



An Inspection into the Handling of Asylum Applications Made by Unaccompanied Children

February – June 2013



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Independent Chief Inspector of Borders and Immigration



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FOREWORD FROM JOHN VINE CBE QPM INDEPENDENT CHIEF INSPECTOR OF BORDERS AND IMMIGRATION



Asylum claims made by unaccompanied children are some of the most sensitive cases dealt with by the Home Office. They are a particularly vulnerable group and for that reason their applications are subject to specific procedural safeguards.

This inspection examined how they were treated by the Home Office when first encountered at ports, airports and elsewhere, and the handling of cases where the Home Office disputed the applicant's age. I also inspected the application of procedural safeguards to children's asylum interviews and to the decisions made on their claims.

I found that staff were professional in dealing with children's cases and committed to their welfare. They worked effectively with local authorities to ensure that children were safeguarded. Most asylum interviews were conducted in a sensitive and appropriate manner, with legal representatives and responsible adults, such as social workers, present to support the child. I did not find any evidence that the Home Office had removed any children from the UK against their will.

In respect of age dispute cases, the Home Office adopted an appropriately cautious approach, minimising the risk of children being placed in the adult asylum system. I found, however, that record-keeping was inadequate and staff had incorrectly recorded whether an individual was the subject of an age dispute in over a third of the cases I sampled. This creates a risk that incorrect information may be published and prevents the Home Office from providing reassurance to stakeholders and the public.

I was also concerned to find inconsistency of treatment and outcomes between different regions. Asylum decisions took an average of 64 days in London but 141 days in the Midlands, which is unacceptably long. Children were less than half as likely to be granted asylum in London as in the Midlands. The Home Office offered no clear explanation for this, nor could it be accounted for by differences in allowed appeal rates. It must therefore ensure that law and policy are being applied consistently and correctly to all children's cases.

I was pleased that case law and information about the child's country of origin were used in deciding the claims of younger children, in line with the requirements in the Immigration Rules. While the best interests of the child were given consideration in most cases where asylum was refused, this should have been done more thoroughly. In addition, the Home Office was failing to meet its legal obligation with regard to family tracing in a majority of cases, which risks incorrect decisions and unnecessary appeals.

The Home Office is currently assessing the feasibility of new targets for asylum casework. It must ensure that, in this sensitive area where children's futures are involved, performance targets do not adversely affect the quality of decisions on their applications.

A handwritten signature in black ink that reads 'John Vine'.

John Vine CBE QPM
Independent Chief Inspector of Borders and Immigration

CHAPTER 1 – EXECUTIVE SUMMARY

1. Asylum applications by unaccompanied children and young people form 5% of all asylum claims in the UK and are some of the most important that the Home Office is required to consider. This group is particularly vulnerable and the Home Office has legal obligations to safeguard these children and actively promote their welfare, in addition to deciding whether they qualify for refugee status in the UK.
2. This inspection examined the handling of applications with a particular focus on safeguarding. We looked at how the Home Office dealt with children when it first encountered them, whether at ports of entry (Dover, Heathrow), or other locations (Croydon, Solihull). We analysed the reasons why it disputed the claimed ages of certain applicants and the outcomes in those cases. We also examined the application of procedural safeguards to the interview stage and the decision-making process in the two regions that dealt with most unaccompanied children – the Midlands and East of England and London and the South-East.
3. Overall, we found trained Home Office staff committed to safeguarding children and working effectively in partnership with local authority social workers. Where they disputed the age of an applicant claiming to be a child, we found that they adopted an appropriately cautious approach. Staff were fully aware of the need to give the benefit of the doubt to most applicants and treat them as children pending the completion of local authority age assessments. The Home Office only placed those claiming to be children in the adult asylum system if it had evidence, such as a pre-existing age assessment, to support that approach or if the applicants appeared to be significantly older than 18.

We found trained Home Office staff committed to safeguarding children and working effectively in partnership with local authority social workers

4. Staff were responsive to child welfare considerations when children were first encountered. They made contact with social services and ensured that children were safeguarded.
5. However, we found 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.
6. There were variations in the timing of screening depending on where children claimed asylum and how locations interpreted the requirement to give children a short period of time to recover from their journeys. We expect the Home Office's review of screening to bring greater clarity and consistency to the initial stages of the asylum process for children.
7. We were concerned that the mandatory requirement to notify the Refugee Council within 24 hours of a child's asylum claim was being done in only 39% of files we sampled, and only at Croydon and Heathrow. This was a poor use of resources, given that the Home Office was paying the Refugee Council £800,000 per year to provide support to child applicants.

8. We were pleased that the Home Office provided us with 97% of the files we requested. However, the records kept were sometimes insufficient or incorrect. In the case of age disputes, we concluded that incorrect recording was linked to a lack of clarity in the guidance provided to staff. This resulted in confusion over when an age dispute ‘flag’ should be applied to the electronic record. We found this was not done correctly in more than a third of cases. The Home Office must take steps to improve this situation, so that it can be confident that it is reporting accurately on its performance in this sensitive area.
9. We were also concerned to find that, in many cases, staff did not comply with guidance on obtaining local authority age assessments. The Home Office must assure itself that such assessments have been conducted in accordance with the legal requirements, but there was no evidence that staff had done this in 54% of the files we sampled. While we welcome a new initiative with local authorities to improve the quality and consistency of information sharing on age assessments, it remains vital for Home Office staff to obtain the necessary information and record the steps they have taken to do so. Insufficient audit trails become a problem when, for example, a Judicial Review is raised.
10. We examined the interview records in 112 files and also observed six asylum interviews. Home Office staff were directly responsible for avoidable interview cancellations in only six cases (4% of our sample), suggesting that such instances are rare. We were, however, concerned that where the Home Office did cancel interviews there could be further lengthy delays. Such delays are unacceptable, other than in exceptional circumstances, particularly given the Immigration Rules requirement to give priority to children’s cases.

We found that objective information was used in a focused way where the claims of younger children were decided

11. There was evidence that responsible adults were present in nearly all of the asylum interviews. We were satisfied that children were offered breaks during interviews in 93% of cases and that the average interview length of under 3 hours was not excessive. The six asylum interviews we observed were conducted appropriately, although the interviewers could have given the children more information on the next steps in the asylum process.
12. We examined the extent to which the decision-making process took account of the specific needs of children. We found that objective information was used in a focused way where the claims of younger children were decided. This is in line with the requirement in the Immigration Rules to give greater weight to such information where the child lacks maturity or understanding of the asylum process. We were, however, concerned that the Home Office only sought information from individuals with a direct knowledge of the child in 19% of cases. Obtaining such information could have allowed the Home Office to make better-informed decisions.
13. The Home Office must consider the best interests of the child throughout the asylum process. This is particularly important at the point of decision as it influences whether leave is granted to those whose asylum claims fail. While we found that 80% of refusal letters did give some individual consideration to best interests, we were concerned that too often the issue was addressed without taking sufficient account of the child’s specific circumstances.

We found that family tracing was neither considered, nor attempted, in 60% of our file sample

14. Internal minutes granting children asylum were generally clear and concise. However, some letters refusing asylum were long and unfocused, citing information of limited relevance to the application. There is a need to improve their quality and tailor their content to individual circumstances.
15. The Home Office has a legal obligation to endeavour to trace the family members of unaccompanied children. The tracing may enable children to be reunited with their families, and it may also provide the Home Office with information that is relevant to the decision on whether to grant the child

leave to remain if the asylum claim fails. We found that family tracing was neither considered, nor attempted, in 60% of our file sample. While we recognise the practical difficulties involved, the Home Office must do more to ensure that it is meeting its obligations in relation to tracing, as otherwise this may risk incorrect decisions and unnecessary appeals.

16. We found significant differences in decision times and case outcomes between the two regions in our sample. In London, children's applications were decided in an average of 64 days but it took 141 days in the Midlands, which was unacceptably long. 37.5% of unaccompanied children were granted asylum in the Midlands and 15.3% in London. We were offered no clear reason for this discrepancy. The asylum process is a national one, so the Home Office must ensure that all children's cases are decided in a timely fashion, and that law and policy are applied consistently and correctly, regardless of where applications are considered.

In London, children's applications were decided in an average of 64 days but it took 141 days in the Midlands, which was unacceptably long

17. During this inspection the Home Office was in the process of restructuring its Asylum Casework Directorate, with a view to addressing inconsistencies of practice and outcome that had arisen under the previous regional structure. The restructure also included moving from the previous model where a 'case owner' was responsible for all aspects of the asylum process to one where a 'caseworker' at the grade below focused on interviewing and making decisions. In London, experienced staff were moving to other jobs earlier and in greater numbers than expected, creating a risk that there would not be enough trained staff available to prioritise children's cases.
18. Simultaneously, the Home Office was seeking to double weekly productivity from five asylum interviews and decisions per caseworker, via an interim 7.5 target, to a requirement of 10 such 'events' by April 2014. Children's cases were subject to the rise to 7.5 events but no decision had been taken on whether the 10 target would also apply. Some mandatory tasks for unaccompanied children's cases, such as family tracing, were outside the 'event' system and not being prioritised.

19. In September 2013, the Home Office decided to put the restructuring process on hold and to assess the feasibility of new performance targets before moving beyond the current five 'events' per week. We welcome both decisions given the loss of expertise we had identified and the significant risk of undertaking structural change while also seeking a major increase in productivity. The Home Office should now ensure that any new performance targets are realistic, achievable and can be implemented without impacting on the quality of decision-making. This is particularly important in relation to children, given their vulnerability and the specific legal requirements that apply to their applications.

The Home Office should now ensure that any new performance targets are realistic, achievable and can be implemented without impacting on the quality of decision-making

CHAPTER 2 – SUMMARY OF RECOMMENDATIONS

We recommend that the Home Office:

1. Applies the law consistently and correctly to children's asylum claims regardless of where they are considered.
2. Ensures that it meets its legal obligation regarding family tracing and retains a record of the steps it has taken.
3. Decides children's asylum claims in a timely manner regardless of where they are considered.
4. Ensures that new performance targets for children's asylum cases are realistic, evidence-based and comply with the Immigration Rules.
5. Develops validated statistics for all cases where asylum applicants claim to be unaccompanied children.
6. Establishes a systematic and comprehensive monitoring system to ensure the timeliness and quality of recorded data.
7. Improves the quality of refusal letters by ensuring that they are logical, concise and tailored to the applicant.
8. Adopts a clear and consistent approach to the initial interview with asylum-seeking children, while continuing to take account of individual needs.
9. Refers all unaccompanied children who apply for asylum to the Refugee Council within the agreed timing, and keeps accurate records of notification.

CHAPTER 3 – THE INSPECTION

The Independent Chief Inspector

- 3.1 The role of the Independent Chief Inspector of Borders and Immigration was established by the UK Borders Act 2007 to examine and report on the efficiency and effectiveness of the then United Kingdom Border Agency ('the Agency'). In 2009, the Chief Inspector's remit was extended to include customs functions and contractors.
- 3.2 On 20 February 2012, the Home Secretary announced that border functions would split from the Agency. From 1 March 2012, these functions returned to the Home Office. As a direct result, on 22 March 2012, the Chief Inspector of the UK Border Agency's title changed to become the Independent Chief Inspector of Borders and Immigration. On 26 March 2013, the Home Secretary announced that the Agency would be abolished and immigration, visa and enforcement functions would also transfer back to the Home Office. The Chief Inspector's statutory responsibilities remain the same.
- 3.3 The Chief Inspector is independent of the Home Office and reports directly to the Home Secretary.

Terms of Reference

- 3.4 The terms of reference were to inspect the efficiency and effectiveness of the Home Office's handling of asylum applications made by unaccompanied children, focusing particularly on safeguarding. To carry out the inspection, we used the Chief Inspector's inspection criteria (see Appendix 1), which are grouped under the themes of:
 - Operational Delivery;
 - Safeguarding Individuals; and
 - Continuous Improvement.

Scope

- 3.5 We examined three specific aspects of the handling of asylum claims made by unaccompanied children.
 - the treatment of these children after the Home Office first encountered them;
 - what happened when the Home Office disputed an applicant's age; and
 - how asylum interviews were conducted and whether decisions were taken in line with the child-specific provisions.

Methodology

- 3.6 In carrying out this inspection, we pursued three strands of enquiry:

a. Stakeholder consultation

3.7 We:

- sent a questionnaire to stakeholders and analysed the 12 responses received;¹
- met three groups of unaccompanied children and young people who were going through, or had been through, the asylum process;²
- met with representatives of three of the four ‘gateway’ local authorities whose social services departments provide care for the majority of unaccompanied children³; and
- met with four key stakeholders.⁴

We make reference to the views expressed throughout the report.

b. Documentation and case files

3.8 We:

- analysed Home Office management information and documentation, including legislation, policy and guidance;
- requested 201 Home Office files relating to unaccompanied children who applied for asylum between 1 April 2011 and 31 March 2012. The Home Office provided 195 of them (97%) within our deadline; and
- assessed these cases against the law, policy and guidance in place at the time they were decided.⁵

3.8.1 The 195 files comprised:

- 115 files where we examined the whole asylum process: first encounter, asylum interviews and decisions, and (where applicable) age disputes. These children had applied for asylum at locations other than ports and airports, had received a decision on their claim and were aged under 18 when that decision was made. The 115 files comprised:
 - 79 where the asylum decision was made in the (then) London and South-East region, the area of the country which decides the largest proportion of these cases;
 - 36 where the decision was made in the (then) Midlands and East of England region, which decides the second largest proportion;
- 22 where applicants claimed asylum in Kent, where we examined just first encounter and (where applicable) age disputes;
- 29 where applicants claimed asylum at Heathrow Airport, where we examined just first encounter and (where applicable) age disputes; and
- 29 where applicants had their age disputed by the Home Office and were (in the Home Office’s view) aged 18 or over at the time of their asylum decision. These comprised 20 cases decided in London and the South-East region and nine decided in the Midlands and East of England. We examined the age disputes in these cases.

3.9 In each category we asked for lists of all cases fitting these criteria and selected cases randomly.

1 Asylum Aid; Bail for Immigration Detainees; Children and Families across Borders (CFAB); Coram Children’s Legal Centre; ECPAT UK; London Borough of Hammersmith and Fulham; The Immigration Law Practitioners’ Association (ILPA); Redbridge Children’s Trust; Refugee Action; The Refugee Council; Solihull Metropolitan Borough Council; and the City of Westminster London Asylum Seekers Consortium.

2 We are grateful to The Children’s Society, Phoenix Community Care and The Scottish Refugee Council for organising the meetings and to the young people who took part.

3 Croydon Borough Council; Kent County Council; and Solihull Metropolitan Borough Council

4 Office of the United Nations High Commissioner for Refugees; The Office of the Children’s Commissioner; The Children’s Society; and The Refugee Council.

5 Where numerical analysis is reported, the term ‘average’ refers to the ‘median’ (a measure of central tendency).

3.10 Separately, we looked at 20 files relating to adults who sought asylum in the same period and whose applications were decided by our two chosen regions. These were a ‘control sample’. There are specific provisions for dealing with children’s asylum cases so it was useful to understand how the Home Office approached other cases.

c. The onsite phase

3.11 The onsite phase of the inspection took place between 22 April and 29 May 2013. During that period, we interviewed staff and managers at five ‘London and South-East’ Home Office locations:

- The Asylum Screening Unit (ASU) in Lunar House, Croydon, where around half of unaccompanied children claim asylum;
- Heathrow Airport (Terminal 4), as some unaccompanied children claim asylum on arrival at airports;
- Facilities in Dover and Folkestone. Many unaccompanied children are encountered in Dover and elsewhere in Kent; screening, interviewing and decision-making for those children take place in Folkestone; and
- Becket House in London which deals with interviewing and decision-making.

3.12 We also visited:

- Facilities in Solihull (for the previous ‘Midlands and East of England region’), where many unaccompanied children are encountered and all stages of the process take place.

3.13 We also interviewed operational policy staff and senior operational managers. A breakdown of the 70 Home Office staff and managers interviewed is set out below in Figure 1.

Figure 1: Home Office staff interviewed, by grade	
Grade	Number of interviewees
Administrative Officer (AO)	3
Assistant Immigration Officer (AIO)	7
Executive Officer (EO)	1
Immigration Officer (IO)	15
Higher Executive Officer (HEO)	13
Chief Immigration Officer (CIO)	8
Senior Executive Officer (SEO)	11
Inspector (HMI)	3
Grade 7	6
Grade 6	2
Senior Civil Service	1
Total	70

3.14 We observed seven screening interviews and six asylum interviews at Croydon, Folkestone and Solihull. We also considered the facilities for children at the locations.

- 3.15 On 6 June 2013, eight days after completing onsite visits, the inspection team provided feedback on high-level emerging findings to the Home Office.
- 3.16 The inspection identified nine recommendations for improvement.

CHAPTER 4 - BACKGROUND

What is Asylum?

- 4.1 'Asylum' is the term used when a country gives protection to someone who is attempting to escape persecution in his or her country of origin. To qualify for refugee status in the UK, an individual must apply to the Home Office and demonstrate that they meet the criteria set out in the Refugee Convention⁶. According to the Convention, a refugee is someone who has a well-founded fear of persecution because of their race, religion, nationality, political opinion or membership of a particular social group, and who is therefore unable or unwilling to return to their country of origin or country of former residence.
- 4.2 At the time that the cases in our sample were decided, an individual who did not qualify for refugee status could be considered for leave to remain in the UK on two other grounds: humanitarian protection (HP)⁷ and discretionary leave (DL). The latter derived primarily from interference with their rights under Article 8 of the European Convention on Human Rights (ECHR).⁸ HP and DL claims could form part of an asylum claim or be made separately. An unaccompanied child who did not qualify for asylum, HP or DL on the grounds set out above could be granted DL on the grounds that no adequate reception arrangements existed in their home country. From April 2013, the DL policy was brought within the Immigration Rules as 'UASC Leave'⁹. This policy change post-dated the period covered by our file sample.

What is an 'Unaccompanied Child'?

- 4.3 The Immigration Rules¹⁰ (hereafter referred to as 'the Rules') define an unaccompanied asylum-seeking child as someone who is:
- aged under 18 years when their asylum application is submitted;¹¹
 - applying for asylum in their own right; and
 - separated from both parents and not being cared for by an adult who in law or by custom has responsibility to do so.

World and European Context

- 4.4 Numbers of asylum applications made by unaccompanied children worldwide are unknown¹² but Europe is known to be the primary destination.¹³ Many countries do not formally record applications

6 The 1951 United Nations Convention relating to the Status of Refugees.

7 To qualify for HP, a person must demonstrate that they would face a real risk of suffering serious harm. This means the death penalty; torture, inhuman or degrading treatment or punishment; or a serious and individual threat to a person's life or safety in situations of armed conflict.

8 Right to respect for their family life, private life, home or correspondence.

9 UASC stands for Unaccompanied Asylum Seeking Child.

10 www.ukba.homeoffice.gov.uk/.../immigrationlaw/immigrationrules paragraph 352ZD

11 Under the Rules, paragraph 349 of HC 395 defines a child for the purposes of an asylum application as a person who is under 18 or, in the absence of any documentary evidence, appears to be under that age.

12 The United Nations High Commissioner for Refugees (UNHCR) highlights the difficulties in collecting and providing a detailed analysis of unaccompanied children and asylum trends globally.

13 In 2009, UNHCR reported that unaccompanied children seeking asylum formed part of a larger group of 'children on the move' for

from unaccompanied children as a sub-group but the Home Office does do so in the UK. We therefore know that, in 2012, unaccompanied children and young people represented 5% of all UK asylum applicants.¹⁴

- 4.5 From 2009-2011, the European continent received around 1,156,200 asylum applications (approximately 40,300 (3.5%) made by unaccompanied children)¹⁵. UK applications by unaccompanied children peaked at 4,285 in 2008, then fell by 63% between 2009 and 2012. What remains constant is the disproportionately high number of applications made by males, and around half of claimants being aged 16 and 17. The four most numerous nationalities in UK claims are Afghanistan, Albania, Iran and Eritrea.

Figure 2: Unaccompanied children’s asylum applications received by Home Office (excluding dependants) by gender and age.¹⁵

	2009	2010	2011	2012
Applications to Home Office	3,174	1,717	1,398	1,168
Male applicants as a %	89%	81%	82%	82%
16 and 17 year olds as a %	45%	48%	49%	50%

Immigration Rules and Legislation

- 4.6 The Rules make specific provision for unaccompanied children seeking asylum, to ensure that appropriate safeguards are in place and that their welfare is considered throughout the consideration of their claims. Specific provisions include the need to give particular priority and care to the handling of unaccompanied children’s cases, and to give close attention to their welfare at all times. The relevant Rules are set out in Appendix 3.¹⁷
- 4.7 Separately, section 55 of the Borders, Citizenship and Immigration Act 2009 required the Secretary of State (i.e. the Home Office), in discharging her existing immigration and asylum functions, to have regard to the need to safeguard and promote the welfare of children who are in the UK. To discharge the section 55 duty, asylum decision-makers had to consider the child’s best interests - we discuss this in chapter 8.

The Asylum Process for Children at the Time of Inspection

- 4.8 At the time when the cases in our sample were decided, the asylum process generally proceeded as below.

- 1 Children claimed asylum at a port, a Home Office local enforcement office or the Asylum Screening Unit (ASU) in Croydon. Basic questions at that stage, with an interpreter if necessary, covered welfare, identity and nationality. Biometric data (photograph and fingerprints) was taken and two key referrals made - to social services (who took these children into care) and to the Children’s Panel of the Refugee Council (which provided services for such children). When trafficking was suspected, other authorities were also alerted;

whom access to, or awareness of, asylum procedures is lacking.

14 21,785 people applied for asylum in the UK in 2012, of whom 1,168 were unaccompanied children. These figures do not include dependants.

15 UNHCR Statistical Yearbooks 2009 – 2011. These figures and the figures used to calculate them were rounded by UNHCR to the nearest hundred.

16 Immigration Statistics, January to March 2013, Asylum Data Tables, Volume 2.

17 The Rules incorporate provisions in Council Directive 2004/83/EC (Asylum Qualification Directive) to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and ensure a minimum level of benefits is available for these persons in all Member States. http://www.emnbelgium.be/sites/default/files/publications/council_directive_2004_eg_eng.pdf

- 2 Screening usually happened some days later, covering basic personal details such as family and the journey to the UK (see chapter 5). Children (in practice, with the assistance of their legal representatives) had to complete and return a Statement of Evidence Form (SEF) within 20 working days. Many also submitted a witness statement, setting out in narrative form the reason(s) for seeking asylum;
- 3 The Rules incorporate provisions in Council Directive 2004/83/EC (Asylum Qualification Directive) to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and ensure a minimum level of benefits is available for these persons in all Member States. http://www.emnbelgium.be/sites/default/files/publications/council_directive_2004_eg_eng.pdf After receipt of the SEF, children were interviewed about the substance of their asylum claim. They had to be accompanied by a ‘responsible adult’ (such as a social worker) and their legal representative usually also attended; and
- 4 A Home Office decision-maker would then consider whether the application met the terms of the Refugee Convention. If so, a preliminary five-year grant of leave to remain was issued. If not, the asylum claim was refused, and the decision-maker went on to consider whether to grant HP under the Rules or a form of DL.¹⁸ If asylum and HP were refused, in most cases the decision-maker would either:
 - grant the form of DL specific to unaccompanied children who had applied for asylum for three years, or until the child was aged 17 years and six months (whichever was the shorter period) if adequate reception arrangements for the child were considered not to exist in their country of origin; and
 - not grant leave to remain, if there were adequate reception arrangements and other conditions were satisfied.

4.9 In certain circumstances applicants had rights of appeal. In some situations, they could apply for extension of the leave granted to them. If that application did not succeed and the decision was not overturned at appeal, they would be expected to leave the UK after becoming 18. Where their appeals were dismissed (or if they chose not to appeal) and they had no leave to remain, they would be expected to work with the Home Office to plan their departure from the UK on a voluntary basis (the Home Office does not, in practice, enforce the removal of those aged under 18).¹⁹

The Multi-Agency Dimension

- 4.10 The Home Office’s key operational partners are local authorities’ social services departments. Four local authorities (Croydon Borough Council, Hillingdon Borough Council, Kent County Council and Solihull Metropolitan Borough Council) are known as the ‘gateway authorities’ as they are the catchment areas for the majority of unaccompanied children, and take them into their care. We met representatives from Croydon, Kent and Solihull - those dealing with the majority of new applicants.
- 4.11 We examined the Home Office’s interaction with local authorities on age disputes and age assessments, where the role of the latter is key.

Terminology

- 4.12 During the period covered by our file sample, the UK Border Agency was organised regionally. Our inspection focused on two regions – ‘London and South-East’, and ‘Midlands and East of England’ and, for convenience, we have generally shortened the references to ‘London’ and ‘Midlands’. The regional structure was discontinued at the end of 2012.

¹⁸ As well as DL specific to this group, it could also have been DL for victims of trafficking or DL for individual reasons.

¹⁹ A child may choose to leave the UK voluntarily in any circumstance; it is not always connected with a particular appeal outcome.

- 4.13 The Agency was disbanded and its functions transferred to the Home Office during this inspection. Many activities and examples cited in this report were carried out by the Agency but, for convenience, we refer throughout to the 'Home Office'.
- 4.14 The term 'children and young people' is commonly used when describing people aged under 18. Around half of unaccompanied children who seek asylum are aged 16 or 17, and would be known as 'young people'. We have therefore used this term where most appropriate but generally used the shorter term 'children' for succinctness.

CHAPTER 5 – INSPECTION FINDINGS: FIRST ENCOUNTER AND SCREENING

How, Where and When Unaccompanied Children are First Encountered

- 5.1 Home Office figures for April 2011 to March 2012 show that 1,402 applications were made by those who claimed to be unaccompanied and under 18. While records are not kept to show how they first gained entry into the UK, they do indicate that most individuals claiming to be children applied for asylum when already in the UK rather than at a port of entry (see Figure 3 below). Figure 4 then provides a breakdown of where applications were made.

Figure 3: Asylum applications made by unaccompanied children at ports compared to in country

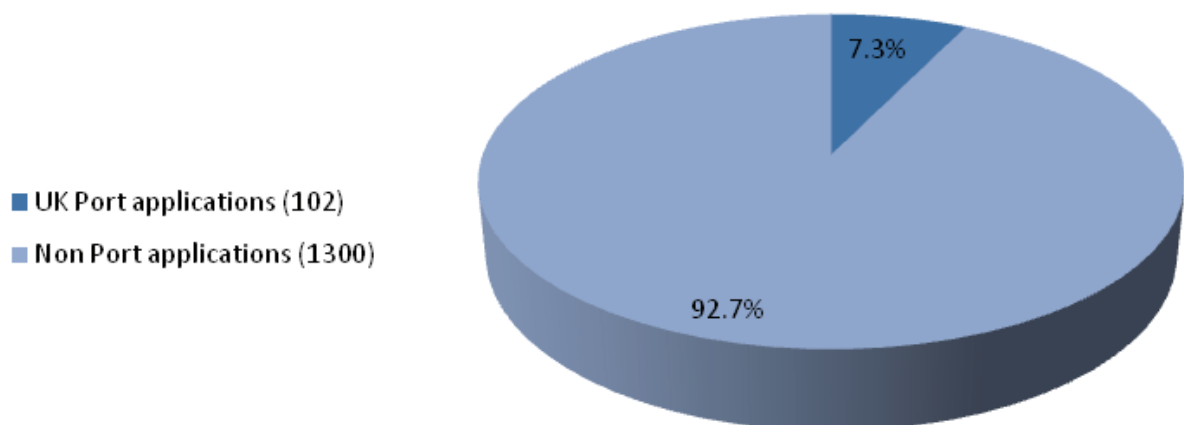


Figure 4: Applications made by individuals in 2011-12 who claimed to be unaccompanied children, broken down by location of application

Location	ASU		Local Enforcement Offices ¹⁹		UK Port		Other ²⁰		Total
	No:	%	No:	%	No:	%	No:	%	
Applications registered	662	47.2	604	43.1	102	7.3	34	2.4	1,402 (100%)

Reporting period: April 2011 – March 2012

- 5.2 92.7% of applications were made by those who were already in the UK. In these cases, initial entry would have been through clandestine means (concealed in vehicles), lawful ones (with a visit visa, for example) and some will have been trafficked to the UK at a younger age.

92.7% of applications were made by those who were already in the UK

²⁰ Includes police stations.

²¹ Includes Home Office Criminal Casework Directorate (and four applications by post).

- 5.3 The Refugee Council and a Home Office senior manager estimated that approximately 30% of all unaccompanied child applicants arrived as clandestines through the Port of Dover alone.²² In the Midlands, one Home Office manager estimated that 60% of young applicants in that region were clandestine arrivals referred by the police.²³ This is a concern; if not found, children and young people could be at risk of being exploited and/or falling into the ‘black economy’ and not being safeguarded.
- 5.4 Representatives we spoke to from Croydon, Kent and Solihull local authorities confirmed that a disproportionately high number of the children subject to immigration control in their care had been clandestine arrivals.
- 5.5 Unless children come to the attention of the Home Office, it is impossible for it to know how many children may have gained entry to the UK illegally. The research group, COMPAS, has pointed to the difficulties in calculating the number of children in the UK illegally, of which unaccompanied clandestine arrivals form part.²⁴
- 5.6 Our August 2013 report on the juxtaposed controls highlighted that the Home Office no longer took fingerprints from all those caught trying to conceal themselves in vehicles to enter the UK clandestinely. This reduced its capacity to identify which unaccompanied children, subsequently applying for asylum in the UK, were previously in another safe country where they could have made a claim. We made a recommendation relevant to this report - that the Home Office should reconsider its current approach to the fingerprinting of clandestines.²⁵ We welcome the fact that the Home Office is currently reviewing its processes.
- 5.7 In September 2013, the National Audit Office published its report ‘*The Border Force: securing the border*’.²⁶ Its finding that Home Office staff at Calais ‘were taken off controls to detect clandestine illegal entrants to the UK concealed in lorries in order to deal with passenger queues’ is also relevant to this report. This made it more likely that children concealed in vehicles would not be detected and passed to the French authorities.

Safeguarding Children Subject to Immigration Control

- 5.8 Early in the inspection, we found that Home Office guidance contained inconsistent definitions of an ‘unaccompanied’ child. We raised the issue with the Home Office. We were reassured to see that, within a revision of the Rules in April 2013, the definition was brought into line with the terminology used in EU Directives.
- 5.9 When children become known to the Home Office and where circumstances point to recent illegal entry to the UK, the process for breach of immigration rules is followed. A claim for asylum might then be made and the Home Office must identify that applicants are under 18 and establish their immediate welfare needs.
- 5.10 The next priority is to arrange a suitable care placement.²⁷ Referrals to local authority social services must be made promptly and children held in Home Office locations for the shortest practicable time.²⁸ The Home Office has local partnerships in place to facilitate the transfer of children from ports and other locations to local authority care.

22 Clandestine entry of young people is frequently via concealment in freight vehicles (often in mixed-age groups).

23 An estimated 20% were referrals from social services and the remaining estimated 20% walked into a local immigration building unexpectedly.

24 *Being children and undocumented in the UK: A Background Paper*, COMPAS, University of Oxford, 2010. <http://www.compas.ox.ac.uk/publications/working-papers/wp-10-78/> COMPAS estimated that 70,000 children entered the country, as dependants or independently, through a number of different routes. The data were not broken down further i.e. to determine the number who arrived unaccompanied and clandestinely.

25 <http://icinspector.independent.gov.uk/wp-content/uploads/2013/08/An-Inspection-of-Juxtaposed-Controls-Final.pdf>

26 <http://www.nao.org.uk/wp-content/uploads/2013/09/The-Border-force-securing-the-border.pdf>

27 The majority go into local authority care but a few have wider family in the UK who can, with social workers’ agreement, accommodate them.

28 At Heathrow, with 24-hour operation, staff told us they focused on transferring children to social workers. For those who arrived on late flights, there was a local target of transfer before midnight.

- 5.11 One stakeholder was concerned about ASU transferring children to local authority care by taxi. In addressing this, we found taxi transfer arrangements formed part of a local partnership approach to coping with unexpected ‘walk ins’ late in the day.²⁹ In these circumstances, Croydon Borough Council found emergency care placements while ASU expedited its procedures and arranged to transfer the children in taxis fully approved by the local authority.
- 5.12 We were satisfied that the overall focus was on quickly establishing identity and getting the children safely off to their foster placements before ASU shut for the day. We did not find this to be a safeguarding failure and did not believe this process placed children at risk.

Considering the Safety and Welfare of Children

- 5.13 Child safety and welfare must be considered by the Home Office in its handling of all aspects of each case. We found most staff to be alert and responsive, irrespective of where children’s applications were handled. In the example below, actions taken by Home Office staff in Dover contributed to welfare.

We found most staff to be alert and responsive, irrespective of where children’s applications were handled

Figure 5: Case study – an example of safeguarding and ensuring child welfare at first encounter

The Applicant

- was found by police exiting a lorry in North Kent in a group of six
- stated that he was thirteen and a half and of Afghan nationality

The Home Office

- transferred him to Dover Eastern Docks and alerted social services
- was preparing to ask him about the illegal entry when he reported chest pains which began about two days previously
- transferred him to hospital and liaised with social services to arrange emergency placement foster parents for him when discharged
- released him directly into the care of the foster parents together with the medication provided by the hospital

Chief Inspector’s Comment

- The details of how this child was safeguarded were well recorded. Home Office staff worked in close partnership with social services to ensure that this child received prompt medical attention and was then passed directly from the Home Office’s care into that of the authorised foster carers. His welfare was further considered in that he was not screened until six days later.

- 5.14 In the Midlands, a member of staff made best use of the limited facilities at a reporting centre to make a young person comfortable when he walked in unexpectedly to make a claim. The staff member recorded:

²⁹ These are children who effectively refer themselves to the Home Office by walking into immigration buildings without appointments to claim asylum.

'In the absence of better facilities, [the young person] was asked to wait in the general waiting room, near to the security desk....security [were] made aware of his presence and circumstances. I have been able to offer him a sandwich, some biscuits and water from the Holding Room stock.'

- 5.15 We observed the facilities mentioned above; primarily a reporting and interviewing centre, it was not designated, or equipped, for a child walking in unannounced and alone. In making a small adjustment, this member of staff provided supervision and met the child's immediate welfare needs.
- 5.16 We observed other local facilities. Dover and Heathrow Terminal 4 had separate holding areas³⁰ for children, monitored by a contractor whose staff received safeguarding training from Barnardo's. At ASU, the facilities set aside for children and families were temporary but well separated from adults. We welcome the first purpose-built facility for children and families who claim asylum, which opened in autumn 2013.

Specialist Training

- 5.17 To enable staff to work with children, the Home Office adopts a three-tiered approach to safeguarding:
- Keeping children safe - Tier 1 (Home Office e-learning) – a core module for all staff;
 - Keeping children safe - Tier 2 (1-day classroom) – generic training delivered by a G4S trainer. We looked at training materials and observed delivery of this course; and
 - Keeping children safe - Tier 3 (2-day classroom) – delivered by experienced Home Office staff, when necessary, for pivotal functions (such as asylum interviews/decisions). We looked at training materials.
- 5.18 We were generally satisfied that the Home Office placed emphasis on safeguarding training for staff and ensured specific training was provided to staff who interviewed children and made decisions on their applications.

Referrals to Other Organisations

- 5.19 Some children may arrive separately but already have family members in the UK and others may appear to be 'accompanied' by adults. Where the Home Office encounters these circumstances, checks should be made against the Police National Computer (PNC) and a separate interview conducted with any accompanying adult(s). Where there may be indicators of child protection concerns, a referral to the relevant authorities must also be made. For example, where trafficking is suspected and an investigation begins, a referral is made to the National Human Trafficking Centre. We observed this being explained to staff at the Tier 2 training course.
- 5.20 All unaccompanied children must be referred to the Refugee Council's Panel of Advisers within 24 hours of the Home Office becoming aware of them. The Home Office contracts the Panel of Advisers to provide asylum advice and support. However, we found that this mandatory requirement to refer was not always being met. Of the 181 cases we sampled for this, only 71 (39%) contained a fax or checklist evidencing referral. Of these, 62 (87%) were referred by ASU. The remaining nine (13%) were referred by Heathrow staff.
- 5.21 We saw no evidence in our sample files that the Midlands and Kent notified the Panel at all. The Refugee Council told us that children at Dover were not being brought to their attention and referrals were incomplete elsewhere. Our findings confirmed this and demonstrated local disparities in procedure.

³⁰ Her Majesty's Chief Inspector of Prisons formally inspects places of detention including short-term holding facilities where children are held on first encounter at Heathrow and Dover.

- 5.22 We found that, at ASU, a systematic approach meant that referrals were routinely done by a named administrator. However, in areas where referral was limited or non-existent we found there was no single point of responsibility.
- 5.23 We mentioned above that Tier 2 training focused on referrals for safeguarding reasons but we noticed that mandatory referral to the Panel was missing from the material. During this inspection, we told senior managers about the disparity in referral rates and omission from the training material. As a result, we found that the necessary amendments to training were initiated and a reminder had gone to senior caseworkers to check the Refugee Council referral when the case arrived with them. While the Home Office also took action to remind front-line staff to make referrals as soon as children are encountered, there is still a need to ensure the process is properly embedded.
- 5.24 The Home Office pays the Refugee Council £800,000 per year to support children. Therefore, failing to refer a significant number of cases to them is a waste of UK taxpayers' money. If our file sample reflected the national position, and if this payment were proportionate to the number of children at the time, then the Home Office was spending almost £500,000 with no demonstrable benefit.
- 5.25 The Home Office must ensure that children receive the support which it pays the Refugee Council to provide. It must place more emphasis on this welfare point and monitor compliance in line with the recommendation below.

We recommend that the Home Office:

Refers all unaccompanied children who apply for asylum to the Refugee Council within the agreed timing, and keeps accurate records of notification.

The Screening Process

- 5.26 Screening was originally designed for the adult asylum process as a means of obtaining basic information, primarily used by the Home Office to allocate an adult to a specific part of the asylum system.
- 5.27 Since 2011, the Home Office has introduced two measures to help tailor the screening process for children - postponing the interview for up to four days after first encounter and piloting (at ASU and Dover) a 'child-specific' screening form.

Postponing Screening for Children in Need

- 5.28 The Children's Commissioner³¹ followed up her Landing in Kent report (February 2011) with Landing in Dover (January 2012). This report was concerned that unaccompanied children reaching the UK after lengthy and dangerous journeys were screened too soon after arriving at the port.³² The Commissioner recommended that the Home Office introduce a period of time for these children to recover (and seek legal advice) before being screened.
- 5.29 The Home Office decided to allow the target group of young people a gap of 'up to four days' to recover. Dover implemented the practice in July 2011 and, in February 2012, the Home Office rolled it out nationally. We found that it was standard practice to hold the screening interview between four and seven days after first encounter in the Midlands and at ASU. Postponing interviews was seen as providing better outcomes for children.
- 5.30 However, our interviews with staff at Dover indicated a disparity of treatment in that the gap between claim and interview appeared to have widened significantly. In two of four interviews, we were told

³¹ The post of Children's Commissioner for England was established by the Children Act 2004 to promote the views of children and young people.

³² http://www.childrenscommissioner.gov.uk/content/publications/content_465

that young people could be screened as much as 21 and 30 days after arrival. Resourcing issues, such as a reduction in staff numbers and the introduction of a rota system, were perceived as the main reasons. In the other interviews, staff voiced concern that lengthy gaps could increase the risk of absconding.³³

- 5.31 Screening interviews are a norm within the asylum process, but they are not mandatory.³⁴ Allowing a gap for recovery before screening does indicate to us that, in line with the Rules, particular care is taken with children's cases. However, if children at Dover are waiting for very lengthy periods before screening, the Home Office risks failing to meet the requirement to prioritise their cases. This has the potential to cause added anxiety to the children concerned.
- 5.32 The Home Office told us that it planned to conduct a national review of screening. As part of that review, we would expect the Home Office to examine whether there are delays in screening at Dover and, if necessary, to take steps to ensure that such cases are prioritised in the future.

Content of the Screening Interview and Support for Children Interviewed

- 5.33 We mentioned above that screening interviews are designed to elicit basic information about applicants. In addition to identity and family questions, we saw that the piloted 'child-specific' form also contained questions about immigration documents, criminality and security and the basis of the claim for asylum.
- 5.34 Home Office guidance is clear that, '*screening is not the place to explore the claim for asylum.*'³⁵ That said, there are four questions about claiming asylum under the section 'basis of the claim' in the screening form. Two questions relate to whether a child has claimed asylum in the past or could have claimed in another safe country prior to applying to the Home Office. One asks why the child has come to the UK and the last asks the much more exploratory question:

If you are afraid that something bad would happen to you if you return home, can you tell me in a few words, what you think could happen and why you think that?

- 5.35 This last question presents the interviewer with a difficult balance to strike between gathering basic information (only touching on reasons for the claim 'in a few words'), and actually starting to explore why a claim is being made. According to the guidance, children should not be asked the more exploratory question unless an adult is with them to look after their interests during the interview.
- 5.36 Home Office guidance is clear that screening is for obtaining basic information only but the inclusion of four questions about the claim risks going further into the reasons for the application. To reduce the risk of asking this question inappropriately with no adult present, the child-friendly form introduced a prompt to remind staff when not to ask it.
- 5.37 The guidance also actively encourages responsible adult support for children when being screened.³⁶ Figure 6 below sets out the analysis of what we found in our file sample.

33 Concerns about absconding were also raised by the Kent local authority representative at our stakeholder meeting.

34 Guidance states that all children should ordinarily be screened but this can vary depending on the child's maturity and individual circumstances.

35 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary> Screening; General Principles, paragraph 6.2

36 The Immigrations Rules provide special provision for children to be supported by adults, who are independent of the Home Office, when being interviewed about the substance of their asylum claim.

Figure 6: Analysis of adult screening attendance from our file sample

	Number	% of sample
Legal representative	20	13%
Responsible adult	74	48%
Both	8	5%
Nobody	32	21%
No evidence on file	21	14%
Total sample	155	*

*Figures do not sum to 100 owing to rounding

- 5.38 Of 155 children interviewed, the majority (61%) had either a responsible adult or legal representative with them. A further eight children (5%) had both. Effectively, this afforded children at screening the same safeguarding provision that is mandatory for the asylum interview. It also enabled the Home Office to ask more children the question about why they feared going home.
- 5.39 While not contrary to the guidance, 32 children (21%) had nobody with them. In a further 21 cases (14%), we were disappointed to find that there were no records to help us determine adult attendance. We comment further on issues of record-keeping in chapter 6.
- 5.40 We examined which questions children were asked about their claims (according to which form was used). Of 32 children screened alone, the piloted child-specific form was used for 16 cases, and 16 children were interviewed using the generic, adult screening form.
- 5.41 Our results showed that the child-specific form did not prevent children, who were not accompanied by an adult at screening, being asked why they feared returning home. In eight of the 16 cases, Home Office staff correctly omitted this question but five children were still asked about fear of going home and three were asked additional questions about their claims. The latter two should not have occurred, irrespective of which form was being used (see Figure 7).

Figure 7: Examples of additional questions which should not have been put to a child

- Why were you followed?
- What happened after?
- Were you also arrested, was your brother?
- How do you know they are after you? [repeated]

- 5.42 Where staff used the generic adult form, 16 children were asked why they feared going home. We found that 12 were specifically asked this question and four were asked this as well as other questions not included in the form. Again, this was contrary to the guidance about the purpose of the interview.
- 5.43 Despite the new child-specific form, we found that questioning could still go in different directions, depending on whether an adult was present and whether staff understood what they could and could not ask. This demonstrated confusion about the purpose of screening. In a minority of cases, and irrespective of whether children gave answers, it was also unacceptable that questions reserved for the asylum interview were asked at screening.

It was unacceptable that questions reserved for the asylum interview were asked at screening

- 5.44 Special provision already exists for children to provide written evidence about their claim before the main interview.³⁷ It is not obvious to us how a screening interview, which obtains different information depending on who attends and whether the staff member understands which questions to ask, adds value to the asylum process. On the basis of our findings, the review of screening is timely and should identify what information is really needed to progress a child's claim, and how best to gather it in a more consistent manner.

We recommend that the Home Office:

Adopts a clear and consistent approach to the initial interview with asylum-seeking children, while continuing to take account of individual needs.

Time Spent Completing the Screening Process at ASU

- 5.45 In response to our questionnaire, stakeholders expressed concern about appointments in ASU, including that it took (according to Home Office figures) on average 4 hours and 49 minutes despite a pre-booked appointment.³⁸ We looked at this (including the taking of biometrics).
- 5.46 We found that ASU had set itself an aim of completing an appointment-led screening process within three hours. We looked at locally recorded information for 1,298 appointments for the year April 2012 to March 2013.³⁹ We calculated the time from arrival to being able to leave for the 793 completed cases and found that the average was 3 hours and 45 minutes.
- 5.47 We directly observed the screening process at ASU during the onsite phase of our inspection. All children were prioritised over adults for fingerprints and photographs, which sped up this stage. Potentially slowing it down was a screener's choice of typing the contemporaneous interview record rather than using manuscript, but we saw a great benefit of typing in producing an accessible printed record for the child's representative.
- 5.48 On balance, we were satisfied that ASU was continuing to respond to concerns about timing. Figures above indicate that process times were below those originally of concern to a stakeholder and that past performance had improved.

Information About the Asylum Process and How to Make a Complaint

- 5.49 All children should know what to expect, and what is expected of them, as soon as they make an application. ASU staff told us that they issue their own 'point of claim' leaflet for children and we were sent an electronic copy. We found the picture-based leaflet to be purposeful and to contain relevant, child-friendly information about making an application, including indicative timescales for each stage of the process.⁴⁰ However, a significant number of applications are registered and handled elsewhere so we urge the Home Office to ensure that every child receives a similar leaflet, irrespective of where they claim.
- 5.50 Similarly, we expect the Home Office to provide easily accessible information on how to make a complaint. We did note a clear focus on obtaining feedback from applicants and we welcome efforts to respond immediately to issues or incidents locally before they become formal complaints.

We found that access to the formal complaints process at screening locations was unchanged from our findings in the 2011 inspection of the Detained Fast Track arrangements

³⁷ The SEF form process is explained in chapter 4.

³⁸ It should be noted that we do not know the start and end points for this calculation.

³⁹ The Home Office began collecting data in January 2012. This included all children screened at ASU. The figures covered the child's time being 'processed' including fingerprinting, photographing, the issue of the necessary paperwork and any waiting time in between.

⁴⁰ The leaflet helpfully uses pictures and words to provide information about contact details in relation to the asylum process, general information about legal advice, how to access healthcare in the UK and advice from voluntary organisations.

5.51 We found that access to the formal complaints process at screening locations was unchanged from our findings in the 2011 inspection of the Detained Fast Track arrangements.⁴¹ In the absence of complaints forms or places to post a complaint, we recommended then that the Home Office should: ‘Improve its complaints handling by informing applicants at all screening locations of how they can make a complaint’. It is disappointing that, two years on, this recommendation has not been implemented. We expect the Home Office to do so without further delay.

41 http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Asylum_A-thematic-inspection-of-Detained-Fast-Track.pdf

CHAPTER 6 – INSPECTION FINDINGS: AGE DISPUTE AND AGE ASSESSMENT

The Need to Determine Age

- 6.1 Initially, the Home Office needs to know whether to allocate the applicant to the children's asylum system as special requirements apply (see Appendix 3). It is generally only later that a decision-maker needs an exact age for a child. Local authorities, on the other hand, require a more precise idea of age when taking a child into care for allocation into the appropriate part of children's services.
- 6.2 Staff at Dover told us that asylum seekers they detected concealed in vehicles were often in mixed-age groups. They believed that the fact that children's asylum claims were prioritised, and that they were often granted limited leave if their applications failed, created an incentive for adults to claim to be under 18. In their view, many of those claiming to be minors were men whom any observer would adjudge to be in their mid 20s, or older. This meant that disentangling and safeguarding the under 18s required them to dispute some claimed ages. Our file sampling confirmed that many clandestine groups were of mixed ages and so separating out any adults was a necessary first step.

How the Home Office May Dispute Age at First Encounter

- 6.3 We looked at the Home Office's 'Assessing Age' policy instruction in place at the time of inspection.⁴² It stated:
- 'Where there is little or no evidence to support the applicant's claimed age and their claim to be a child is doubted ... The applicant should be treated as an adult if their physical appearance/demeanour **very strongly suggests that they are significantly over 18 years of age.**'*
- 6.4 The guidance then highlighted the potential risks and consequences of this action in that the applicant would be considered under the adult process and could be liable for detention. It required independent corroboration from a more senior manager and also reminded staff that further age information required a review of the case.
- 6.5 We found from staff interviews and our observation of a trainer, that staff were encouraged to use this option in the guidance when perceiving an applicant to be at least 25 years old. One stakeholder report advocated using this policy 'with extreme caution',⁴³ and we therefore found the Home Office's use of an eight-year age gap to be reassuring as an example of safeguarding, and of seeking to minimise the risk of placing someone under 18 into the adult asylum process.
- 6.6 The guidance went on to specify that all other applicants should be afforded the 'benefit of the doubt and treated as children'. We saw this policy, which is described as 'designed to safeguard the welfare of children', being applied in many cases in our file sample. One example is given below.

⁴² <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view%253DBinary.28357810ECEA7B1C20CBF76CFF49144E.html> Section 2

⁴³ 'Happy Birthday? Disputing the age of children in the immigration system' – Coram Children's Legal Centre http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday_Final.pdf page 20.

Figure 8: Case study - giving the 'benefit of the doubt'

The Applicant

- applied for asylum at ASU

The Home Office

- disputed the claimed age but gave the 'benefit of the doubt' and the applicant entered the child's asylum process
- requested an age assessment from the local authority
- did not delay the decision for the age assessment as asylum was being granted so age was not a crucial decision factor⁴⁴

Chief Inspector's Comment

- While staff doubted the applicant's claimed age, they did not place the individual into the adult process as he did not appear to be 'significantly over 18'. The 'benefit of the doubt' option was correctly used.

The Local Authority 'Age Assessment' Process

- 6.7 Local authority age assessment is not formalised in statute but the courts provided guidance in the case *B v London Borough of Merton* [2003],⁴⁵ so assessments must be 'Merton-compliant'. Home Office liaison with local authorities on age assessments is discussed later in this chapter.
- 6.8 Merton-compliant assessments are carried out by two social workers and go beyond appearance and demeanour to aspects such as family composition, schooling, experience of life changes, ability to interact with others and psychological development.

Complexities of Determining Age

- 6.9 A valid travel document can establish age or there may be age evidence from a previous visa application, or having been fingerprinted when crossing Europe (discussed in chapter 5). An applicant who is not newly-arrived may already have been age assessed by a local authority.
- 6.10 Determining age is a complex and inexact process for the many children who arrive in the UK without documents. Some will come from cultures where knowing your exact age is not as important as in the UK. Factors such as genetics and previous life experiences may also play a role.
- 6.11 Indicators of maturity include confidence in interacting with adults and asserting one's own position (a report described this as being 'street wise').⁴⁶ We observed in interviews, and understood from the groups of young people we spoke to, that many of the 16-17 year old male applicants consider themselves adults in their own cultures.
- 6.12 Potential threats to psychological development for this group include extreme anxiety and we also found a confirmed learning disability as a complicating factor for assessing age in two of our sampled files.

44 See paragraph 6.46 of this report - guidance allows for decisions being made before receipt of the age assessment.

45 <http://www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html>

46 'Negotiating childhood - Age assessment in the UK asylum system' - Refugee Studies Centre, University of Oxford, Working Paper Series No. 67: http://www.rsc.ox.ac.uk/publications/working-papers-folder_contents/RSCworkingpaper67.pdf

Stakeholder Concerns

- 6.13 The Rules require the Home Office to ensure that it is those under 18 at the time of applying who enter the children's asylum process.
- 6.14 Stakeholders have highlighted three key strands of concern in relation to age dispute and age assessment. The first is a perception that Home Office staff routinely dispute age as a default position and that the benefit of the doubt is not being given.
- 6.15 Their second concern is that the Home Office has a 'culture of disbelief' that influences the way that staff approached the issue of age dispute. This suggestion was also made in evidence to a Parliamentary inquiry earlier this year.⁴⁷ The third key concern, about detention, is discussed later in this chapter.
- 6.16 We examined the Home Office's handling of age disputes by analysing management information; sampling Home Office files; talking to Home Office staff, local authorities and other stakeholders; and speaking to young people with experience of the asylum process.

The National Picture on Age Disputes

- 6.17 Of the 1,402 asylum applications from people claiming to be under 18 that the Home Office received in 2011-12, it accepted 1,058 (75.5%) as children.
- 6.18 The Home Office informed us that the three categories of applicants immediately identified as adults (see below), are not formally defined as age disputes and should not be flagged as such on its Case Information Database (CID):
- An existing Merton-compliant local authority age assessment stated the applicant to be an adult;
 - Documentary evidence showed the applicant to be aged 18 or over;
 - Physical appearance and/or demeanour very strongly suggested that they were significantly over 18.
- 6.19 Within our file sample, however, we did find that staff had incorrectly raised electronic flags on CID for some cases from the three adult categories set out above and also failed to flag other categories where it was required. This raised concern about the likelihood of mistakes across asylum cases generally, beyond our file sample, and also concern about how age dispute statistics are calculated. The detail and implications are set out below.

Results From File Sampling

- 6.20 For our assessment of age disputes across the child's asylum process we examined 166 files (excluding the separate batch of 29 files we had requested where applicants had definitely had their age disputed by the Home Office and were, in the Home Office's view, aged 18 or over at the time of their asylum decision). The 166 files were more representative of child asylum cases in that they might, or might not, contain age disputes.
- 6.21 We identified age disputes within the 166 by examining all paper and electronic records (not just CID flags). We found evidence of disputed age in 37 files (22%),⁴⁸ including examples of the three adult categories at 6.18 above. Figure 9 records the results of our analysis.

47 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2010/human-rights-of-unaccompanied-migrant-children/>

48 In one further file (excluded from this analysis) it was not clear if there had been an age dispute.

Figure 9: 37 files where applicant age had been disputed out of a sample of 166, broken down by category of dispute

Accepted as a child, but exact age disputed	11
Considered an adult but given the ‘benefit of the doubt’	17
Pre-existing local authority age assessment as an adult	3*
Documentary evidence of being over 18	1
The ‘significantly over 18’ option was applied	1
Not clear what type of age dispute	3
Other (an individual with age disputed on two occasions) ⁴⁹	1
Total cases	37

*One case had both a pre-existing local authority age assessment and documentary evidence of being over 18

- 6.22 We found that in 28 of the 37 cases (76%) the applicant went straight into the child’s process (we cannot comment on the three unclear cases). In 17 of those, staff were not satisfied that the applicant was a child but they gave the ‘benefit of the doubt’. All these applicants were safeguarded and the age dispute did not put them at risk of detention. From these files, our site observations and discussions with staff we concluded that staff were fully aware of the need to give the ‘benefit of the doubt’.
- 6.23 Five of the 37 (13.5%) were immediately categorised as adults, but only one via the ‘significantly over 18’ option. This fitted with our onsite and training findings (see 6.5/6 above) and contributed to our view that staff generally operate this policy in a cautious way.
- 6.24 We found localised differences for first encounter locations - ASU disputed 37% of applicants compared to 17% at Heathrow and 3% at Dover. We noted that ASU had 47% of all applications for that year.
- 6.25 We also looked at the quality of records by examining the age dispute flags for the 37 cases in Figure 9. Excluding the three unclear cases and the ‘other’, 28 cases should have had a flag but only half did so. The five cases immediately identified as adult should not have been flagged at all, according to the Home Office, but two were.
- 6.26 In view of the administrative mistakes we found within the 166 representative files, we looked at record quality in the 29 age dispute files (explained in paragraph 6.20). The Home Office had identified these via the electronic flag and we found mistakes again. The ‘benefit of the doubt’ cases (19) were correctly flagged but the other 10 (34%) should not have been flagged because they fell into the three adult categories set out in paragraph 6.18. Overall, we were concerned to find such a high level of incorrectly applied flags across the files we sampled.
- 6.27 We looked again at the ‘Assessing Age’ policy instruction to see how misunderstanding of flagging could have occurred. We identified section 3.3 as an example of confusing guidance.⁵⁰ It told staff to record when age was in doubt and why. It then went straight on to the need for a specific minute for ‘significantly over 18’ cases. Then, again, it went straight on to a heading of ‘CID’, and instructions on making records (including flags). There were insufficient sub-headings to divide up the categories so we could see how staff could think that they should flag ‘significantly over 18’ cases.

We concluded that staff were fully aware of the need to give the ‘benefit of the doubt’

49 An individual age disputed on two separate arrivals. After being found in a port’s lorry park, he chose to return to his port of embarkation before the ‘significantly over 18’ assessment was carried through. He later presented himself at Solihull and was given the ‘benefit of the doubt’.

50 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view%253DBinary.28357810ECEA7B1C20CBF76CFF49144E.html> Section 3.

Figure 10: Example of misunderstanding guidance

The Applicant

- gave an adult date of birth when arriving at Heathrow in late afternoon and was detained overnight for screening next morning
- claimed to be a child at the screening interview

The Home Office

- disputed his being a child but gave ‘the benefit of the doubt’ – so he entered the child process
- issued an incorrectly completed BP7⁵¹ form for the file
- failed to issue an IS97(M) form⁵², as required, to the applicant
- failed to put an age dispute flag on CID
- recorded the applicant’s claimed date of birth and did nothing more.

Chief Inspector’s Comments

- When the applicant changed his claimed date of birth, the Home Office correctly safeguarded him using the ‘benefit of the doubt’ option. According to notes on the file staff were then confused about how to proceed and, as a result, the Home Office failed to record this as an age dispute case on CID.

6.28 From the sampled files we conclude that some level of mistaken flagging is likely to exist right across age dispute files. This is of concern as we understand that the flags inform Home Office data gathering. There is therefore a risk that inaccurate information on the issue could be provided to Ministers and Parliament due to flaws in the way age disputes are recorded on CID.

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Local Partnerships with Social Services

6.29 We looked at the quality of the Home Office’s local partnerships with social services for age issues and saw Home Office staff working effectively with social workers.

6.30 Dover staff told us that social workers frequently attended clandestine ‘finds’ in Kent. The Kent County Council representative told us that, as a child care professional, he considered it ‘entirely reasonable to find out if someone is a child or not’ and described his team as able to respond day and night.

6.31 Midlands and East of England encompasses 33 local authorities, but any Solihull ‘walk ins’ fall to local social workers. We spoke to representatives and heard about effective partnership working to identify and safeguard children.

6.32 ASU, dealing with nearly half of all applications, has a Home Office-funded social worker from Croydon Borough Council onsite from Monday to Friday. This is mainly to ensure ‘responsible adult’ availability as a single social worker cannot undertake age assessments. The arrangement is for Home Office staff to consider claimed ages and for Croydon to provide a prompt assessment appointment for undocumented children.

51 This internal form records the type of age dispute for the file.

52 This explanatory form must be given to all applicants whose age is disputed, even those immediately categorised as adult.

6.33 In cases where children go first to local authorities with later referral to the Home Office, social workers have usually started an age assessment and the Home Office awaits it. We found this in files and confirmed it with staff and local authorities.

Conclusion: The Home Office Approach to Age Dispute

6.34 Within this inspection, and contrary to the views held by some stakeholders, we did not find evidence of age dispute being a default position or of staff routinely disbelieving claims and failing to give the ‘benefit of the doubt’. At all sites, we observed a focus on safeguarding with staff concerned to separate children from adults and get them promptly into local authority care. Several staff described their approach as treating each child as they would wish their own child to be treated if alone in a foreign country.

Age Dispute and Risk of Detention

6.35 We examined how often applicants later found to be children were detained following an age dispute.

6.36 We established that there was no validated statistical analysis. We were told that ASU was to run a pilot designed to collect data and improve management information on age disputes. We welcome this initiative but we believe that a wider national system is needed (see the recommendation below).

6.37 The Home Office does, however, collate quarterly figures (indicative, not validated) on age-related detentions and releases. The figures are provided to a group of stakeholders, including the Refugee Council, and regular meetings are held to discuss them. These are set out below in Figure 11.

We did not find evidence of age dispute being a default position or of staff routinely disbelieving claims

Figure 11: Indicative figures on asylum detention and release related to claimed under 18 status

	2011/12	2012/13 (available to 31 Dec only at time of inspection)
Type 1a Claimed to be child pre-detention: detained as adult on basis of local authority age assessment. Reassessed by local authority while detained and released as child	6	8
Type 1b Claimed to be child pre-detention: detained as adult on basis of ‘significantly over 18’ or credible documentary evidence. Local authority age assessment done and released as child	1	3
Type 2 Claimed to be child after detention: local authority age assessment done and released as child	8	5
Type 3a Claimed to be child pre-detention: detained because of previous age assessment. New evidence threw some doubt so released while awaiting new decision	2	1
Type 3b Claimed to be child pre-detention: detained as adult based on previous age assessment. Released from detention for reason other than age e.g. illness	0	0
Totals	17	17

- 6.38 For three of the groups Home Office age dispute was not a factor in their detention. The largest (Type 1a) were detained on local authority age assessments. Type 2 claimed to be children only after being detained. Type 3a were safeguarded by being released to local authority care when doubt arose, rather than being detained until receipt of new information about age.
- 6.39 For Type 1b cases, we cannot tell which were detained on actual evidence and which purely on the ‘significantly over 18’ judgement. The Home Office should separate these two categories in the interests of transparency.
- 6.40 We compared our file findings to these statistics. Of eight applicants in our file sample who were detained, six were detained on the basis of a local authority age assessment. The eight were later released, four of them on the basis of a local authority assessment (or re-assessment) finding them to be children. This was in line with Figure 11 above.
- 6.41 It is Government policy not to detain children. Any detention of an under 18 applicant is regrettable and the risk should be minimised. What we saw from our file sample and Figure 11 (allowing for indicative figures), is that only four detentions out of 34 arose purely from Home Office staff disputing age or accepting documentary evidence, which was later shown to be incorrect. The majority were detained on the basis of a local authority age assessment.
- 6.42 The absence of reliable statistics on the detention of those who initially claimed to be children is a further example of the shortcomings we found in relation to statistics and management information relating to the asylum processes for children. Accurate information is needed if the Home Office is to operate efficiently and effectively, and also to provide reassurance to Ministers, Parliament and the public that it is meeting its obligations in relation to children who claim asylum.

Accurate information is needed if the Home Office is to operate efficiently and effectively, and also to provide reassurance to Ministers, Parliament and the public that it is meeting its obligations in relation to children who claim asylum

We recommend that the Home Office:

Develops validated statistics for all cases where asylum applicants claim to be unaccompanied children.

Working With Local Authority Age Assessments

- 6.43 Local authorities lead on establishing age using the Merton-compliant age assessment process. We were, however, concerned to find that in 54% of the 52 files where the Home Office should have obtained proof of Merton compliancy, it was missing or the situation was not clear.
- 6.44 The amount and quality of age assessment material on file was also limited. There were 41 files where an age assessment of some description was on the file but for 23 of these (56%) we found only a cover page or a summary page.
- 6.45 We found the Home Office guidance on these matters to be clear and specific.⁵³ It said that staff should ask the local authority for the full assessment and confirmation that it had been carried out ‘in compliance with the guidelines in the Merton case’. If they met a problem, the guidance told staff to ‘point out’ the provision for sharing such data within the Data Protection Act 2008.
- 6.46 While the guidance set out the 2009 judgment that local authorities should share full assessments

⁵³ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view%253DBinary.28357810ECEAF7B1C20CBF76CFF49144E.html> Section 5.

with the Home Office,⁵⁴ it also provided staff with clear instructions if this did not happen - 'discuss with the relevant local authority and obtain in writing, at the very least the assessment conclusion, the reasons on which their conclusion is based and an assurance that their assessment complies with the local authority's assessment policy and the guidelines in the Merton case'. Although it allowed that asylum decisions should not be delayed pending an age assessment, it required staff to make 'every attempt' to obtain one and to document all attempts. The fact that the guidance was so explicit makes our findings on the issue even more concerning.

- 6.47 The majority of files also lacked audit trails to show that staff had acted to comply with the guidance on contacting the local authority.
- 6.48 We did find some evidence of good practice. For example, one decision-maker supported the social services' age assessment process, and complied with guidance on information sharing, by providing a visa application form and birth certificate which had recently come to light. That staff member also recorded the steps taken to confirm Merton compliancy.
- 6.49 But, overall, improvement was required so that adequate Merton-compliant age assessment information was obtained in compliance with guidance. An audit trail helps anyone taking over a case and could be needed for a legal process such as Judicial Review.

Change to Age Assessment Information Sharing

- 6.50 The Association of Directors of Children's Services (ADCS) has developed a 'Model Information Sharing Proforma' with the Home Office, which supersedes the age assessment part of their Joint Working Protocol. It sets out the information needed by the Home Office (see 6.46 above) and, although its use is not mandatory, we hope that wide adoption will bring greater consistency to age assessment information sharing between local authorities and the Home Office.

Record-Keeping

- 6.51 In paragraph 6.30 we highlighted the significance of incorrect age dispute flags. We frequently found that clear guidance on obtaining local authority assessments was not followed. We encountered incomplete, unclear and incorrect records. We concluded that it was entirely likely that similar administrative mistakes and omissions were happening more widely across age disputes beyond our sample. These are all performance monitoring issues which the Home Office must tackle as they undermine the credibility of any statistics predicated on assumptions of CID records being complete and correct.
- 6.52 Aside from statistics, it is an operational imperative that anyone taking over a live case should be able to work from existing records. A manager told us that he reminds his staff about the importance of records by saying: 'If it isn't on CID, it didn't happen.' When onsite, we found some localised monitoring of CID record quality but a centrally-driven approach is needed. Senior managers described having had directorate records quality at 97% in the past and stated an intention of driving it back up. We welcome their appetite for improving the situation. Figure 12 highlights how important prompt and accurate records changes are in complex, and often fast-changing, age dispute cases.

It is an operational imperative that anyone taking over a live case should be able to work from existing records. A manager told us that he reminds his staff about the importance of records by saying: 'If it isn't on CID, it didn't happen'

⁵⁴ <http://www.baillii.org/ew/cases/EWHC/Admin/2009/939.html>

Figure 12: Case study – complex and changing records in an age dispute case

The Applicant

- claimed a date of birth of 27/8/95 on arrival (age disputed as below)
- gave a date of birth of 27/8/96 at screening and in the SEF

The Home Office

- disputed the initial claim of 27/8/95 (adjudging 27/8/92 but giving the ‘benefit of the doubt’ so the applicant entered the child’s asylum process)
- received a Merton-compliant local authority age assessment with a date of 27/8/93 and accepted it
- issued an outright refusal in line with the applicant being over 17.5 years – all documents showing 27/8/93 (except the refusal letter which mistakenly showed 27/8/92)
- received a further local authority age assessment for 27/8/95 and accepted it
- received notification of a court order stating that a date of birth of 21/3/96 had been agreed between the applicant and the local authority and accepted it
- issued a new decision because the applicant was then under 17.5 years

Chief Inspector’s Comments

- This case is typical of the plethora of data changes needing to be recorded accurately and promptly in age dispute cases. A diligent and methodical approach to keeping the file and CID up to date is crucial to efficiency and fairness.

- 6.53 We also considered the paper-based records. A recurring problem was the original screening and asylum interview notes having been detached for photocopying (for appeals) but frequently not replaced. Some files had papers badly out of order and/or completely loose – potentially from the photocopying. There appears to be a basic process management problem here which requires attention.
- 6.54 Our conclusions about records relating to age disputes and age assessments reflect a wider concern about the quality of record-keeping more generally. In chapter 5, we highlighted that 14% of files did not record whether an adult was with the child at screening. Later in the report we also highlight incomplete records in both paper and electronic files in relation to interviews and decisions. We have highlighted similar concerns about the quality of CID and paper files many times in the past, for example when we looked at the handling of legacy asylum and migration cases.⁵⁵ Collectively, the concerns in this report lead us to the recommendation below.

We recommend that the Home Office:

Establishes a systematic and comprehensive monitoring system to ensure the timeliness and quality of recorded data.

⁵⁵ <http://icinspector.independent.gov.uk/wp-content/uploads/2012/11/UK-Border-Agencys-handling-of-legacy-asylum-and-migration-cases-22.11.2012.pdf>

CHAPTER 7 – INSPECTION FINDINGS: ASYLUM INTERVIEWS

- 7.1 Asylum interviews help the Home Office to assess the validity of claims for international protection and they are the first occasion when children speak at length about their reasons for coming to the UK. Many of the special provisions for dealing with asylum claims made by unaccompanied children therefore concern interviews.
- 7.2 The Rules set out requirements relevant to interviewing children, such as the requirement to give particular priority and care to the handling of unaccompanied children’s cases (see Appendix 3). Article 12 of the UN Convention on the Rights of the Child (UNCRC) is also relevant to interviews. It states that children have the right to express their views freely, to have those views given due weight, and to be heard in proceedings affecting them.⁵⁶
- 7.3 In order to inspect the efficiency and effectiveness of the interview process, we sampled 112 Home Office files;⁵⁷ observed six substantive asylum interviews; spoke to Home Office staff; and spoke to young people about their experiences of the process. In this chapter, we examine the interview process in the order that children experience it and measure Home Office performance against the Rules and its own guidance.

The Statement of Evidence Form (SEF)

- 7.4 The SEF asks several questions; some factual such as details of family members, some relating to the asylum claim itself. As mentioned in chapter 4, in most cases a narrative witness statement is also submitted. The interview takes place when they have been received.
- 7.5 Interviewing after the case owner has seen them should make the interview more focused and no longer or more intrusive than necessary. A number of staff told us that they would not interview children without a SEF and, as we discuss later, we saw examples of interviews being cancelled for this reason.

Figure 13: Interviews broken down by whether a SEF had been received

	Number of cases	% of cases*
SEF received before interview	98	88
SEF not received before interview	2	2
Unclear when SEF was received	12	11
Total cases	112	

*Figures do not sum to 100 owing to rounding

- 7.6 In five of the 98 cases above, the SEF was received only on the day of the interview and three of those interviews were delayed because the case owner needed time to read it.

⁵⁶ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁵⁷ There were 115 files in which we inspected the whole asylum process to the point of decision. Three of those children were too young to be interviewed.

7.7 There should not be a long period between receipt and interview. Unless there are reasons for delay arising from the child’s needs, the interview should follow soon after the SEF is received in line with the requirement to give particular priority to children’s cases. We therefore measured the interval between that date and the interview date (in cases where the former was clear).

Figure 14: Intervals between SEF requested return date and interviews, by region

Region:	Average time interval between requested return date of SEF and interview date (days)
London	10.5
Midlands	33

7.8 We considered the average time in the Midlands to be too long. It was not in line with the spirit of the Rules and caused unnecessary delays for children.

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7.9 Staff in Solihull told us that interviews were usually scheduled for six weeks after the date when they first received the case. They said this included between one and two weeks for the SEF to progress through the internal postal system. As the 33 day figure excluded the normal 20 days for returning the SEF, in practice it exceeded six weeks.

Before the Interview Day

7.10 One stakeholder wrote that it was of the utmost importance that the Home Office did not cancel interviews at the last minute. We agree, as cancellations can be unsettling for children and are unlikely to be in their best interests (unless there is a good reason).

7.11 In the 112 cases in our sample where the applicant was interviewed we found:

- 83 cases (74%) with no cancellations (either before or on the day).
- 29 cases (26%) with 38 cancellations, including seven cases with two cancellations and one with three. Of those 38, six were the responsibility of Home Office staff and four related to Home Office interpreters.
- The remaining 28 included cases where the legal representative or social worker requested a cancellation, or the Home Office cancelled for a reason benefiting the child (for example, that the Home Office was still awaiting the SEF), or where the reason was unclear.

7.12 Ideally, there would be no cancellations. Of the 10 Home Office cancellations we found, four were for reasons related to the Home Office interpreter – for example, the interpreter had to cancel. We acknowledge that the Home Office does not employ interpreters directly and such cancellations are therefore difficult to avoid.

7.13 We found that only six of the avoidable cancellations were caused directly by the Home Office (4% of sampled cases). Some of the other cancellations, such as those where no SEF had yet been received, show that the action was taken in the best interests of the child.

7.14 When interviews were cancelled, we examined how long it took to rearrange them. The average time interval between the cancelled interview and the new date was 21.5 calendar days but, in six cases, there were delays of over two months, including one of seven months and 26 days. In three of those six cases there was a clear reason – for example, one applicant spoke a rare language and the

Home Office could find only one approved interpreter, who was not available for some considerable time. Children’s cases are required to be prioritised and such long intervals do not comply with that. Other than in exceptional circumstances, postponing an interview for a lengthy period is clearly unacceptable.

Delays to the Start of the Interview

7.15 Interviews should start on time. The interview day will be stressful for children and it is unlikely to be in their best interests to be kept waiting. We examined how many interviews in our sample started more than 30 minutes late. We selected 30 minutes because the Early Legal Advice Project (ELAP)⁵⁸ in the Midlands region stipulated that interviews should start no more than 30 minutes after the applicant entered the building.⁵⁹ Figure 15 sets out our findings.

Figure 15: Delays to the start of asylum interviews		
	Number	Percentage (%)*
No delay or less than 30 minutes	55	50
Delay – caused by Home Office	13	12
Delay – caused by applicant/their accompanying adult(s)	15	14
Delay – reason unclear	27	25
Total	110	

*Figures do not sum to 100 owing to rounding

7.16 In our sample, we found that the Home Office was responsible for the lowest number of delays. However, we found that any delays caused by the Home Office tended to be longer (60-90 minutes), whereas those caused by applicants and/or their accompanying adults tended to be shorter (30-60 minutes). A number related to interpreter provision. While there is no evidence that the Home Office is unreasonably delaying the starts of interviews, it should ensure that delays are minimised and that difficulties with interpreter provision do not cause unreasonable delays.

Interview Facilities

7.17 We observed interview rooms in three locations - Lunar House in Croydon (where Becket House staff interview children), Frontier House in Folkestone and Sandford House in Solihull. We were satisfied with facilities in Lunar House and Frontier House, where rooms were light, soundproof and reasonably spacious with comfortable chairs.

7.18 We were not satisfied with facilities in Sandford House. The rooms themselves were satisfactory but were located just off the very busy reporting centre waiting area. The considerable noise from the waiting area was audible during interviews. In one interview we observed, a young child knocked against the door on a couple of occasions. In the other, after the reporting centre closed, a vacuum cleaner was very audible. These situations risked giving children the impression that interviews needed to be rushed. There are interview rooms in other, less noisy, parts of the building and the Home Office should consider using those for children’s asylum interviews.

The People in the Interview

7.19 In most cases, there are five people in the interview room:

58 ELAP was piloted in the Midlands region. It was intended to enable applicants to receive legal advice at an early stage in order to realise several benefits, such as improved quality of service.

59 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/elap-midland-and-east?view=Binary>

- The child;
- The interviewer;
- The responsible adult;
- The legal representative;⁶⁰ and
- The Home Office interpreter.

- 7.20 The Rules require interviewers to have had specialist training in interviewing children. Unaccompanied children are now a relatively small proportion of asylum applicants, so many staff work full-time on adults' cases and do not need this specialist training. As of February 2013, the Midlands had 12 out of 29.5 full-time equivalent⁶¹ asylum decision-makers specially trained and, as of March 2013, London had 36.9 out of 133.5.
- 7.21 The Rules also require that interviews are conducted in the presence of an independent adult - the responsible adult. As previously explained, this is usually a social worker, local authority key worker or foster parent. Their role is effectively to safeguard the child during the interview, including giving moral support and reassurance where needed.⁶² In our file sample, we found evidence that a responsible adult was present throughout in 101 (90%)⁶³ of the cases.
- 7.22 The Rules give the legal representative the right to be present and to ask questions and make comments within the specified interview framework, although their presence is not mandatory. We found evidence that they were present in 96 (86%) of the cases we sampled (in some of the remaining cases there was clearly no representative; in others it was unclear).

Conduct of the Interview

- 7.23 Home Office guidance sets out some requirements for the conduct of interviews. Children should, for example, be able to express themselves in their own way and at their own speed, and interviewers should check periodically that they feel comfortable. Interviewers should adopt a sensitive manner, ensuring that their body language and vocabulary, for example, are appropriate to the child's particular situation.
- 7.24 The Home Office's quality assurance framework sets out standards for interviews. None focuses specifically on interviews of children, but they contain standards applying to all cases, such as the need for a logical structure.

Findings From File Sampling

- 7.25 Using these standards, and other measures we considered important (for example, informing children at the end about the next stage of the process), we examined the interview records in the files to see whether they had been conducted in a child-friendly way.
- 7.26 There are limitations to using these transcripts as evidence. Questions asked in an adversarial way might not show up as such in the transcript. Conversely, an interviewer may have used sympathetic language before asking a difficult question but not recorded it. What may appear from a transcript to be 'firm' language may be justified in the circumstances, for example if an older interviewee is adopting a disruptive attitude. In one case, the responsible adult and legal representative warned a 17-year-old male about his 'immature' approach to the interview shortly after it started.

⁶⁰ Legal representatives often bring their own interpreter, who makes notes to inform any further written representations, but does not participate in the interview.

⁶¹ For example: a member of staff who worked Monday to Friday would be 1.0 FTE; one who worked Monday to Wednesday would be 0.6 FTE.

⁶² <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary> paragraph 4.3

⁶³ In a few cases there was more than one interview session. We have credited a responsible adult as being present only if one was present in all the interviews for a case. The same applies in relation to legal representatives in paragraph 7.22.

- 7.27 One stakeholder suggested that interviews are often conducted inappropriately, with failure to give effect to the Home Office's duties to children, and that examples of efforts to make young people feel at ease were the exception. In our sample, we did find some examples of behaviour by interviewers, which did not, from the transcript, appear child-friendly. Figure 16 describes one such example.

Figure 16: Example of a non-child friendly approach

The Applicant

- travelled to the UK from Albania, claimed asylum and was interviewed

The Interviewer

- asked some questions which appeared insensitive; for example, he stated: 'That is not what I asked' [then repeated the question], 'You still have not answered my question', 'Given that this is something that could spare your life why don't you remember?' and 'What has your age got to do with it?'

Chief Inspector's Comments

- Based on the transcript, these questions appear not to be in line with the requirement in the Rules to give close attention to the child's welfare at all times.

- 7.28 Such examples were, however, rare. In many instances the transcripts indicated child-friendly behaviour on the part of interviewers, as set out in Figure 17.

Figure 17: Example of a child-friendly approach

The Applicant

- travelled to the UK from Iran, claimed asylum and was interviewed
- said at the start of the interview that he had pains in his stomach and in his leg (the latter deriving from a longer-term injury)

The Interviewer

- asked him several questions about those pains, including whether he was taking medication
- checked that he was happy to continue
- said that he should say at any point if he wished to stop
- checked that both the legal representative and the responsible adult were happy to continue

Chief Inspector's Comments

- This is a good example of a Home Office member of staff putting child welfare first.

- 7.29 We identified good interview practice at Folkestone. Staff routinely started by asking questions about the applicant's health, welfare and circumstances in the UK (which could include schooling). They told us that they do this to help build a rapport with the child. This appears to be a useful way both to relax children at the start of interviews and to highlight any well-being issues, which may affect questioning.

- 7.30 We were pleased to see that, in a number of interviews, staff 'signposted' questions as a way of helping children understand what was happening. If about to ask some questions about the child's family, for example, the interviewer would say that they were now moving on to this topic.

7.31 As the interview is an intense process, breaks should be offered to children. The responsible adult is responsible for calling for them, although guidance tells staff to ensure that regular breaks are factored in. In a number of cases, and in line with guidance, interviewers asked if applicants were comfortable to continue. While this is required when children return from a break, many of these questions were unconnected to breaks and were additional checks on well-being. Staff told us that, in practice, it is the interviewer who would usually call for a break.

7.32 At least one break was offered, usually by the interviewer in 101 of the 109 (93%) interview records available to us. This indicated that staff generally took child welfare into account. In three of the remaining eight interviews, the interview lasted around one hour, reducing the need for breaks.

We were pleased to see that, in a number of interviews, staff 'signposted' questions as a way of helping children understand what was happening

Observation

7.33 We observed six interviews. Our impression was that staff concentrated on the child and our presence did not affect the interaction.

7.34 We observed a number of examples of child-friendly behaviour. In one case, after the child returned from a break, the interviewer explained the need to explore a difficult and possibly upsetting issue and said that, if the child found it upsetting, she could take her time and take a further break. The interviewer then asked only a few questions, recorded the answers and read them back to the child to check that she was content with them. In another case the child replied to a question: 'Even now, I'm scared talking about [a particular subject].' The interviewer replied: 'Don't be scared, you're in a safe environment here, you can talk to me'.

7.35 We observed no examples of behaviour specifically 'unfriendly' to children but in two cases interviewers did not appear to be seeking to build a rapport with the child and addressed them largely through the interpreter. Also, on a couple of occasions, applicants were asked to speculate about issues that they could not reasonably be expected to know about. Leading questions were rare and all but one of the interviews had a clear, logical structure. We observed no questions which we judged to be insensitive or inappropriate.

7.36 We were concerned to observe that in only one of the six interviews did the case owner explain at the end what would happen next. Children should leave interviews understanding the next stage of the process. While their responsible adult or legal representative would be likely to explain, they should also hear it from the person who will decide their application.

We were concerned to observe that in only one of the six interviews did the case owner explain at the end what would happen next. Children should leave interviews understanding the next stage of the process

Interview Length

7.37 There is no formal standard for how long child interviews should last. However, staff in the Midlands clearly observed an informal local rule that, excluding breaks, they should generally not exceed two hours. We heard about this benchmark from staff in Solihull on five occasions. In a recent report, The Children's Society noted that a few of the children to whom they had spoken said they had been interviewed for up to eight hours.⁶⁴

7.38 We recorded the lengths of the interviews (including breaks) in our file sample of 104 files.⁶⁵ In the sample overall and when broken down by London and Midlands, the average length was always

64 'Into the unknown – Children's journeys through the asylum process', The Children's Society, September 2012, page 11.

65 We excluded the interviews in the two cases which involved more than one session (three in one case, two in the other).

between 2 hours 45 minutes and 2 hours 50 minutes.

Figure 18: Breakdown by percentage of the sample for interview lengths⁶⁶

	% All files*	% London	% Midlands
Less than 1 hour	1	1	0
1-2 hours	8	10	3
2-3 hours	48	44	58
3-4 hours	32	30	36
4-5 hours	9	11	3
5-6 hours	3	4	0
6 hours or more	0	0	0

*Figures do not sum to 100 owing to rounding

- 7.39 Appropriate length depends on each individual child and the circumstances of the claim. It is unlikely, though, that in most cases an interview of four hours or more will be in the child’s best interests, or that it will meet the requirement in the Rules that close attention should be given to welfare at all times.
- 7.40 Only 12 interviews (12% of the sample) lasted four hours or more and all but two of the children interviewed in those cases were aged 16 or 17. The other two were aged 15 and both of their interviews lasted four hours (to the nearest five minutes). We were reassured that no interview in our sample lasted six hours or more.
- 7.41 Although average interview lengths in London and the Midlands were effectively the same, we found another significant disparity between the two regions and that was in the range of times. In the Midlands 94% of interviews lasted between two and four hours; in London 74% did. It is not clear why this difference has arisen but it may be because Midlands interviewers have regard to the two-hour benchmark.
- 7.42 We were concerned to see a few children’s interviews in London lasting up to six hours. We consider that the Midlands’ approach of aiming to avoid lengthy interviews is more in line with the requirement in the Rules to give close attention to children’s welfare at all times.

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The Child’s Perspective

- 7.43 We discussed asylum interviews with three groups of young people in London, Manchester and Glasgow. The provisions in the Rules are intended to make the process more comfortable for children, so we wanted to learn whether they have this effect. However child-friendly the interview is, children are likely to be anxious and unlikely to find being interviewed a wholly pleasant experience.
- 7.44 We observed marked differences between the three groups. Six of the young people in London and Manchester told us about their interviews and five were broadly content with them. One described the interviewer as ‘very nice’; another said that they felt able to say what they wanted to say. The sixth said the interviewer was often quite abrupt.

⁶⁶ An interview lasting 2 hours (to the nearest five minutes) is included within ‘2-3 hours’ etc. 12 of the 71 London cases lasted 2 hours (to the nearest five minutes).

7.45 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. We heard that an increasing number of interviews in Glasgow are being held at non-Home Office locations. The group said that this made them feel more comfortable and calm and the Scottish Refugee Council, who arranged our meeting, echoed this.

Conclusion

7.46 We are satisfied that the Home Office is, in most cases, following the requirements of the Rules for asylum interviews. We also consider that they are usually conducted in a child-friendly manner. We found good examples of interviewers actively considering children's welfare. We also found that examples of poor behaviour by interviewers appeared to be the exception rather than the rule.

We are satisfied that the Home Office is, in most cases, following the requirements of the Rules for asylum interviews

7.47 The Home Office should, however, make some improvements - in particular: reducing delays to the start of interviews; speeding up the scheduling of Solihull interviews and improving the interviewing facilities there. Finally, it should set out the next steps in the process to the child at the end of interviews.

CHAPTER 8 – INSPECTION FINDINGS: DECISIONS

Introduction

- 8.1 The child had five working days after the interview to submit any comments about the interview and any other information to be considered. Then, to determine the claim, a decision-maker had to:
- Decide whether or not to grant asylum;
 - Decide – when asylum had been refused - whether to grant leave to remain pursuant to the ECHR;
 - Endeavour to trace the child’s family members;
 - Ensure that the child’s best interests were a primary consideration in decision-making; and
 - Decide – when asylum and leave based on the ECHR had been refused – whether to grant leave to remain pursuant to the policy on unaccompanied children, or whether to refuse all leave with a view to the child returning to their country of origin.⁶⁷
- 8.2 Decision-makers generally referred to all five issues in the same document. We consider them separately in this chapter, while highlighting the links.
- 8.3 A grant of asylum is set out in an internal ‘grant minute’, which stays on case files and CID as a record of the decision-making process. When asylum is refused, a ‘reasons for refusal letter’ (or, informally, ‘refusal letter’) is sent to applicants. Both documents explain the consideration process and the reasons for the decision, and they formed most of our file sampling consideration. We refer to grant minutes and refusal letters collectively as ‘decision documents’.

Decision Timescales

- 8.4 In our files, we examined the interval between the asylum claim and the despatch of the documents communicating the decision (‘decision service’). This is an important measure. Stakeholders raised concerns about long waits for decisions.

Figure 19: Discrepancies in interval between asylum claim and decision service

	London	Midlands
Average interval (days)	64	141
% of cases decided within three months	67%	25%
% of cases decided within six months	87%	78%

- 8.5 The Midlands average was not reasonable. The lowest figure in the Midlands – 69 days – was longer than the London average. There were, however, some very long intervals in both locations, such as the case below.

⁶⁷ This describes the asylum process at the time that the cases in our sample were decided.

Figure 20: Case study - a very delayed decision

The Applicant

- applied for asylum, with the case decided in London

The Home Office

- left five months between the asylum claim and the planned interview date
- after the social worker asked that that interview be postponed, left eight further months until the next interview date. It failed to answer two letters from the applicant's legal representative during this period
- made a new date after the legal adviser made a complaint
- made no notes on CID between the cancelled interview and the response to the complaint
- left 424 days overall between asylum application and decision service

Chief Inspector's Comments

- There was no clear reason in the records for this extended interval. This child received a very poor service and should not have had to wait over a year for a decision.

8.6 Our sampling demonstrated stark disparities between the two regions. The period between interview and decision service was 23 days in London and 39 in the Midlands.

Our sampling demonstrated stark disparities between the two regions. The period between interview and decision service was 23 days in London and 39 in the Midlands

8.7 We asked staff in the Midlands why they thought this might be. Some suggested the Early Legal Advice Project (ELAP)⁶⁸ was a factor but the ELAP document indicated an interval of between 50 and 65 days for decisions.⁶⁹ Staff considered that staffing reductions in the Midlands and pressure to give priority to adult asylum cases had also been factors in the delays.

8.8 London staff told us that they worked towards an informal guideline of serving children's decisions within 60 days of claims (fitting with their average of 64 days). Staff in the Midlands told us that they used a measure of 90 days but most Midlands' cases were not decided within even that period. London, unlike the Midlands, pre-schedules the day of decision service for the first possible date after the interview and this appeared to us to be an effective driver for decision times.

8.9 We found some confusion about the 60-day benchmark. The Home Office initially told us that there was, as of February 2013, no specific timeliness target for decisions on unaccompanied children's cases, although consideration was being given to introducing one. London staff who mentioned 60 days said that it had previously been a formal target and was now an informal guideline. However, a senior manager told us it was a formal, national target. The Home Office must be clear about what, if any, target there is for completing decisions on unaccompanied children's cases. It should communicate any such target to staff with guidance about how to achieve it. Children should not be left to wait for lengthy periods without decisions on their status.

Children should not be left to wait for lengthy periods without decisions on their status

⁶⁸ ELAP was piloted in the Midlands region to enable applicants to receive legal advice at an early stage.

⁶⁹ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/elap-midland-and-east?view=Binary> pages 14-16.

8.10 It is concerning that there was such a wide disparity between decision times in the two areas, and that they applied different benchmarks. Based on our sampling, it took too long to make asylum decisions in the Midlands and this was contrary to the requirement in the Rules that particular priority should be given to children's cases. Other than in exceptional circumstances, a child in one location should not have to wait significantly longer than a child in another location. We previously emphasised the need for children's cases to be dealt with in a timely way in the inspection into legacy asylum and migration cases.⁷⁰

We recommend that the Home Office:

Decides children's asylum claims in a timely manner regardless of where they are considered.

Decisions

8.11 Chapter 4 explained that asylum decisions are made pursuant to the Refugee Convention. The Convention makes no reference to age, and the Rules, which incorporate much of it into domestic law, make clear that a person of any age may qualify as a refugee, with the same criteria applying regardless of age (Appendix 3, paragraph 351). A child must therefore satisfy the same criteria as an adult to be granted asylum.

8.12 Applications from adults and children are not, however, considered in exactly the same way. Decision-makers should follow particular processes and apply safeguards when assessing children's applications. They essentially require decision-makers to consider a child's situation and maturity before deciding to reject the evidence presented, and to give greater weight to other sources of evidence.

8.13 While these provisions⁷¹ appear at first to place children in a more advantageous position, their aim is merely to counterbalance the natural disadvantages children may suffer, namely that they may be less able than adults to articulate, or even understand the objective basis of their fears.

8.14 We inspected the application of the procedural safeguards relating to children and the clarity of the asylum decisions. We requested statistics on the proportions of unaccompanied children granted asylum in each region. The significant disparity in outcomes between London and the Midlands can be seen in Figure 21 below.⁷²

Figure 21: Proportions of unaccompanied children granted asylum, by region

	% of people granted asylum	% granted DL ⁷³	% with other outcomes
London	15.3	64.7	20.0
Midlands	37.5	40.9	21.6

8.15 We discussed the possible reasons with staff in both locations. The most common suggestion was that the asylum intakes in the two areas reflected different nationality profiles.

8.16 We examined national figures for unaccompanied children who applied for asylum (in locations other than ports) within the same time period. There were some significant differences in the nationality mix. For example, 23% of the applicants whose cases were decided in London came from Albania, compared to 4% in the Midlands.

70 <http://icinspector.independent.gov.uk/wp-content/uploads/2012/11/UK-Border-Agency's-handling-of-legacy-asylum-and-migration-cases-22.11.2012.pdf>

71 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary>, paragraph 16.4

72 These figures relate to unaccompanied children who claimed asylum between 1 April 2011 and 31 March 2012 and who, as of February 2013, had received decisions on their claims.

73 As discussed in chapter 4, this was known as DL at the time of our sample, but is now known as UASC leave.

- 8.17 Nationality may explain some of the difference. However, the Midlands granted asylum to a higher proportion of all the nationalities for which there was a large disparity. Nationality alone is unlikely to explain the significant difference in grant rates. We therefore examined the proportion of refused applicants whose appeals against those decisions were allowed, because allowed appeals may demonstrate that initial decisions were incorrect.
- 8.18 We requested figures on appeals.⁷⁴ Figure 22 sets these out below.

Figure 22: Rates of appeals allowed in the two regions inspected

Region	% of appeals allowed
London	46
Midlands	39

- 8.19 While the allowed appeal rate in London was higher than in the Midlands, the variation was insufficient to indicate a stark disparity in the quality of decisions between the two regions. We noted, though, that no strategic level analysis was being done to analyse all the reasons for allowed appeals, which could determine where improvements to decision quality were needed. In our view, systematic analysis of appeal outcomes, whether allowed or dismissed, is vital if the Home Office is to improve the quality of its initial decisions and reduce the proportion overturned at tribunal. This is another area on which we have made recommendations a number of times, for example in the inspection relating to marriage and civil partnerships.⁷⁵

Systematic analysis of appeal outcomes, whether allowed or dismissed, is vital if the Home Office is to improve the quality of its initial decisions and reduce the proportion overturned at tribunal

- 8.20 Both locations are part of one national organisation and apply the same legal framework. Disparities between the grant rates of the magnitude we found are therefore surprising. If one region (or both) is not applying the correct standards for granting asylum, this has serious consequences. Senior managers told us they were not aware of any recent work undertaken to analyse the reasons for these disparities.

- 8.21 This situation touches on a number of areas – fairness for the applicants and potentially improving performance are just two. We believe that the Home Office should commission analyses to examine the disparities, including analysis of the reasons for allowed appeals. In that context, we make the following recommendation.

Disparities between the grant rates of the magnitude we found are surprising

We recommend that the Home Office:

Applies the law consistently and correctly to children's asylum claims regardless of where they are considered.

Child-specific Provisions

- 8.22 To look more closely at the use of the procedural safeguards, we examined 115 decision documents - 79 from London and 36 from the Midlands. Reflecting the national breakdown for decision outcomes in unaccompanied children's cases⁷⁶, asylum had been granted in 20% of the cases we requested; with DL in 60% (20% had been refused outright).

⁷⁴ This refers to applicants who sought asylum in the same period as for the decision figures shown previously, were refused asylum (even if granted DL) and appealed the decision.

⁷⁵ <http://icinspector.independent.gov.uk/wp-content/uploads/2013/01/marriage-and-civil-partnerships-FINAL-PDF.pdf>

⁷⁶ The figures used were for decisions taken in 2011, according to published statistics (Immigration Statistics, July to September 2013, Asylum data tables volume 2). Figures for 2012 were not available when we requested files.

Objective Information

- 8.23 Decision-makers should use a wide range of sources to ensure that children's cases are explored fully. We examined whether decision-makers used more subjective information (for example, alleged internal inconsistencies in children's accounts) or objective information (for example, information about the child's country of origin, which could explain what happened to them and any risk they might face if they returned). While the appropriate level of objective information will vary according to the case, its use is an indicator that the decision-maker has given weight to sources of evidence other than the child's own account.
- 8.24 We found that a significant level of objective information was used in decision documents. In 14 of the 16 decision documents relating to applicants aged 14 or younger at the time of decision, objective information predominated over subjective. We were pleased that the Home Office appeared to have given appropriate weight to objective indications of risk when dealing with younger children. The need to rely on such information was especially important for younger children, who were likely to be less able to explain their fears than older children. There was less of a clear pattern for older children.
- 8.25 We also considered the types of objective information deployed. The most frequently cited were country of origin information (COI) reports, which the Home Office produces about countries from which asylum applicants are most likely to originate.⁷⁷ We were pleased to see that decision-makers also used several other sources of objective information, such as the Immigration and Refugee Board of Canada, RefWorld⁷⁸ and reports by United Nations Special Rapporteurs.
- 8.26 COI reports should contain a section on children. Such information was used in 52% of the cases we sampled, in line with the Home Office guidance that child-specific country of origin information should be obtained and referred to wherever available.⁷⁹ Such information would not have been relevant in every case but we consider that the usage could have been higher. Figure 23 below shows an example case, which effectively supported the decision-maker's argument that the applicant would not face risk on return.

We were pleased that the Home Office appeared to have given appropriate weight to objective indications of risk when dealing with younger children

⁷⁷ Under section 48 of the UK Borders Act 2007, the Independent Chief Inspector of Borders and Immigration reviews the content of this material. He is supported in this by the Independent Advisory Group on Country Information.

⁷⁸ A UNHCR source of information for those making decisions about refugee status.

⁷⁹ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary>, paragraph 16.1.

Figure 23: Case study - effective use of child-specific country of origin information (COI)

The Applicant

- travelled to the UK from Morocco and claimed asylum

The Home Office

- refused his application, arguing, among other things, that he could live elsewhere in Morocco
- quoted from the children section of the Morocco COI report, to describe, among other things, the 'Child-Friendly Cities' initiative there
- quoted a United States State Department report on Morocco, which described a plan to address child abuse, including programmes concerning child domestics and street children
- referred to a number of organisations in Morocco, which assisted children, including two website addresses

Chief Inspector's Comments

- This decision-maker made extensive use of child-specific country of origin information. This demonstrated close engagement with the child's situation.

Information About the Child

- 8.27 We examined whether decision-makers had sought information from people with direct knowledge of the child. Home Office guidance stated that they should consider evidence from a range of other sources, such as family members, accompanying adults⁸⁰, social workers and other agencies involved with the child.⁸¹ These provisions were specific to children and created an expectation that such information would be sought.
- 8.28 We were surprised to find that this was done in only 19% of cases. There was stakeholder concern that decision-makers did not always gather information proactively about the children. On the basis of our file sample, we agree.

Taking Age and Maturity into Account

- 8.29 We finally considered whether decision-makers were having regard to children's age and maturity and applying the benefit of the doubt more generously.⁸² These are subjective concepts, which would be hard to measure systematically in the files. We did, however, observe a number of examples of decision-makers applying these principles.

⁸⁰ The document applies to accompanied children too; references to 'accompanying adults' would not usually apply to unaccompanied children.

⁸¹ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary> paragraph 13.1

⁸² As footnote 81, section 16.2. 'In young and less mature children a different degree in their knowledge and information is to be expected and the benefit of the doubt must be applied more liberally.'

Figure 24: Case study - taking age and maturity into account

The Applicant

- claimed to be originally from Eritrea and to have travelled to the UK after spending time in other countries
- was asked in her interview some questions to test whether she was really Eritrean - she answered a number correctly, and some incorrectly

The Home Office Decision-Maker Wrote:

- Due to her leaving [name of city] when she was still a relatively young child, [number of years old], and having no formal education while also spending the majority of her life outside of her claimed home country, it is considered that she would struggle to answer specific questions posed to her about her home city. Therefore little weight can be attached to her failure to answer specific questions about her home city.

Chief Inspector's Comments

- This is a good example of a child being given the benefit of the doubt and not being penalised for a lack of knowledge, which may have derived from leaving her country of origin when she was much younger.

8.30 In another grant minute, the decision-maker recorded that the 14-year-old male applicant from Afghanistan had no knowledge of his father's roles working either for the Taliban or, later, the Afghanistan Government. The decision maker recorded that he gave consideration to the boy's age and found it plausible that a member of the Taliban would not discuss that role with his 14-year-old son. He therefore accepted the boy's explanation for his lack of knowledge.

8.31 In some cases, decision-makers did not make specific allowance for age and maturity. In a refusal letter one 14-year-old's credibility was found to be damaged because he said at one point in the interview that a particular event had occurred two months after his uncle's death but at another point that it had occurred four months afterwards. However, we identified only a few cases which contained such examples.

We concluded that the Home Office is giving reasonable attention to the specific procedural provisions for children's claims but could do more

8.32 Overall, we were satisfied that decision-makers, generally, had a reasonable understanding of the requirements to make allowances for children's age and maturity when assessing their asylum claims. Staff told us that they challenged children's credibility when warranted but approached it in a different, and more limited way than they would with adults.

8.33 We concluded that the Home Office is giving reasonable attention to the specific procedural provisions for children's claims but could do more, especially to seek information from those with direct knowledge of the child's circumstances.

Leave to Remain Under the ECHR

8.34 Chapter 4 explained that children granted asylum at the time of our inspection normally received five years' leave to remain. If they were not granted asylum, decision-makers next considered whether to grant HP. If HP was not granted (and it rarely was), decision-makers decided whether to grant a period of DL, usually because return to the country of origin would constitute a disproportionate interference with the right to respect for their private life, family life, home or correspondence, under Article 8 of the ECHR.

- 8.35 As unaccompanied children were less likely than many other applicants to have a family life or to have established a private life in the UK, grants of DL on the basis of Article 8 were rare. If decision-makers did find, however, that Article 8 was engaged, they were supposed to take into account the best interests of the child, when assessing whether the interference with that right was proportionate.⁸³
- 8.36 If children were refused asylum, HP and DL based on the ECHR, decision-makers then did one of two things. One was to grant a period of discretionary leave pursuant to a specific policy for unaccompanied children seeking asylum. During the period of our file sample, this type of leave was granted for three years or until the child was aged 17 years and six months ('17.5'), whichever was shorter.
- 8.37 The principal criterion for such a grant was that there were no 'adequate reception arrangements' in the country to which the child would otherwise return. This usually referred to whether there were family members who could care for children and, in most cases, meet them on arrival.⁸⁴
- 8.38 Alternatively, decision-makers granted no leave to the child (an 'outright refusal') on the basis that they could return to their country of origin. This was done for one of two reasons. The first was that the child was aged 17.5 or older at the time of decision, so it was considered that they could return to their country of origin on reaching 18. The second was that the child was aged under 17.5 at the time of the decision; there were adequate reception arrangements in the country to which they would return; and return to that country was in their best interests – or, it was not in their best interests but those were outweighed by the need to provide effective immigration control.
- 8.39 Decision-makers also assessed where children's best interests lay, and endeavoured to trace their family members ('family tracing'). We consider this first.

Family Tracing

- 8.40 Family tracing derives from a European Directive, adopted in 2003⁸⁵ and implemented in the UK by the Asylum Seekers (Reception Conditions) Regulations, which took effect in 2005. These state that, to protect unaccompanied children's best interests, the Secretary of State shall endeavour to trace their family members as soon as possible after they claim asylum. The regulations also state that in cases where there may be a threat to the child or their close family, the Secretary of State should take care to ensure that the collection, processing and circulation of information about them is done confidentially to avoid risk.⁸⁶
- 8.41 Family tracing may serve a humanitarian purpose by allowing children to re-establish contact with their family and reunite with them. It may be crucial to assessing best interests. The UNHCR guidelines on best interests state: '*Family reunification, whenever feasible, should generally be regarded as being in the best interests of the child*'.⁸⁷ It may also be crucial when assessing whether adequate reception arrangements exist and it may therefore determine whether leave is granted.
- 8.42 While it is separate to the asylum decision, family tracing may in some cases be relevant to the consideration of an asylum claim, as the presence or otherwise of family members in a child's country of origin may help corroborate the claim, or do the reverse. A court case established the principle that a child who came from Afghanistan and was an orphan could be granted asylum on that basis.⁸⁸ Therefore, if family tracing were to show that the parents of a child from Afghanistan were dead, this could result in a grant of asylum.

⁸³ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary> paragraph 17.6.

⁸⁴ As footnote 83, paragraph 17.7.

⁸⁵ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Article 19-3.

⁸⁶ The Asylum Seekers (Reception Conditions) Regulations 2005, article 6.

⁸⁷ UNHCR Guidelines on Determining the Best Interests of the Child, May 2008, page 31.

⁸⁸ LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 00005 (15 March 2007).

- 8.43 The main Home Office guidance on children's asylum claims, which we looked at, was last updated substantively in 2010. It explained family tracing, but said little about how to do it.⁸⁹
- 8.44 Between spring 2011 and autumn 2012 – the period when almost all cases in our file sample were decided, there were three significant court cases on family tracing.⁹⁰ Collectively, these established that the duty to endeavour to trace could not be ignored, whereas the Home Office had (before March 2011) systemically breached that duty. They also found that the Home Office was not in a position to assess a child's best interests if it unjustifiably failed to trace their family. Such a failure could also be relevant to judicial considerations of asylum claims - in particular, if a child could show that the failure to trace led to their suffering disadvantage, they could be entitled to 'corrective leave' to remain.⁹¹
- 8.45 The Home Office issued interim guidance to staff after the first case, then a further, fuller set of interim guidance after the third. Together, these gave staff information on how to conduct tracing, among other things. Methods suggested included approaching Foreign and Commonwealth Office (FCO) posts in the country of origin to see whether they could trace the child's parents, and telephoning the child's family directly where contact details were available.
- 8.46 The latter guidance set out circumstances when asylum decisions could be issued without having the tracing results. These included where there were no surviving family members; where sufficient information could not be obtained despite concerted endeavours to obtain it; where tracing would raise a risk for the child or the family in the country of origin; and where the child was still in regular contact with the parents.
- 8.47 During file sampling, we saw another type of situation within this overall group. A Vietnamese boy had been trafficked to the UK and suffered sexual abuse. When the interviewing officer asked him about family tracing, he said that he did not want to trace them because they had abandoned him to his abuser. Tracing was therefore not pursued.
- 8.48 In parallel, the Midlands region issued two sets of local guidance. The first, in July/August 2011, stated that decision-makers should inform applicants about the Red Cross,⁹² contact the relevant FCO post and issue children with a family tracing proforma. The proforma asked, among other things, what tracing activities the children had done and intended to do, and where they thought their parents were. The second, in February 2013, included a detailed process map, and other possible tracing methods, including searching social networks such as Facebook.
- 8.49 We recognise that decision-makers would have regarded the requirements of tracing as being in a state of flux during our file sampling period. The central guidance following the third ruling was clearer than previous documents about what was required, but that guidance preceded only 4% of the decisions we examined in our file sample.
- 8.50 Decision-makers also faced considerable difficulties when they endeavoured to trace. These are set out below.
- The only established resource available abroad is the FCO, which provides assistance and advice where possible, but there is no formal protocol and its resources to assist with tracing are limited;

⁸⁹ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary> section 15.

⁹⁰ *DS (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 305 (22 March 2011), paragraphs 44, 46; *HK (Afghanistan) & Ors v Secretary of State for the Home Department* [2012] EWCA Civ 315 (16 March 2012), paragraph 46; *KA (Afghanistan) & Ors v Secretary of State for the Home Department* [2012] EWCA Civ 1014 (25 July 2012), paragraphs 16-17, 24.

⁹¹ The later case of *EU (Afghanistan)* elaborated further on this issue (*EU (Afghanistan) & Ors v Secretary of State for the Home Department* [2013] EWCA Civ 32, 31 January 2013).

⁹² The Red Cross conducts tracing, but only on referral from applicants, not from the Home Office.

- Some countries present particular difficulties. A recent publication highlighted that tracing in Afghanistan was ‘*all but impossible*’.⁹³ The UK also has no diplomatic representation in Iran; and
- Children are not required to co-operate and may choose not to do so. A recent court judgment illustrated this situation in stating that unaccompanied children from Afghanistan will have been sent to the UK, presumably by their families and at great expense, either because they face risk in Afghanistan or to give them a better life. In either case they are unlikely to want to cooperate in the return process.⁹⁴ This point was echoed by some of the staff we interviewed.

- 8.51 It is not always clear whether in an individual case the Home Office can be said to have met the tracing duty. In some cases, such as those when a visit is paid to the family’s address, it clearly has done. However, in some cases the duty may be met by doing less than that, such as by just gathering information from the child about their family, if it is determined that no further action can be taken in that particular case.
- 8.52 In our file sampling, we looked for evidence of tracing efforts either before or after decision service, if the latter followed a consideration process, which began before decision service. We did not, however, credit tracing efforts which derived from a later judicial direction.
- 8.53 We considered separately cases where asylum was granted. The tracing duty applied in these cases as, for example, it might have located family members in a third country with whom the child could live. However, as family reunification in the country of origin was not possible when asylum was granted, we considered a failure to endeavour to trace to be not as serious in these cases as in cases where asylum was refused.
- 8.54 There was evidence in only one of the 22 cases where asylum was granted that decision-makers considered whether to undertake tracing.
- 8.55 Of the 93 cases where asylum was refused, we found the following:
- In 34 (37%) there was no evidence that decision-makers had considered tracing;
 - In seven (8%) there was no evidence of consideration, but we identified a reason why tracing might not have been pursued (for example, that a child was in contact with his or her parents);
 - In 12 (13%) the only action was to inform the applicant about the Red Cross. The courts have made clear that this is insufficient to discharge the duty;⁹⁵
 - In three (3%) decision-makers stated that tracing was being or would be undertaken, but there was no evidence that it was; and
 - In seven (8%) the Home Office did not pursue tracing for a reason which was clearly insufficient, or did not do so when it clearly should have done. In one case, the decision-maker stated that the applicant’s not having requested assistance in tracing his family indicated he might not need such assistance. In some Midlands cases the proforma was sent out and returned by children, but nothing was then done. One example is given below.

93 Martin Lemberg-Pedersen, ‘The evolution of the ERPUM project’, published in ‘The deportation of unaccompanied minors from the EU – Family tracing and government accountability in the European Return Platform for Unaccompanied Minors (ERPUM) project’, Workshop report, Refugee Studies Centre, Oxford, May 2013, page 4.

94 EU (Afghanistan) & Ors v Secretary of State for the Home Department [2013] EWCA Civ 32 (31 January 2013), paragraph 10.

95 KA (Afghanistan) & Ors v Secretary of State for the Home Department [2012] EWCA Civ 1014 (25 July 2012), paragraph 24.

Figure 25: Case study - failure to act on a returned family tracing proforma

The Applicant

- was sent a family tracing proforma
- returned it, asking that family tracing be done and providing the name of his home village in Afghanistan

The Home Office Decision-Maker

- wrote that it was impractical for the Home Office to seek to trace his family, as he had not provided enough detailed or recent information

The Appeal Tribunal

- found that the child had provided information
- sent the case back to the Home Office because its family tracing efforts, and therefore its best interests consideration, were inadequate

Chief Inspector's Comments

- The decision-maker had sufficient information to attempt to trace the child's family, but did not do so. It is not clear why the proforma was sent out if no use was made of it on return. The case had to be sent back for family tracing to be done, which was inefficient and must have been frustrating for the child.

8.56 In 60% of the refusal cases we sampled, tracing either was not done, was insufficient or was considered but then not carried through on a ground that was clearly unreasonable. In the remaining cases, we are either confident that the family tracing duty was discharged or, for the reasons set out in paragraph 8.51, a case can be made that it was.

8.57 In four cases, the Home Office used the information supplied to attempt to locate the child's family, and in two cases they were located. One of those is described below.

In 60% of the refusal cases we sampled, tracing either was not done, was insufficient or was considered but then not carried through on a ground that was clearly unreasonable

Figure 26: Case study - successful family tracing

The Applicant

- travelled to the UK from Pakistan with his mother. She later returned to Pakistan and, after a period of time, he claimed asylum

The Home Office Decision-Maker

- contacted the High Commission in Islamabad and asked them to visit the applicant's mother, using the address her son had supplied. They located his mother, who said she was happy to meet him in Pakistan, as she had not known his whereabouts for a long time
- asked the High Commission how this reunion could be effected and was told they had arrangements with a non-governmental organisation which could meet the boy in Pakistan and return him to his mother
- refused the claim outright, as adequate reception arrangements were available
- arranged a meeting at the offices of the boy's social worker, where he explained to the boy the various options for returning to his mother

Chief Inspector's Comments

- Although the applicant was eventually granted humanitarian protection following an allowed appeal and the issue of return therefore did not arise, this is an example of good practice by the Home Office on family tracing.

- 8.58 Decision-makers may have endeavoured to trace in other cases, but the records did not evidence it. Yet the guidance following the first court case made clear that all tracing efforts should be recorded on both CID and file.
- 8.59 The Midlands demonstrated greater awareness of the tracing duty than London (shown by the two sets of local guidance and the despatch of the proforma in 76% of the refusals we sampled). This did not mean, though, that it discharged the tracing duty in all those cases, as the case study in Figure 25 demonstrates.
- 8.60 We conclude from our sampling that decision-makers were, in a majority of cases, aware of the legal duty to endeavour to trace, but in a majority of cases they were not meeting it. We are concerned at this finding because failure to discharge the duty may:
- mean that a family is not reunited;
 - place the Home Office in breach of its legal duty and, by extension, of its duty to consider best interests;
 - lead to incorrect decisions, such as a grant of leave based on no adequate reception arrangements when tracing might have located family members;
 - require the Home Office, in certain circumstances, to grant the child corrective leave to remain; and
 - result in tribunals sending cases back for tracing to be done, which was confirmed by our file sample and staff (inefficient for all and prolonging the process for children).

8.61 Those risks lead us to the recommendation below.

We recommend that the Home Office:

- Ensures that it meets its legal obligation regarding family tracing and retains a record of the steps it has taken.

The Concept of ‘Best Interests’

- 8.62 Section 55 of the Borders, Citizenship and Immigration Act 2009 requires decision-makers to have regard to the need to safeguard and promote the welfare of children. In practice, although decision documents generally refer to section 55, they also refer to ‘best interests of the child’. This derives from Article 3 of the UNCRC (on which section 55 is based), which states that in all actions concerning children the best interests of the child shall be a primary consideration, and also from the Supreme Court case of *ZH (Tanzania)* (February 2011).⁹⁶ This established that, when assessing the proportionality of interference with Article 8 rights, the best interests of the child must be a primary consideration. The judgment stated that best interests should be considered first, although they can be outweighed by the cumulative effect of other considerations.
- 8.63 The section 55 duty applies to all aspects of the consideration of a child’s asylum claim and Home Office guidance therefore refers to section 55 and the best interests of the child in various places. The area where it discusses these subjects at greatest length, however, is when decision-makers determine whether children should be granted leave because there are no adequate reception arrangements, or refused outright.⁹⁷ Decision documents have therefore included sections which consider the child’s best interests, in order to demonstrate that there has been a consideration of best interests and the section 55 duty.
- 8.64 We focused on the way in which the Home Office discharges its duties to make the best interests of the child a primary consideration, within the context of its existing functions and the current policy framework.
- 8.65 In our file sample, we measured the number of cases in which there was evidence that consideration of best interests had been undertaken. Again, we consider grants of asylum separately. The need to consider best interests applies in these cases, but a grant of asylum represents a judgement that to return the child to their country of origin would expose them to a real risk of persecution, which cannot be in their best interests.
- 8.66 Of the 22 grants of asylum which we sampled, there were no references to section 55 or to best interests in 20. However, for the reason above, it is difficult to see how a consideration of the child’s best interests will not have been undertaken in these cases, even if it is not recorded in those terms.
- 8.67 We examined the decision documents in cases where asylum was refused to see whether they considered best interests. We defined a consideration of best interests as one which contained some degree of consideration of the child’s individual circumstances, however brief. When best interests and/or section 55 were referred to, but nothing was written about the child’s circumstances, we judged that there was no evidence that an individualised consideration of best interests had been undertaken. We found that 74 out of the 93 refusal cases (80%) did include consideration of best interests that was clearly case-specific.

We found that 74 out of the 93 refusal cases (80%) did include consideration of best interests that was clearly case-specific

⁹⁶ *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 (1 February 2011).

⁹⁷ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary> section 17

8.68 Home Office guidance lists the factors which may be relevant when assessing best interests including, for example, level of education, emotional and behavioural development, and family and social relationships.⁹⁸ We saw some good examples of ‘best interests’ considerations. Figure 27 refers to one such case.

Figure 27: Case study – a thorough consideration of best interests

The Applicant

- travelled to the UK from Albania and claimed asylum

The Home Office Decision-Maker

- refused his asylum claim
- quoted case law (ZH) to indicate what should be looked at when considering best interests
- explained how the applicant could be distinguished from the child who was the subject of that case law
- using a quotation from ZH that nationality is very important in assessing best interests, explained the family ties he had in Albania and stated that these should not be severed in favour of remaining in the UK, where he had lived for only a short time
- explained that his schooling had been in Albania, he was familiar with the language and culture there and could readapt to life with his parents
- concluded it was overwhelmingly in his best interests to return to Albania

Chief Inspector’s Comments

- This is a good example of considering the child’s best interests. The decision-maker examined a range of factors as part of a structured consideration process.

8.69 Such considerations appeared, however, in the minority of cases. In a significantly larger number, the best interests considerations appeared inadequate in that they often used standard forms of wording and lacked evidence of in-depth consideration. One example is below.

⁹⁸ As footnote 97, paragraph 17.8.

Figure 28: Case study – a consideration of best interests which appears inadequate

The Applicant

- travelled to the UK from Afghanistan and claimed asylum

The Home Office Decision-Maker

- refused his asylum application, writing:
- It is considered that it would be in your long-term best interests to be returned to Afghanistan and reunited with your family there. It is a generally accepted principle that children should grow up within their family and their own cultural identity wherever possible. However, as we have been unable to make contact with your family members at present, you have been granted Discretionary Leave to Remain in the UK in accordance with our policy on unaccompanied asylum-seeking children as we are not satisfied that adequate reception arrangements are in place in Afghanistan at the present time. It is considered that a temporary grant of Discretionary Leave to Remain in the UK is in your best interests at the present time.

Chief Inspector's Comments

- This consideration does not appear to examine all the individual factors which may be relevant in assessing this particular child's best interests.

- 8.70 Guidance includes seeking relevant information from children's social workers - as a minimum, they should discuss the case with them and ask them to complete a standard 'best interests consideration proforma'.⁹⁹
- 8.71 Across our sampled files (grants and refusals), we found that decision makers had sought social workers' views in only 10% of cases, all but one in the Midlands. This is another example of staff not following guidance. One of the local authorities we spoke to was unaware of the proforma and, when told about it, responded 'without doubt we should contribute'.
- 8.72 Here, as with information which may assist decisions on asylum claims, the Home Office is not proactively searching for information.
- 8.73 Although the main references to best interests within Home Office guidance related to whether DL should be granted under the unaccompanied children policy, in our file sample we found that considerations of best interests tended to be placed within the Article 8 section of the letter, reflecting the requirement to consider it as part of the proportionality assessment. In many cases such an assessment was still included in the letter, even if it was not found that Article 8 rights were engaged.¹⁰⁰
- 8.74 Once the consideration of best interests had appeared within a letter as part of the consideration of Article 8, it then tended to lead into the consideration of whether to grant leave under the unaccompanied children policy. It is the relationship between leave under that policy and best interests which is significant.
- 8.75 At the start of the quotation in Figure 28 the decision-maker concluded that it was in the applicant's long-term best interests to return to his country of origin. Such reasoning was common. In many of those cases decision-makers then granted a period of DL because there were no adequate reception arrangements in the country of return.

⁹⁹ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary> paragraph 17.8.1

¹⁰⁰ We assessed that this was so that the decision-maker could argue that there was no interference with Article 8 rights, if others disagreed with their conclusion that there were no such rights engaged.

- 8.76 We asked several Home Office staff about the relationship between the DL policy and the need to consider best interests. They tended to consider that the latter had a wider scope than the former, and permitted/required them to consider more issues than they otherwise would.
- 8.77 The last sentence from the quotation in Figure 28 is crucial: ‘It is considered that a temporary grant of Discretionary Leave to Remain in the UK is in your best interests **at the present time**’ (our emphasis).
- 8.78 In their considerations of best interests, some decision-makers used that freedom to consider more issues to help them to assess where the child’s long-term best interests lay. Based on the refusal letters we sampled, they tended to conclude that the child’s best interests lay in returning to the country of origin. But this was often not possible for lack of reception arrangements. As the route to their long-term best interests could not be realised, decision-makers then granted DL for unaccompanied children because they considered it to be in the child’s best interests in the circumstances. The fact that it was impractical for many children to return to their countries of origin therefore meant that many considerations of best interests had less practical effect than might at first be supposed.

Decisions About Leave to Remain

- 8.79 In 97% of the cases in our sample where DL was granted there was a judgement that there were no adequate reception arrangements. We were pleased to see that decision-makers had considered the correct factor when making these decisions.
- 8.80 In 2011, about one in six unaccompanied children who received asylum decisions before their eighteenth birthday were refused outright.¹⁰¹ Of the 22 outright refusals we sampled, 18 were refused because the children were aged 17.5 or above. The four remaining cases represent too small a sample to draw firm conclusions. In one, the decision-maker concluded that adequate reception arrangements existed and, in another, that an Albanian child could return home to his parents. In the other two, the children had been re-categorised as accompanied.
- 8.81 The Home Office must take particular care when refusing outright children aged under 17.5. In addition, there is a de facto policy never to forcibly remove a child whose asylum claim has been refused outright (while they are still a child). We requested figures on the removals of unaccompanied children who had sought asylum in the period April 2011- March 2012. While 13 children left the UK voluntarily, none was forcibly removed. We learned that in the same period, 52 of the 113 outright refusals issued nationwide (46%) were made in relation to children aged under 17.5, which we assessed would have been because return to their country was deemed feasible. The Home Office should ensure that, if it is clear that a child will not be returned forcibly to their country of origin, they are not left in ‘limbo’.

While 13 children left the UK voluntarily, none was forcibly removed

Quality of Decision Documents

- 8.82 We finally consider the overall quality of decision documents. Firstly, we looked at the considerations of the asylum claims, as these comprise the bulk of the documents. We saw some very high-quality documents, which were succinct, comprehensive and well-structured, like the example below.

¹⁰¹ Immigration Statistics, January-March 2013, Asylum Data Tables, Volume 2.

Figure 29: Case study - a well-structured decision letter

The Applicant

- said that he had travelled to the UK from Iran
- claimed asylum on the basis that his conversion from Islam to Christianity, and preaching of Christianity, would place him at risk if he returned to Iran

The Decision-Maker's Letter Refused the Application and

- set out all the applicant's evidence
- set out which questions about Iran had been answered correctly so that the Home Office accepted the applicant was Iranian
- set out which questions about Islam and Christianity had been answered correctly or incorrectly so that the Home Office concluded that he had been Christian since birth and not preached Christianity
- with reference to the Rules, explained that the benefit of the doubt on a claimed but unsubstantiated¹⁰² event would not be given as other elements of his account were not believed to have happened
- set out relevant aspects of case law and concluded from them that he would not be at risk on return to Iran

Chief Inspector's Comments

- This letter was comprehensive and logically structured. While the applicant may not have welcomed the decision, he is likely to have been able to understand clearly why it was reached.

8.83 We also saw a small number of letters which simply reproduced large sections of objective information and case law without any editing. The relevance was not always clear, as set out in Figure 30.

¹⁰² This term is used in decision documents to refer to a part of a claim which a decision-maker does not have sufficient evidence to conclude to be either true or false.

Figure 30: Case study - a decision letter lacking focused use of objective information

The Applicant

- travelled to the UK (via other countries) from Afghanistan, aged 10, and claimed asylum.

The Decision-Maker's Letter

- refused the application
- made some clear findings of fact
- produced a refusal letter with no clear structure
- in one paragraph, stated non-belief of the applicant's claim to have been targeted by the Taliban because of his father's affiliation to a particular grouping in Afghanistan. To substantiate this judgement, he included three pages of objective information about the foreign military forces in Afghanistan on the basis that they could have protected him
- later reproduced a full two pages of objective information to substantiate the argument that the authorities in Afghanistan could offer the applicant protection

Chief Inspector's Comments

- This refusal letter was not clear and contained long extracts of the available objective information when shorter and focused extracts or summaries would have reinforced the specific points being made. The child would have found it hard to understand why his application had been rejected.

8.84 We noted that many of the especially well-argued decision documents were grant minutes in cases where asylum was granted to applicants. Several of these were brief, well-structured and judicious, and made clear findings. As the minutes formed only about one fifth of our sample, it is surprising that they were such a large proportion of the highest-quality decision documents.

8.85 Grant minutes and refusal letters are necessarily different. The former are for internal assurance and audit, while the latter are required both to inform the applicant and their representatives, and for use in any subsequent appeal. Grant minutes are inevitably briefer and more focused than refusal letters - certain matters need not be included in an internal document whereas, for example, the legal framework has to be explained to the applicant in a decision letter.

8.86 Elements of the brevity and focus of grant minutes should read across into the considerations within refusal letters. A senior manager and another member of staff told us that work is being done to reduce the length of refusal letters. We welcome this, and consider that the structures of the best grant minutes could inform that work.

8.87 There was also variation in the quality of the remaining parts of decision documents – i.e. leave under the ECHR, family tracing, best interests and leave on the basis of a lack of reception arrangements. Many refusal letters followed a clear, logical structure. However, others were less clear and there appeared to be no standard template setting out what should be included in refusal letters and in what order. The lack of a standard template had led to wide variation in content with potential for elements to be missed, which may have contributed to the omissions of family tracing in many cases and consideration of best interests in some cases.

Focused decision letters are important because they provide clearer accounts to applicants of the reasons for the decision, they can make the process more efficient

- 8.88 Some refusal letters in our sample ended with information about the assisted voluntary return options available to children. All children could benefit from receiving this information, rather than just some.
- 8.89 The lengths of refusal letters also varied although most were of a reasonable length. The example cited in Figure 29 was only 10 pages but the one in Figure 30 was 32 pages, one of the longest we sampled. It is difficult to locate its principal findings. Focused decision letters are important both because they provide clearer accounts to applicants of the reasons for the decision, and because they can make the process more efficient. In that context, we make the following recommendation.

We recommend that the Home Office:

- Improves the quality of refusal letters by ensuring that they are logical, concise and tailored to the applicant.

CHAPTER 9 – INSPECTION FINDINGS: CONTINUOUS IMPROVEMENT

Restructuring of Asylum Casework

- 9.1 Until the end of 2012, the asylum system was broken down into six regions.¹⁰³ Throughout this report we have highlighted significant differences, in treatment and outcomes, between the two regions we inspected. Asylum is a central government function, which operates according to a set legal framework, so we would not have expected the Home Office to have allowed regionalisation to produce what one senior manager described to us as ‘different asylum processes’.
- 9.2 We expect the new national structure to have a more consistent and rigorous overview of performance, and to address and resolve the highlighted disparities in treatment and outcomes. We would hope that, once any unjustifiable disparities are addressed, measures will ensure that local differences do not arise again except where they are justified by the needs of an individual child.
-
- We expect the new national structure to have a more consistent and rigorous overview of performance, and to address and resolve the highlighted disparities in treatment and outcomes*
-
- 9.3 During our inspection, the Home Office was in the process of a restructure designed to replace ‘case owners’ dealing with all aspects of the asylum process with a new ‘caseworker’ role at the grade below. This role was responsible for conducting interviews and decisions with other tasks passing to clerical staff or, in the case of representing the Home Office at appeal hearings, to Presenting Officers.
- 9.4 Restructuring presented some risks. We found that increasing departures were not just of staff directly affected by the grade change. Earlier-than-expected departures risked experience and knowledge being lost before they could be transferred. They also risked a shortfall in staff trained to deal with children’s cases.
- 9.5 When onsite in May 2013, we learned that a third of children-trained staff in London had left since January 2013. This inspection found the Home Office to have a well-structured process for this training but it will clearly need to deploy sufficient training resources to cope with future skills attrition.
- 9.6 Staff views differed on the grade change. Some believed that it would dilute the quality of asylum decision-making but some managers were confident that high calibre graduates were being recruited into vacancies left by departing case owners.
- 9.7 In September 2013, however, senior managers decided to put the restructure on hold. They informed staff that circumstances had changed and that: ‘*A formal restructuring process would create further distraction, over a protracted period, from delivering on our core business targets and process improvements*’.¹⁰⁴ We welcome this decision given the loss of expertise we had identified and the risk of undertaking such significant change while also seeking to increase staff productivity.

103 London & South-East; Midlands & East of England; Wales & South-West; North-West; North-East, Yorkshire & Humber; and Scotland & Northern Ireland.

104 Email from the Director of Asylum to asylum staff in UK Visas and Immigration, 11 September 2013.

Changes to Performance Targets

- 9.8 All asylum case owners were previously required to carry out four ‘events’ per week (for example, an interview, or making and promulgating a decision). This was raised to five in April 2013. When onsite, staff told us that they would be required to achieve 7.5 events per week from October 2013, with 10 events in place by April 2014.
- 9.9 In discussion, we found both staff and managers were concerned about this. While a number thought 7.5 achievable (assuming clerical staff took on more tasks), most thought 10 was unachievable or could be achieved only with major changes and/or a loss of decision quality. One person said that only a ‘tickbox’ approach to decision-making could make 10 events feasible – another that no business could double its productivity in a year. We also noted that a number of necessary tasks do not count as events and a higher productivity target would severely reduce time for them. These include family tracing, the Home Office’s execution of which we have criticised in this report.
- 9.10 A senior manager told us that it was not certain whether the 10-event target would apply to unaccompanied children’s cases. We noted that members of staff we spoke to at all levels had understood that it would apply to them as well as to adults.
- 9.11 We were surprised to find no formal modelling with impact assessments had been done on the proposed new targets. There had been no formal staff consultation, although some individuals had made their views known nonetheless. A standard ‘change management’ technique would normally be used for a productivity change of this magnitude, particularly in light of the simultaneous restructuring. We would have expected to see a solid evidential basis and a proposal discussed with staff.
-
- We were surprised to find no formal modelling with impact assessments had been done on the proposed new targets*
-
- 9.12 In a message to staff in September 2013, the new Director of Asylum announced that he did not intend to move beyond the five events target, ‘before we have in place new ways of working and training packages which will free up decision-makers to achieve those higher levels’.¹⁰⁵ While we believe this decision is sensible, given the lack of structures in place to support the previously proposed targets, the Home Office must still ensure that any future increase in productivity does not impact adversely on those other necessary tasks mentioned above. As well as family tracing, liaison with social services is crucial work that does not count as an event. We found that the Home Office had built some effective safeguarding partnerships with local authorities, but partnership-working cannot be properly maintained without organisational will and resources.
- 9.13 Staff also told us that cases remitted by appeal tribunals for further work are considered a low priority and resolving them does not count as an event. These cases should be slotted into the event framework as delays impact on individual children and fail the requirement to prioritise children’s asylum cases.

Quality Framework

- 9.14 In chapter 7 we noted the new quality framework. We welcome its clear focus and aim of ensuring consistency between different locations, but are concerned that the marking criteria for both interviews and decisions contain no child-specific material. They will not measure whether there is compliance with the child-specific requirements.

¹⁰⁵ Email from the Director of Asylum to asylum staff in UK Visas and Immigration, 2 September 2013.

9.15 We have been told of plans for additional thematic reviews, including unaccompanied children, but it is not clear how regular these will be. The Home Office must have regular assurance of its compliance with the child-specific requirements. In the context of the new quality framework and the on-going assessment of the feasibility of new performance targets, we make the following recommendation.

The Home Office must have regular assurance of its compliance with the child-specific requirements

We recommend that the Home Office:

- Ensures that new performance targets for children's asylum cases are realistic, evidence-based and comply with the Immigration Rules.

APPENDIX 1 – INSPECTION CRITERIA

The following of the Chief Inspector’s standard inspection criteria were used in this inspection.

Inspection criteria used for this inspection
Operational Delivery
1. Decisions on the entry, stay and removal of people should be taken in accordance with the law and the principles of good administration
3. Resources should be allocated to support operational delivery and achieve value for money
4. Complaints procedures should be in accordance with the recognised principles of complaints handling
Safeguarding Individuals
5. All individuals should be treated with dignity and respect and without discrimination in accordance with the law
7. All border and immigration functions should be carried out with regard to the need to safeguard and promote the welfare of children
8. Personal data of individuals should be treated and stored securely in accordance with the relevant legislation and regulations
Continuous Improvement
9. The implementation of policies and processes should support the delivery of Home Office objectives
10. Risks to operational delivery should be identified, monitored and mitigated

APPENDIX 2 – GLOSSARY

Term	Description
A	
Accompanied child seeking asylum	Someone who is aged under 18, applying for asylum in their own right, and: <ul style="list-style-type: none"> - forms part of a family group; or - is separated from both parents and is being cared for by an adult who in law or by custom has responsibility to do so, or is in a private fostering arrangement.
Age assessment	Document produced by a local authority social services department, recording its assessment of a person's age
Age dispute	A process where the Home Office doubts the asylum applicant's claim to be a child (or, in some cases, accepts that an applicant is a child but doubts their claimed age) and refers them to a local authority for a formal age assessment.
Asylum	Protection given by a country, pursuant to the Refugee Convention of 1951, to someone with a well-founded fear of persecution in their home country
Asylum Screening Unit (ASU)	Home Office unit in Croydon which is the lead location for asylum applications and also conducts screening
B	
Best interests	Article 3 of the UNCRC requires the best interests of the child to be a primary consideration in all actions concerning children. The Home Office makes assessments of children's best interests when deciding their asylum claims.
C	
Case Information Database (CID)	A database used by the Home Office, designed to record all applications for leave to remain and to record what has happened in each case
Clandestine arrival	An individual who attempts to enter the UK illegally, concealed in a vehicle or container
D	
Discretionary leave (DL)	Leave to remain granted outside the Immigration Rules. DL was granted to those whose removal from the UK would infringe their rights under Article 8 of the ECHR. Until April 2013, when it was renamed 'UASC leave' and incorporated into the Rules, it was also granted to unaccompanied children who had been refused asylum and for whom adequate reception arrangements in their country of origin were unavailable.

E	
Early Legal Advice Project (ELAP)	A time-constrained pilot for conducting asylum cases with early legal advice. It was piloted within the Midlands and East of England region.
European Convention on Human Rights (ECHR)	A Convention to protect human rights and fundamental freedoms
F	
Family tracing	Legal requirement for the Home Office to endeavour to trace the family members of unaccompanied children who have sought asylum
H	
Humanitarian protection (HP)	Form of immigration status granted to those who do not qualify for asylum, but who would face a real risk of suffering serious harm if returned to their country of origin
I	
Immigration Rules	The Rules laid before Parliament by the Home Secretary about the practice to be followed in regulating the entry into and stay in the UK of people subject to immigration control
J	
Juxtaposed controls	UK immigration controls based in France and Belgium where immigration checks are conducted on passengers before they travel to the UK
L	
Leave to remain	Permission given to a person to reside within the UK for a designated period
M	
Merton-compliant	Standards for local authority age assessments, set out in the case of B v London Borough of Merton (2003)
O	
Outright refusal	Decision on an asylum application which grants no leave to remain to the applicant
R	
Removal	The process by which a person is removed from the UK voluntarily or forcibly
Responsible adult	An adult independent of the Home Office who accompanies a child to an asylum interview and safeguards their welfare during the interview
S	
Screening interview	The process of establishing initial information from an asylum seeker in support of his or her claim
Section 55	Section of the Borders, Citizenship and Immigration Act 2009, requiring the Home Office to have regard to the need to safeguard and promote the welfare of children who are in the UK

Statement of Evidence Form (SEF)	Form given to unaccompanied children which asks them questions about their asylum claim
U	
UASC leave	New name given in April 2013 to the form of leave granted to unaccompanied children who have been refused asylum and for whom no adequate reception arrangements are available
Unaccompanied child seeking asylum	Someone who is aged under 18, applying for asylum in their own right, separated from both parents and not being cared for by an adult who in law or by custom has responsibility to do so
United Kingdom Border Agency (UKBA)	Former agency of the Home Office which, until April 2013, was responsible for considering applications for permission to enter and stay in the UK
United Nations Convention on the Rights of the Child (UNCRC)	Convention setting out the rights of children.

APPENDIX 3 - IMMIGRATION RULES RELATED TO UNACCOMPANIED CHILDREN SEEKING ASYLUM

The full Immigration Rules can be viewed at <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>. Below are the specific rules relating to unaccompanied children seeking asylum.

350. Unaccompanied children may also apply for asylum and, in view of their potential vulnerability, particular priority and care is to be given to the handling of their cases.
351. A person of any age may qualify for refugee status under the Convention and the criteria in paragraph 334 apply to all cases. However, account should be taken of the applicant's maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of his situation. An asylum application made on behalf of a child should not be refused solely because the child is too young to understand his situation or to have formed a well founded fear of persecution. Close attention should be given to the welfare of the child at all times.
352. Any child over the age of 12 who has claimed asylum in his own right shall be interviewed about the substance of his claim unless the child is unfit or unable to be interviewed. When an interview takes place it shall be conducted in the presence of a parent, guardian, representative or another adult independent of the Secretary of State who has responsibility for the child. The interviewer shall have specialist training in the interviewing of children and have particular regard to the possibility that a child will feel inhibited or alarmed. 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. The interviewer should then consider whether it would be appropriate for the interview to be resumed the same day or on another day.
- 352ZA. The Secretary of State shall as soon as possible after an unaccompanied child makes an application for asylum take measures to ensure that a representative represents and/or assists the unaccompanied child with respect to the examination of the application and ensure that the representative is given the opportunity to inform the unaccompanied child about the meaning and possible consequences of the interview and, where appropriate, how to prepare himself for the interview. The representative shall have the right to be present at the interview and ask questions and make comments in the interview, within the framework set by the interviewer.
- 352ZB. The decision on the application for asylum shall be taken by a person who is trained to deal with asylum claims from children.
- Requirements for limited leave to remain as an unaccompanied asylum seeking child.
- 352ZC. The requirements to be met in order for a grant of limited leave to remain to be made in relation to an unaccompanied asylum seeking child under paragraph 352ZE are:
- a) the applicant is an unaccompanied asylum seeking child under the age of 17 ½ years throughout the duration of leave to be granted in this capacity;

- b) the applicant must have applied for asylum and been refused Refugee Leave and Humanitarian Protection;
- c) there are no adequate reception arrangements in the country to which they would be returned if leave to remain was not granted;
- d) the applicant must not be excluded from a grant of asylum under Regulation 7 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 or excluded from a grant of Humanitarian Protection under paragraph 339D or both;
- e) there are no reasonable grounds for regarding the applicant as a danger to the security of the United Kingdom;
- f) the applicant has not been convicted by a final judgment of a particularly serious crime, and the applicant does not constitute a danger to the community of the United Kingdom; and
- g) the applicant is not, at the date of their application, the subject of a deportation order or a decision to make a deportation order.

352ZD. An unaccompanied asylum seeking child is a person who:

- a) is under 18 years of age when the asylum application is submitted.
- b) is applying for asylum in their own right; and
- c) is separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so.

352ZE. Limited leave to remain should be granted for a period of 30 months or until the child is 17 ½ years of age whichever is shorter, provided that the Secretary of State is satisfied that the requirements in paragraph 352ZC are met.

352ZF. Limited leave granted under this provision will cease if:

- a) any one or more of the requirements listed in paragraph 352ZC cease to be met, or
- b) a misrepresentation or omission of facts, including the use of false documents, were decisive for the grant of leave under 352ZE.

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