

Refugee Children's Consortium

Response to the Department for Education draft statutory guidance for local authorities *Care of unaccompanied migrant children and child victims of modern slavery*.

March 2017

The Refugee Children's Consortium (RCC) is a group of NGOs working collaboratively to ensure that the rights and needs of refugee children are promoted, respected and met in accordance with the relevant domestic, regional and international human rights and welfare standards. Our membership includes leading children's and refugee NGOs, bringing together a significant body of expertise in safeguarding and promoting children's welfare including dealing directly with children who are refugees, migrants or seeking asylum.

Members who have contributed to or endorsed this response, including those with observer status, are listed at the end. Some will also have submitted their own response to the consultation.

We welcome the opportunity to comment on this draft and hope that it is useful for you to have some suggestions of amendments consolidated in this way. However, we must express our extreme disappointment in the particularly short timescale in which we have been asked for our views. Whilst some member organisations have had the opportunity to comment upon earlier drafts, many have not had this opportunity and even those of us that have seen earlier drafts would have appreciated more time to absorb the draft and form views to assist in its development.

Our comments are in two parts; overarching observations about the guidance and some specific comments relating to paragraphs which are referenced in line with the document.

General remarks

Whilst we appreciate that some of the guidance might apply in different ways to the different categories of child the guidance covers, at times there is an unhelpful focus on children whose vulnerabilities arise from their experience of being trafficked and less attention paid to the needs arising from the experience of being unaccompanied and having insecure immigration status. The latter group of children are frequently seen as less in need of protection and support as their trafficked counterparts by social work professionals, so it is particularly important to strike the right balance in the guidance. As the title used for the children covered by the guidance is quite long, it might be worth substituting 'unaccompanied migrant children and child victims of modern slavery' with 'children covered by this guidance' where it is not necessary to use the lengthy descriptor or to specifically mention one group rather than another.

As the guidance is primarily for professionals working in the field of child protection and safeguarding, we would advise a review of the terminology with the potential to cause confusion amongst that group. Words such as 'status' and 'protection' are used in both the immigration and

children's arena with different meanings, so additional explanations may be necessary in places; similarly children's legal representatives, in this context, should be described as 'immigration legal representative,' as children may be involved in other proceedings for which they have legal representatives.

We were surprised to see the word 'should' used in many places in the document, rather than 'must' which appears only occasionally. As 'must' has the tone of compulsion, we would expect guidance issued under section 7 of the Local Authority Social Services Act 1970 to use the word 'must' to ensure professionals are clear as to its mandatory nature.

Comments on specific paragraphs (numbering reflects the paragraph numbers in the original document).

2. Replace 'child victims of modern slavery' with 'unaccompanied children'. There is no evidence to suggest the latter group is less uncertain or unaware of their rights and whom they should trust, than the former group.

5. Add to the list of what this guidance should be read alongside

The Children Act 1989 Guidance and Regulations on Private Fostering.

8. The first sentence must include reference to those seeking asylum and reflect their experiences, as well as those children who have been trafficked. e.g. the statement that 'some will have been trafficked and may have witnessed horrific acts of violence' could be expanded to add 'some will have been persecuted and witnessed or been subject to horrific acts of violence'.

Definitions under the 'unaccompanied child' subtitle. The statement that

Such children may have begun their life in the UK with family or with relatives, and for a range of reasons these care arrangements are no longer working

And the last paragraph, which reads

The circumstances of unaccompanied children may be that they have parents and family members who are not in the UK. Being unaccompanied is not necessarily a permanent status and may change, particularly if the child has other family members in the UK

should both be moved to be above the sub-heading 'unaccompanied asylum seeking child' to make clear that these statements apply to both groups i.e. those seeking asylum and those not.

The definition of an unaccompanied EEA national child should be grouped with the other unaccompanied child definitions.

We also request that in all cases the word child is used before the word asylum i.e. 'unaccompanied child seeking asylum'.

Definition of the Best Interests principle. Whilst keeping the reference to Safe and Sound we recommend also referring to Annex 1 of the Interim Transfer Protocol as it has a fuller description of the Best Interests principle whilst remaining accessible and reasonably brief.

14. Delete 'may be' as a number of immigration outcomes is possible. Delete 'including return to the individual's country of origin'; it is accurate to reflect that different outcomes are possible without selecting one as an example.

15. Delete 'the needs' as this sentence currently reads as if it is the children's needs that require specialist support, rather than the children.

16-24 Training and awareness

The section should include references to social work education and continued professional development and reflect the requirements for knowledge and skills relevant to all social work.

17. This paragraph would benefit from expansion, at least to explain that simply having a precarious or unknown status has an impact on a child's vulnerability. It also reads as though the impact is on the process rather than on the child's ability to engage, express their views and understand what is happening to them.

18. This paragraph is long and slightly overwhelming. It could be made into two paragraphs; one about the process (all elements included in his paragraph relate to the asylum process, not immigration more generally) and the other covering legal advice.

Paragraphs 25-31. The only comment on this section is that it is important to tell social workers that referrals to the NRM should be made without delay, being mindful of the need to involve children in the discussion of this referral, as failing to keep the child fully informed and engaged risks entrenching the feelings of powerlessness that these children are likely to experience.

35. The impression given in this paragraph is that children will usually be referred to the local authority by other statutory authorities (ports and police stations are mentioned). Many children are referred to a local authority by friends, voluntary agencies, legal representatives or by the child self referring; we still encounter difficulties due to misunderstandings from social workers. The very important message given in paragraph 10 could be usefully repeated here and social work professionals reminded that they must respond to a referral from any source. It would also be helpful to state in this first paragraph that children may enter the care system after some time of being in the country, including some who will have been in private fostering arrangements or after a family breakdown.

This paragraph also includes important advice about sharing a child's information. Whilst it is useful to refer to the DfE information sharing advice, this is non statutory guidance, so it would be helpful to include reference to the Data Protection Act and its associated statutory code of practice. It would also be advisable to note that these children are unlikely to be able to give informed consent without an explanation of the implications of the sharing of personal information and that it is not good practice to ask children to agree to such practice without being fully satisfied that their consent is really informed.

The advice to take a photograph of each child and keep it on their file (currently in paragraph 50) is more logically placed in the assessment section of the guidance as it relates to an early part of the process.

36. This paragraph rightly mentions that all unaccompanied children are at risk of going missing, however the only example given is that children may be subject to ongoing exploitation. We would advise that the guidance either gives more examples, such as the fear of negative outcomes to a claim, or gives no examples because of the risk of leading professionals to think one is more important than another. At the least the paragraph should include a statement to the effect that there are many reasons why children go missing, including those that any child in care may experience e.g. dissatisfaction with placements or feeling their views are not being considered.

37 and 38. The second of these paragraphs rather undermines the message given in the first i.e. that indicators of safeguarding risks may not be apparent in the early stages, by specifically mentioning victims of modern slavery for consideration in the decision to refer to the National Transfer Scheme.

42. Without further signposting to appropriate guidance the end of this paragraph may be alarming to social workers. Whilst every care should be given to safeguarding children, it is very difficult to **ensure** that the interpreter is not linked in the way described.

44. We are concerned at the statement in this paragraph that 'the assessment should seek to establish the circumstances which led the child coming to the UK' without additional advice that this needs to be done carefully and sensitively and not necessarily in the first encounter with the child. Practitioners should be encouraged to establish a relationship of trust and they need to feel they can use their own judgement rather than feel obliged to ask for details of the child's entry to the UK at an early stage. This applies to recently arrived children, who will have been asked these questions on arrival to the UK and those children who may have been brought here and do not understand the circumstances of their arrival.

46. We recommend rewording the order in this paragraph so that social workers understand from the outset that family reunification of many children, particularly those seeking asylum, will not be possible either whilst they are seeking asylum or if they are recognised as refugees. Planning for reunification with the child's birth family must not precede inquiries made as to the safety of family members and is not the sole responsibility of the social worker. The paragraph should start by advising social workers that family tracing and reunification are very difficult and sensitive issues for this group of children, for a range of reasons.

Planning, protection and placement section. This section could usefully start by discussion of the best interests principle. Also use of the word 'should' in several paragraphs describe statutory duties so we would advise use of the word 'must' where possible.

52. We recommend an addition to the end of this paragraph to advise that as well as taking into account any developmental or learning difficulties, account must be taken of the child's ongoing feelings of loss and bereavement as well as possible trauma and the effect this will have on their ability to engage, concentrate or even consider planning for the future.

61. The bullet point list in this paragraph is unnecessary here and not appropriate for this guidance. It is better placed in guidance that can explain the context and reasons for such actions and could be misconstrued here with dangerous implications.

67. Independent visitors must be provided with knowledge, training and ongoing support, particularly given they may be dealing with distressing issues and possibly forming relationships with children facing very difficult futures.

It would be useful to mention here that the Refugee Council Childrens' Panel Advice Service is staffed by OISC registered advisers.

68. Replace 'the extent of care leaver duties' with 'the provision of care leaver duties' as this better describes the effect of Schedule 3 to the Nationality, Immigration and Asylum Act 2002.

70. The additional support that these care leavers may require is not restricted to those who have recently arrived in the UK. The lack of established social networks and/or access to members of their extended family to whom many care leavers turn at this time of transition needs to be taken into account.

We have refrained from further comment on the section *Planning transition to adulthood* as we understand it may need further revision on commencement of the relevant provisions of the Immigration Act 2016.

74. Given the large numbers of children that are waiting long periods not just for conclusion of their application but sometimes for the commencement of it, this paragraph could usefully advise that many children turn 18 having completed only the very beginning of the process.

75. This list relates solely to possible outcomes of an asylum application so the first sentence should reflect that.

The last sentence should specify that the plan for return can only be made once the child turns 18, as advice and assistance for children who wish to return whilst still a child needs much more careful consideration and planning than is mentioned here.

78. It would be useful to signpost social work professionals for more detailed information and advice relating to financial support for these care leavers as it is an issue about which member agencies receive many queries.

79. Please replace the word 'adult' in the penultimate sentence; if not with 'young person' at least with 'individual'.

Annex A

Refugee Council – Children's Panel

Please delete the 0808 808 0500 number as this has not been operational for some time

Also please add a descriptive sentence as the other agencies have in this section

The Refugee Children's Section has a national remit to offer advice and support to unaccompanied children, and advice other professionals who are involved in their care. This includes work with all unaccompanied children who claim asylum and specialist projects working with trafficked children and with age disputed young people.

Please amend the Migrant Children's Project to the following:

The Migrant Children's Project advice line at Coram Children's Legal Centre

Provides specialist advice to professionals, young people and families on the rights and entitlements of asylum-seeking, refugee, trafficked and migrant children and young people: Phone: 0207 636 8505 (Monday to Friday Tuesday to Thursday 10am to 4pm) Email: mcp@coramclc.org.uk

Please add

CoramBAAF facilitates the Special Interest Private Fostering Groups for local authority practitioners/managers to ensure privately fostered children who might be victims of slavery are safeguarded www.corambaaf.org.uk

Coram Children's Legal Centre, 'Seeking Support: A guide to the rights and entitlements of separated children' www.seekingsupport.co.uk

- Please add to the Training Section:

'Coram Children's Legal Centre offers a range of training courses on supporting unaccompanied refugee and migrant children and young people's rights for professionals and practitioners, aimed at service-providers in the statutory and voluntary sectors and all those working with or supporting children, young people and families including social workers, advocates, independent reviewing officers, support workers, teachers, foster carers, mentors, advisers and volunteers. For more information, see www.coramchildrenslegalcentre.com'

Contact

For further discussion on this please contact Judith Dennis, Refugee Council and chair of the RCC welfare sub group Judith.dennis@refugeecouncil.org.uk

The following organisations within the Refugee Children's Consortium have endorsed this response:

- BASW, the British Association of Social Workers
- Coram Children's Legal Centre
- Migrant and Refugee Children's Legal Unit
- Refugee Action
- Refugee Council
- Refugee Support Network