. We monitor, on a quarterly basis, cases of those who have been detained on the basis that they are adults but who have at some stage claimed to be children, and we discuss findings with corporate partners to try to resolve issues that emerge. We have no plans at present to formally publish this data.

In respect of the issue of cases in which age is assessed by local authorities, this information is contained within the data currently collected but not in a format which can be easily utilised to produce statistics. We are not of the view that the value of publishing this data would justify the resource expenditure required to produce it. We are looking into the feasibility of extracting judicial review data.

Recommendation 14: These statistics should be disaggregated to allow scrutiny of the gender and nationality of all cases. Local authorities should

also be required to produce statistics for any cases where those requesting support and claiming to be children emerge outside of the usual asylum and immigration processes. (Paragraph 89)

Data which are recorded on our case information database and published can be disaggregated by gender and nationality. Whilst local authorities collect a wide range of data locally, we do not propose to increase the range of nationally collected data.

Recommendation 15: We recommend that the Government work alongside the Association of Directors of Children’s Services (ADCS) to develop a clear set of statutory guidelines for assessing the age of unaccompanied migrant children. This guidance should make clear that young people should be given the benefit of the doubt unless there are compelling grounds to discount their claim. It should also make clear that any person who claims to be a child whose age is disputed and who is to be assessed by local authorities or in judicial review proceedings is not to be made eligible for fast-track removal from the United Kingdom. Guidance should also ensure that examinations are never forced, nor culturally inappropriate, and always pursue the least invasive option for assessment. (Paragraph 103)

The Government is already working alongside the ADCS and others in order to develop a multi-disciplinary approach to age assessment which builds on and improves the current process. We do not, however, believe that this is likely to result in a need for statutory guidelines. We also do not believe that it is a matter, in terms of the age assessment itself, of giving the individual the benefit of the doubt – the purpose of the age assessment is to make the best assessment of an individual’s age in order to ensure as effectively as possible that they are managed in age-appropriate services.

However if, on initial encounter, an individual is referred to a local authority for an age assessment, they are always treated as a child until and unless the outcome of the assessment is that they are an adult and, on that basis, would not be placed in, or held in, detention – though, in the event that the local authority placement is delayed by the local authority, the removal centre will make immediate arrangements to safeguard the individual within the centre whilst awaiting the local authority response. A claim will only be accepted into detained fast track if the claimant is considered to be an adult (due to credible evidence of majority, an age assessment from a local authority to that effect, or if their physical appearance and demeanour strongly suggests that they are significantly over the age of 18). Cases involving judicial review are not as clear cut. If the judicial review is instigated prior to entry into detained fast track taking place, the judicial review would be taken into account in considering whether the entry criteria had been met – in other words, whether the

judicial review would be likely to indicate that a quick asylum decision might not be possible. If the judicial review is instigated after entry into detained fast track, consideration would be given to whether, given the circumstances of the case, release from detained fast track is appropriate. We do not believe, however, in either circumstance, that there should be a blanket exemption from detained fast track for judicial review cases.

Local authorities would always be expected to carry out age assessments in a sensitive and culturally-aware manner using the most appropriate evidential tools in compliance with existing case law.

Recommendation 16: As part of developing age assessment guidance, the Government should evaluate how to incorporate a greater range of expert input into the process. In particular, the Government should commission the Royal College of Paediatric and Child Health (RCPH) to develop guidelines for a stronger contribution from paediatric consultants in assessing age. (Paragraph 104)

The RCPCH is amongst the organisations with whom the Government is engaging in order to develop an enhanced multi-disciplinary approach to age assessment. The RCPCH has submitted to Government a request for funding to support a research proposal and the Government is considering whether this represents a feasible and potentially effective contribution to the age assessment process and value for money.

Recommendation 17: We see no reason to depart from our predecessor Committee's view that x-rays should not be used in assessing age. (Paragraph 105)

The Government has paused its proposed trial of dental x-rays for age assessment purposes pending ethical approval and is currently considering its position.

Recommendation 18: Asylum claims must be properly determined in all cases regardless of age under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The determination must be sensitive to the needs and experiences of children seeking asylum. Children should be provided with funded specialist legal advice and representation during this process. Where a child is granted refugee status he or she should have the possibility of being reunited with family members, as is the case for adults in the same situation. (Paragraph 119)

Children are able to access free legal advice for their asylum application. In addition, all unaccompanied children are referred to the Refugee Council Children's Panel who provide advice and support.

There are a number of safeguards in place to ensure asylum claims from unaccompanied children are properly determined. There is specific guidance within the 'Processing an asylum application from a child' instruction on how to handle applications and make decisions on claims from unaccompanied children. In addition, caseworkers receive specific training to deal with asylum claims from children to ensure they are sensitive to their specific needs. Our internal Quality Audit Team also reviews five per cent of decisions to ensure they meet the required standards and are properly determined under the 1951 Convention.

For children who have been granted refugee status, the family reunion route differs from that available to adults in view of their vulnerability to help ensure that they do not become a target for traffickers who view this as a potential method by which larger family groups can be brought to the UK. In cases where it is appropriate to allow refugee children to be joined by their parents, application will be considered on a case by case basis outside the rules under Article 8 provisions.

Recommendation 19: We recommend that the Government amend the eligibility requirements under section 83 of the Nationality, Immigration and Asylum Act 2002 to ensure that appeal rights are available for all those subject to a negative decision in relation to an asylum or leave claim, regardless of the remaining period. (Paragraph 120)

We have recently given thorough consideration to the change recommended by the Committee as it formed the basis of three amendments proposed by Lord Avebury during the passage of the Crime and Courts Act 2013.

We have reviewed our position in light of the Committee's recommendation but remain of the view that this change should not be made for the same reasons it was opposed during the passage of the Crime and Courts Act, namely because it would have serious and undesirable consequences for the existing appeals framework. In particular, this change could result in multiple appeals being used to prolong an individual's stay in the United Kingdom as it is not unusual for shorter periods of leave to be extended repeatedly. The consequent increase in the number of appeals would occasion increased costs. In the current economic circumstances it is vital that resources are used where they are most needed.

We therefore maintain our position that the adverse impacts of the current policy are not sufficiently grave to justify incurring additional expense in relation to appeals. We note in particular that in all cases, before an individual is removed from the United Kingdom, the current statutory framework provides for a right of appeal.

Furthermore, only a minority of unaccompanied children are affected by this policy, namely those who are older than 16 ½ when refused asylum but granted some other form of leave. Those children are close to adulthood and have a right of appeal should a decision be taken to remove them when their leave expires. Finally,

individuals should not have multiple appeal rights over a brief period of time, possibly raising the same arguments on each occasion as matters may not have evolved since their last appeal.

Recommendation 20: Where children are granted discretionary leave, we recommend that the leave period should run until the age of 18, in accordance with the definition of a child in Article 1 of the UNCRC. (Paragraph 122)

We do not accept this recommendation. Where there are no adequate reception arrangements in the country of return, unaccompanied children whose asylum claims have failed are granted unaccompanied asylum seeking child (UASC) Leave within the Immigration Rules either for a period of 30 months or for a period until the child is 17½ years of age, depending which is the shorter period.

Before expiry of UASC leave the child will have the opportunity to submit a further application for leave. The period between the expiry of leave at 17½ years of age until the child turns 18 enables the Home Office to consider applications for further leave before the child reaches adulthood. This approach helps ensure that unaccompanied children have certainty about their status in the UK as soon as possible after their 18th birthday, enabling them to make informed decisions about their future. Furthermore, a person who applies for further leave before their current leave expires will have their leave automatically extended while their application for further leave is still outstanding or while an appeal against a refusal to grant further leave is outstanding. In practice, UASC leave does normally continue until a child is at least 18 years of age.

Recommendation 21: During a period of discretionary leave, decision-making should be encouraged as soon as there is sufficient evidence against which to evaluate a claim. Where it is in the best interests of the child to remain in the United Kingdom, indefinite leave to remain should be granted as early as that judgment can be made, to enable children to access higher education and enter the labour market. Where return is considered to be appropriate, a care plan should be constructed to inform and prepare a child for return in adulthood. In either case, support should persist until the objectives of a properly considered care plan are met. (Paragraph 123)

We have already agreed to consider establishing a formal best interests determination process in the context of the existing immigration and asylum process (recommendation 2) and will review the timing of decision making as part of that consideration. We already take in to account a child's best interests as a primary consideration (although this is not the only consideration) in every decision affecting the child. When making best interest decisions, wherever appropriate, contributions will be obtained from other relevant agencies/parties, including social services and

the specialist advocate for child victims of trafficking in the trial sites (see recommendation 31).

Recommendation 22: We recommend the establishment of a pilot tribunal with adapted procedures, drawing on expertise from both the child and family and immigration courts, to take on responsibility for the decision-making, welfare and support arrangements of unaccompanied asylum-seeking children in a small number of cases. Its work should be independently reviewed, in order to identify possible adaptations to the decision making framework more generally that may emerge. (Paragraph 125)

The recommendation is far reaching with implications across a number of government departments, including the Ministry of Justice, Department for Education, local authorities and the Home Office. Undertaking what would amount to a fundamental restructuring of the court system is unlikely to be a realistic approach at the present time and we do not accept a combined family and immigration court should be the primary decision maker in immigration cases.

Recommendation 23: We recommend that the Government commission an independent review of the operation of the National Referral Mechanism (NRM), which should in particular consider whether a statutory framework for the mechanism is necessary. (Paragraph 140)

The National Referral Mechanism (NRM) is monitored by a multi agency Oversight Group with representation from non governmental organisations (NGOs) and Government. The NRM was reviewed, with input from a range of Government departments and NGOs at six months and 12 months after its initial inception. These reviews identified examples of best practice and highlighted where improvement was required with the findings used to inform policy development. In December 2013 the Home Secretary announced a further review of the NRM to ensure it is effectively identifying victims and giving them access to support. The terms of the review are still being agreed.

Recommendation 24: We recommend that the Government integrate NRM training into pre- and post qualifying training for the safeguarding workforce. (Paragraph 141 – see also Paragraph 56 of the Report and response above)

We are keen to raise awareness of trafficking indicators and have actively promoted the London Safeguarding Board Trafficking toolkit which is an aid for practitioners in identifying and safeguarding trafficked children. We have also revised the Department for Education/ Home Office joint practice guidance - safeguarding children who may have been trafficked.

The Home Office awarded funding to three organisations with anti-trafficking expertise including with children. Among other related work, the aim of the funding was to support front line professionals, including social workers, in their continued development of identification and prompt referral of potential victims of trafficking, and improve and complement the awareness and understanding of front-line professionals in providing support. This work was completed in March 2013.

Going forward we are keen to ensure that awareness levels of trafficking remain high and officials are looking at these issues.

Recommendation 25: We recommend that the UK Human Trafficking Centre (UKHTC) be given sole responsibility as the “competent authority” under the NRM. The Government should ensure that the UKHTC is properly resourced to engage other agencies in its work and to foster trust and support for the system at a local level. (Paragraph 142)

Claims of trafficking are often first raised as part of the border or immigration process. To date border and immigration staff members have referred more child cases to the National Referral Mechanism (NRM) than any other organisation including the police, local authorities and NGOs. Trafficking is a serious crime and the Government has always been very clear that safeguarding the child and investigating the crime are priorities. But where a claimant is subject to immigration control and has no legal basis for being in the UK, a recovery and reflection period needs to be granted by way of temporary admission. Under legislation only officials acting on behalf of the Home Secretary are able to grant temporary admission or immigration leave.

The UK Human Trafficking Centre (UKHTC) delivers coordination and tactical advice on the operational response to trafficking. The UKHTC is part of the National Crime Agency (NCA) and it draws on its own expertise and the wider specialist skills and resources of the NCA to deliver a coordinated response. The UKHTC works closely with NGOs, civil society groups and at the local, regional and national level to support those whose role is to identify and support victims.

In December 2013 the Home Secretary announced a review of the NRM to ensure it is effectively identifying victims and giving them access to support. The terms of the review are still being agreed.

Recommendation 26: We recommend that disaggregated data on human trafficking be collected, monitored and analysed systematically. We recommend that an independent anti-trafficking coordinator be empowered to oversee the dissemination and analysis of such data, to report at least annually. (Paragraph 146)

The UKHTC provides a central point of expertise and coordination in relation to the UK's response to the trafficking of human beings. Through the NRM data on the identification of victims is collected and published on a quarterly basis on the website of the NCA.

The EU Directive requires the establishment of a National *Rapporteur* or Equivalent Mechanism to monitor trends and gather statistics on human trafficking. The UK Government has decided that the Inter-Departmental Ministerial Group (IDMG) on Human Trafficking is best placed to perform that role. We keep this position under review.

Recommendation 27: We welcome the production of Crown Prosecution Service (CPS) and police guidance which makes clear that authorities should seek not to prosecute or convict child victims of trafficking unnecessarily. We recommend that the Government develop targeted materials to raise awareness of this guidance and of the NRM among police and CPS staff. (Paragraph 152)

The CPS is considering issuing new guidelines to prosecutors following implementation of the EU Human Trafficking Directive 2011/36/EU on 6 April 2013 which places specific obligation on Member States to protect victims' rights and ensure that victims of trafficking are not prosecuted or punished for their involvement in criminal activities. The Director of Public Prosecutions has advised that revised policy guidance be published to provide a more direct guide to assist prosecutors in discharging their responsibility. The new guidelines will be shared with law enforcement agencies and the Law Society to ensure a joined-up approach in these cases. The national policing lead for organised immigration crime and the Law Society have both been contacted and have agreed to issue new guidelines which reflects the CPS guidance to prosecutors.

Recommendation 28: We recommend that suitably trained prison and youth offending institution staff be vested with "first responder" status under the NRM, to give them the power to refer possible victims of trafficking into the mechanism. (Paragraph 153)

We are open to expanding the list of bodies that can refer victims to the NRM and the first stages of this are for those bodies to make an approach to the multi agency NRM Oversight Group.

Young people in custody are amongst the most vulnerable in society. Every under 18 Young Offender Institution (YOI) employs a Head of Safeguarding, who is responsible for assisting the Governor of the YOI to ensure that all of the functions of the YOI are carried out with due regard to safeguarding and promoting the welfare of children in custody. In addition, all NOMS staff working with young people in custody

receive training in child protection and safeguarding, which ensures that they are aware of the YOI's child protection policy and the process for raising child protection concerns, including where they feel a child is at risk of significant harm because of their involvement with child trafficking. Each under 18 YOI's child protection policy is agreed with their Local Safeguarding Children Board (LSCB). Local authorities, who are a key component of each LSCB, are identified first responder agencies and are better placed to offer a more holistic referral to the NRM, particularly given that the young person is very likely to have been assessed by the local Youth Offending Team before attending Court for either remand or conviction.

Recommendation 29: All decisions on returning children to their country of origin should be made only after a full assessment of whether return is in the best interests of the child. Such a decision should be made in the light of a full country-of-origin report framed according to the UNCRC, and after a full assessment of the needs of the child and the care arrangements that they will return to. Return arrangements should also be subject to independent evaluation afterwards to determine their suitability. We recommend that the Government issues clear guidance setting out these standards, including in cases of returns to third countries under the Dublin II Regulation. (Paragraph 163)

In line with recommendation 2, we will consider the case for establishing a Best Interests Determination process in the context of the existing immigration and asylum process.

Decisions as to whether it would be appropriate to return unaccompanied children to countries of origin, or whether a period of temporary leave will be granted are currently considered on a case-by-case basis, subject to an individual assessment of each child's best interests, the availability of suitable reception arrangements and country of origin guidance which is in accordance with the UN Convention. Returns decisions are made in accordance with our established policies and processes, which we ensure are in line with our domestic and international obligations as well as emerging case law in this area. Local authorities work closely with the Home Office when assessing whether return is suitable, and, if appropriate, contributions will be made by other relevant agencies/parties.

Recommendation 30: We recommend that the Government clarify the work it has undertaken with respect to returning children forcibly to Afghanistan and Iraq, particularly in relation to the European Return Platform for Unaccompanied Minors (ERPUM). The Government should affirm that no proposals for enforced returns will be taken forward while conflict or humanitarian concerns persist. If this cannot be guaranteed within the ERPUM,

we recommend that the Government withdraw from further participation with the platform. (Paragraph 164)

The UK, working with Sweden, Netherlands, Norway as part of the European Return Platform for Unaccompanied Minors, is currently exploring whether arrangements can be established to facilitate the return of a limited number of unaccompanied young people aged 16 to 17 to Afghanistan and Iraq. The process would entail family tracing and suitable package of reception assistance, including the provision of temporary and longer term accommodation.

Decisions as to whether it would be appropriate to return unaccompanied children, whose asylum claims have been refused, to countries of origin are considered on a case by case basis, subject to an individual assessment of each child's best interests. Unaccompanied children are not returned unless their families can be located and it is appropriate for the child to return to them, or suitable alternative support and care arrangements are in place to receive them. The need to establish tracing, reception and care arrangements has meant that the UK does not currently routinely undertake enforced returns of unaccompanied children to any country, including Iraq and Afghanistan.

If suitable arrangements are established by ERPUM, the Government will review the position to not routinely return unaccompanied children to Iraq/Afghanistan, taking in to account all applicable factors, including the security situation in the country and the individuals' best interests. No date has yet been set for when suitable arrangements can be established.

Supporting unaccompanied migrant children

Recommendation 31: We welcome the findings from the Scottish Guardianship Service, which demonstrate the value that a guardian can add for unaccompanied asylum seeking and trafficked children. We recommend that the Government commission pilots in England and Wales that builds upon and adapts the model of guardianship trialled in Scotland. The guardian should provide support in relation to the asylum and immigration process, support services and future planning, help children develop wider social networks, and ensure that children's views are heard in all proceedings that affect them. The Government should evaluate the case for establishing a wider guardianship scheme throughout England and Wales once those pilot schemes are complete. (Paragraph 175)

On 28 January 2014 the Government announced that a scheme involving a network of specialist advocates working with victims of child trafficking would be trialled

across a number of local authorities in England including West Midlands, which includes seven local authorities, Manchester and Oxfordshire.

Under the new system each child victim will be allocated a person with specialist training and expertise in trafficking who will provide dedicated support and guidance and ensure the child's voice is heard. Independent of the local authority, the specialist advocate will act as a single point of contact throughout the care and immigration process and will be responsible for promoting the child's safety and wellbeing, particularly important in light of the risk of children being re-trafficked.

These specialist advocates will assist the local authority in assessing the needs of the child as a victim of trafficking, support the child in overcoming language and cultural barriers, making sure the child has access to the right services, accompany the child to key meetings and promote their interests.

The trials will be robustly evaluated and there will be a reporting stage at 6 months.

The move to introduce a trial of Advocates is part of the government's wider commitment to eradicate slavery and protect victims through legislation and non-legislative work.

Recommendation 32: We recommend that the Government conduct or commission a mapping exercise that sets out a comprehensive picture of local authority support services for unaccompanied migrant children. This exercise should in particular seek to identify the best performing local authorities in order to develop them as centres of excellence for the benefit of unaccompanied migrant children throughout the United Kingdom. In the light of this exercise, the Government should update its guidance provided to children's services in local authorities to address any gaps that emerge, and link it to the broader Working Together to Safeguard Children document. (Paragraph 188)

We agree with the Committee that there is an issue with local authority consistency - some are very effective, and others not so. We want all local authorities to come up to the standard of the best. To this end, we published for consultation on 28 January new statutory guidance for local authorities on care planning for unaccompanied asylum seeking trafficked children. This guidance addresses many of the issues highlighted in the report "Still at Risk", published by the Refugee Council and the Children's Society and commissioned by the Government. The guidance will bring more consistency and a higher quality of care provision to unaccompanied and trafficked children across England.

Recommendation 33: We recommend that the Government assess the cost-benefit case for rolling out the pilot safe accommodation scheme for trafficked children, operated by Barnardo's in conjunction with the Department for

**Education, more widely. We support the case for doing so in principle.
(Paragraph 189)**

The Government strongly supports the work of voluntary sector bodies such as Barnardo's in protecting children from all forms of abuse, including child sexual exploitation.

The Safe Accommodation project provided useful insights about how best to develop models of specialist foster care for young people who are at risk, or who have already been trafficked or suffered sexual exploitation.

The project was evaluated by the University of Bedfordshire, and part of the evaluation was to assess the cost-effectiveness of providing specialist foster care placements for young people who are at risk of trafficking and child sexual exploitation. The evaluation did not provide conclusive evidence that this approach provided value for money, although there were potential benefits to be gained from protecting young people from the poor outcomes they might otherwise have experienced¹.

The Department for Education is now providing funding to Barnardo's for a further project aimed at embedding more effective practice in safeguarding children, including those in foster care, from sexual exploitation.

Recommendation 34: Unaccompanied migrant children must be properly supported in the transition to adulthood. The Government should ensure that children receive bespoke and comprehensive plans that focus on educational goals, reintegration and rehabilitation. Such plans should give proper consideration to all possible outcomes for the child, including family reunification and reintegration whether in the home country, the UK or a third country. Care plans should take full account of the wishes of the child, and remain applicable up to the age of 21, or 25 if the young person remains in education, to enable children to realise their maximum potential. (Paragraph 198)

We agree with the Committee that children should be properly supported in the transition to adulthood, and this area is addressed in the new guidance that is under consultation. Lone migrant children generally come into local authority care system and as such are entitled to the same support and services as all looked after children while under the age of 18 years.

¹ http://www.beds.ac.uk/__data/assets/pdf_file/0007/281374/Barnardo27s-SA-Project-Evaluation-Full-Report.pdf

After the age of 18, many will be treated as care leavers and will continue to be entitled to a range of support from local authorities, including provision of accommodation, support with education and the provision of a personal adviser until the age of 21, or up to age 25 if in education or training. However, whilst many will continue to be supported post 18 as “former relevant children” (the status given to children who were in care but have now left the care system), some will not due to their immigration status, which may require them to return to their countries of origin.

Even so, there should not be a cliff edge that signals any reduction in support. The key here is early discussions as part of the care planning process. The possibility of return for some asylum seeking young people should be discussed as part of the pathway planning process, where there is a possibility of them becoming Appeals Rights Exhausted and therefore having no right to remain in the UK.

After that, they may be supported for a longer period with accommodation and the means to live but only for human rights reasons. Whether those reasons apply depends on an assessment of the individual case (legislation therefore should not prevent support being provided to this group of young people, although there are conditions attached to it).

There are concerns about inconsistencies in the way that local authorities undertake the human rights assessments, and that some local authorities are not providing necessary support. That is one of the reasons that the Local Government Association set up a Task and Finish Group to consider the matter and issue some guidance. Officials from the Department for Education and the Home Office have contributed to the development of this guidance, which is published on the website of the Association of Directors of Children’s Services.

For recommendation 35, see response to recommendations 4 and 5.

Recommendation 36: We recommend that the Government amend paragraphs 1(1)(g) – (j) of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to ensure that unaccompanied migrant children who have exhausted their appeal rights receive the full range of leaving care support to which they would otherwise be entitled, regardless of their immigration status. The Government should also issue guidance to make clear to relevant local authorities that support duties owed to children whose appeal rights are exhausted apply until such children are given leave to remain, or fail to comply with refusal directions. (Paragraph 213)

Unaccompanied migrant children are not subject to the provision of Schedule 3 of the Nationality, Immigration and Nationality Act 2002 in the way suggested. Immigration status is not relevant to eligibility to local authority support for as long as the person remains under 18 years of age. Immigration status is relevant after the

person reaches 18 years of age, at which point those who have exhausted all applications and appeals to remain can only be supported where that is necessary to avoid a breach of their human rights. The circumstances in which support should continue for human rights reasons will vary, but would generally include cases where the persons are taking reasonable steps to return to their countries but face a temporary barrier. The Government does not believe that it is appropriate to provide support at public expense in other cases.

Recommendation 37: The Government should affirm its commitment to uphold Articles 29 and 30 of the UNCRC and ensure equal access to education to children regardless of immigration status. It should assess how primary and secondary education is provided to unaccompanied migrant children, with a view to ensuring that their educational needs are met. The Government must ensure that any inequality in provision is addressed urgently. (Paragraph 218)

The Department for Education does not restrict access to compulsory education for any children on the basis of their immigration status. The Secretary of State has a general duty to promote the education of the people of England and Wales under section 10 of the Education Act 1996, there are also duties placed on local authorities to ensure that sufficient schools for providing primary and secondary education are available for their area.

The School Admissions Code exists to ensure that places in all state-funded schools are allocated in a fair and transparent manner. The Code sets out the admissions procedures that must be followed by academies, voluntary aided and local authority controlled schools alike. This includes a mandatory timeline for the determination of admission arrangements and allocation of school places. All schools are required to give highest priority in their admissions criteria to looked-after children i.e. children who are in the care of an English or Welsh local authority. In all cases, looked-after children will have a personal care plan, including an education plan.

Additionally each local authority must have a Fair Access Protocol, agreed with the majority of the schools in its area, to ensure that – outside the normal admissions round – unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible, and that no school is asked to take a disproportionate number of children with challenging behaviour or children excluded from other schools. All admission authorities, including those of academies and free schools, are required to participate in the Fair Access Protocol for their area.

It is for local authorities, together with their schools, to decide on which children should be eligible for their Fair Access Protocol, but paragraph 3.15 of the School Admissions Code lists certain categories of children that must be included as a minimum. This list includes refugees and asylum seekers and those out of education for more than two months.

Recommendation 38: We recommend that the Government conduct an immediate assessment of the availability and quality of legally-aided legal representation for unaccompanied migrant children in England and Wales. (Paragraph 231)

Legal advisers who conduct cases for unaccompanied migrant children are fully regulated to ensure that a good quality of legal advice with quality approved lawyers is provided for any unaccompanied migrant children. In addition to any regulatory requirements, the Legal Aid Agency has enhanced contractual provisions regarding unaccompanied asylum seeking children. These include enhanced Criminal Records Bureau checks and a different fee scheme, so that legal advisors spend appropriate time with vulnerable clients meeting their needs.

New contracts to deliver the revised scope of immigration and asylum legal aid commenced on 1 April 2013 following an open tender. The Legal Aid Agency monitors access to services on an ongoing basis through the life of contracts and, in the event of gaps in access being identified, will take appropriate action to ensure the availability of services for clients. We are not aware of any gaps in coverage of legally-aided legal representation for migrant children.

Whether or not the child receives legal aid, there are other potential sources of support. Those potential sources of assistance include voluntary sector support, support provided by law centres, and the support, where a child is looked after, provided by a local authority. This can include consideration of whether legal advice is necessary. The Government has committed to a post-implementation review of the reforms in 2016 and we will make an appraisal of the spectrum of services then.

Recommendation 39: The Government should pay particular attention to the impact of withdrawing legal aid for non-asylum immigration cases involving unaccompanied migrant children when reviewing the changes to legal aid entitlement effected in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The Government should give serious consideration in any such review to the cost-benefit case for providing legal aid to all unaccompanied migrant children involved in immigration proceedings. (Paragraph 234)

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force on 1 April 2013. In the Royal Assent Impact Assessment, the Government has committed to a post-implementation review of the reforms in 2016. There has also been a commitment to Parliament to review the impact of withdrawing legal aid for onward appeals in immigration cases in general. This review will start in April 2014, one year after implementation. We will respond to these reviews, and any other practical issues relating to legal advice for unaccompanied migrant children identified, on the basis of the evidence gathered.



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ISBN 978-0-10-187782-4



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