

# Refugee Children's Consortium

## Independent Chief Inspector of Borders and Immigration (ICIBI) call for evidence - The Home Office's consideration of children's 'best interests' Refugee Children's Consortium submission, October 2017

### Introduction

The Refugee Children's Consortium (RCC) is a group of NGOs working collaboratively to ensure that the rights and needs of refugee and migrant children are promoted, respected and met in accordance with the relevant domestic, regional and international standards. The RCC has, for many years, highlighted that the best interests of the child must be a major factor in all decisions relating to child refugees and migrants in the UK. It is important that children who have claimed asylum here are sufficiently supported in order to allow them to integrate and contribute to the UK, as well as ensure that best outcomes are achieved for all children.

This section has since been removed (and we would recommend it be reinstated) but an older version of the Home Office Asylum Instruction *Processing an asylum application from a child* recognised that:

*"Article 3 of the UNCRC obligates the [Home Office] to ensure that the best interests of the child are a primary consideration in all actions concerning the child. This guidance must be read with this principle clearly in mind and the understanding that Best Interests is a continuous assessment that starts from the moment the child is encountered and continues until such time as a durable solution has been reached."*<sup>1</sup>

In order to operationalise Article 3, all asylum and immigration policies and practices must comply with the duty to treat a child's best interests as a primary consideration in all decision-making and at every stage of the process, applying it to procedures and processes, as well as how immigration claims are considered and determined. Currently, "each public authority or service with a mandate concerning unaccompanied children assesses the best interests of the child from the perspective of the legal and practice framework within which they operate. At present, this leads to variation in the understanding and implementation of the best interests principle."<sup>2</sup>

Arguable the Home Office has made progress in the considered of children's best interests in the context of asylum *process* but less so in the spheres of policy management and substantive

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<sup>1</sup> Section 1.3 '*Processing an asylum application from a child*', as at February 2015

<sup>2</sup> UNHCR and UNICEF UK, *What the United Kingdom can do to ensure respect for the best interests of unaccompanied and separated children*, 2016.

asylum/immigration decision making. In June 2013 the Joint Committee on Human Rights (JCHR) in its report, *Human Rights of unaccompanied migrant children and young people in the UK*, urged the Government to “ensure that all those working with unaccompanied migrant children are given clear guidance about the importance of these best interests” and to “evaluate whether more formal processes are required to properly determine best interests in cases involving unaccompanied migrant children.” In response to the Committee’s comments, in February 2014, the Government agreed to consider the case for establishing a Best Interests Determination process in the context of the existing immigration and asylum process. While we have seen some progress in terms of the language used in Home Office guidance, reports published since 2014 have highlighted continued gaps in the way in which children’s best interests are currently being considered both as children go through the asylum process generally and in relation to substantive decision-making.<sup>3</sup>

A House of Lords EU Committee report found that while the best interests principle is embodied in both EU and domestic law it is largely ignored in practice and evidence suggested that “*despite the existence of guidance on the application of the best interests principle, it is not respected and is regarded as an impediment to the effective operation of immigration controls.*”<sup>4</sup>

### **Reception & Initial Encounter**

The asylum process tends to concentrate on the immediate pretext to a child asylum seeker’s departure from their country of origin, and fails to take into account other relevant factors about their life prior to leaving, their experiences during their journey, and what has happened since their arrival in the UK. The process is extremely complex and children will struggle to negotiate it without the required support, advice and representation. Research by the Law Centres Network considered how a child’s best interests were considered in the UK asylum system and one child who gave evidence stated that:

*“It’s like when you come here you are blind, then you get a stick to help you to go, because you don’t know the language, the words they don’t work, and you don’t know the way. By the time you find out, you are refused and all that, so it’s all mixed, and confusion and all that...”<sup>5</sup>*

A reflection from a young asylum seeker involved in Coram’s Young Citizens leadership programme also highlights the importance of support for children when they first come to the attention of relevant authorities, and the need to prioritise their welfare and immediate safety needs over immigration control concerns:

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<sup>3</sup> Including Greater Manchester Immigration Aid Unit, *Children’s Best Interests: A Primary Consideration?*, 2013; Kent Law Clinic, *How children become ‘failed asylum-seekers’*, 2014 at [http://www.kent.ac.uk/law/clinic/how\\_children\\_become\\_failed\\_asylum-seekers.pdf](http://www.kent.ac.uk/law/clinic/how_children_become_failed_asylum-seekers.pdf); Law Centres Network, *Put yourself in our shoes*, 2015 at <http://www.lawcentres.org.uk/policy/news/news/keep-children-s-best-interests-at-heart-of-asylum-system-new-report>; ECPAT UK, *Lighting The Way*, 2017; The Children’s Society, *Not Just a Temporary Fix: Durable solutions for separated migrant children*, 2015, at <https://www.childrenssociety.org.uk/what-we-do/resources-and-publications/not-just-a-temporary-fix-durable-solutions-for-separated>

<sup>4</sup> House of Lords EU Committee, *Children in crisis: unaccompanied children in the EU*, 2016, conclusion 20.

<sup>5</sup> Law Centres Network, *Put yourself in our shoes*, 2015 <http://www.lawcentres.org.uk/policy/news/news/keep-children-s-best-interests-at-heart-of-asylum-system-new-report>

*“I was bombarded with information and asked a lot of questions. I hadn’t slept for a day, I was sleeping on bench, I wanted to sleep. I think they could have asked me those questions later on.”*

Children’s voices, views and experiences are an integral part of best interests assessments and determinations. Upon arrival in the UK, they need to be able to access information in a range of languages and formats explaining, for example, how the asylum and care systems work, the role and purpose of the different ‘authority’ figures they may meet, what their rights are, and what can happen to them when they turn 18.

A checklist of what needs to happen throughout the process of an asylum claim, available to both young people and those caring for, or working with them, would be helpful. This links too to understanding about the implications of being granted UASC leave (see below).

### **Age assessments**

Age assessments and age disputes continue to be a significant problem and cause lengthy delays in many children’s asylum claims and referrals as victims of trafficking. Recent statistics show that there has been an increase from 318 individuals age disputed by the Home Office in 2014 (16% of all children’s asylum applications to 789 in 2015 (24% of all applications) to 928 in 2016 (28% of all applications).<sup>6</sup> However, as there is no central mechanism for monitoring the outcomes of these disputes, or the cases in which a child’s age is challenged by the local authority, it is impossible to accurately assess the scale of the problem or development of practice in this area.

Home Office statistics on age disputed cases also do not include the category of those applicants who claim to be children but who are treated as adult because in the opinion of an Immigration Officer “their physical appearance and/or general demeanour very strongly indicates that they are significantly over 18 years”. It is therefore not possible to paint a complete picture of the numbers of asylum applicants claiming to be children and it is not possible to track the outcomes for those individuals.

The RCC has long called for the Home Office to amend its guidance in this area. In a recent case, involving a teenager from Sudan placed in immigration detention because the officer said he “reasonably believed” he was older than 18, the Court of Appeal upheld that someone’s age is a matter of “objective fact” and cannot be based on physical appearance or demeanour,<sup>7</sup> yet the Home Office does not intend to depart from its policy of deciding and individual is an adult on that basis. This is in contradiction to age assessment guidance issued by the Association of Directors of Children’s Services<sup>8</sup> and puts children at risk of being placed in adult accommodation or in detention, based on an untrained visual assessment, significantly against the child’s best interests. The impact on a child’s psychological wellbeing of wrongfully treating an adult as a child, including the possibility

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<sup>6</sup> Home Office, Immigration Statistics, Asylum data tables volume 3, at <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2017/list-of-tables#asylum>

<sup>7</sup> <http://www.childrenslegalcentre.com/age-assessments-young-asylum-seekers/>

<sup>8</sup> [http://adcs.org.uk/assets/documentation/Age\\_Assessment\\_Guidance\\_2015\\_Final.pdf](http://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf)

of detention is severe and well documented<sup>9</sup> - earlier this Autumn the BCC Panorama investigation on Brook House immigration removal centre - exposed the continuing unlawful detention of children on the basis that they 'looked over 18'. The impact on the child of treating them as an adult should be highlighted within Home Office guidance for caseworkers, to ensure that caseworkers are fully considering the child's best interests within every element of their decision making. In the words of one young person:

*"The Home Office are destroying young people's lives – people who are 15 or 16 are being put into adult accommodation which destroys their hopes and dreams and they're not given the support they need."*<sup>10</sup>

If the existing policy is retained and is intended to cover what the Home Office perceives to be obvious cases then it must be accountable, subject to the appropriate scrutiny, and must provide data to demonstrate that its policy is not being routinely misused. The Home Office should commit to publishing wider statistics on age disputes, including:

- Record of claimed age/ assigned age
- The numbers of individuals who claim to be children but are treated as adults by the Home Office
- The numbers of children who claim to be *over* 18 but are suspected to be children  
The numbers subsequently found to be in immigration detention and/or asylum accommodation
- Final outcomes

The Modern Slavery Act 2015 Section 51 'Presumption of Age' clause strengthens the benefit of the doubt principle in cases where trafficking may be a possible factor. Yet, many frontline professionals, including the Home Office and social workers, are unaware of this duty in primary legislation.

Department for Education (DfE) statutory guidance states that "age assessments should only be carried out where there is significant reason to doubt that the claimant is a child."<sup>11</sup> However, research has shown that the DfE does not monitor compliance with the guidance but expected a local authority to monitor itself<sup>12</sup>. Concerns have been raised by local authorities on the application of this guidance when they find there is no significant reason to doubt the child's account but they feel obligated to due to the Home Office dispute of the child's age. In the case of *R(PM) v Hertfordshire Country Council* in which it was determined that other public authorities view of age is not, in itself, of any evidential weight or value to the Council, who must exercise *their own judgment* in assessing the Claimant's age for the purposes of their section 20 duty [under the Children Act 1989]. Social workers need clear guidance *from the Home Office* to ensure they are making their

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<sup>9</sup> See, for example, Coram Children's Legal Centre, Happy Birthday? Disputing the age of children in the immigration system, 2013 at <http://www.childrenslegalcentre.com/report-happy-birthday-disputing-age-children-immigration-system/>  
<sup>10</sup> Unaccompanied young person involved in Coram's Young Citizens programme. - <http://www.coram.org.uk/how-we-do-it/supporting-young-people>

<sup>11</sup> Department for Education, Statutory Guidance Care of unaccompanied and trafficked children 2014  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf)

<sup>12</sup> ECPAT UK, *Lighting The Way*, 2017

own decision as to what is in the child's best interests and the duties owed to that child as a child in need in their area.

## National Transfer Scheme

*“These young people have come to the UK to find a stable place and it creates a cycle of uncertainty – they might build relationships and take temporary classes to learn the language. One day the social worker comes and tells them they have to move. The stability is not there. If there’s no stability how can you integrate, build relationships, learn the language? If they’re being moved it should be done in a certain amount of time – not allow them to build relationships and settle – it needs to be done in days not in weeks or months.”*

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Launched on the 1st July 2016 by the Home Office and Department for Education, the National Transfer Scheme was described as a ‘new voluntary transfer arrangement between local authorities for the care of unaccompanied children who arrive in the UK and claim asylum’. Operating through a voluntary interim transfer protocol, (‘the interim protocol’),<sup>14</sup> the National Transfer Scheme aims to ensure that the responsibility for supporting these children does not fall disproportionately to a small number of local authorities situated as entry points into the UK (such as Kent and Hillingdon) and that ‘there is a more even distribution of caring responsibilities across the country’.

Transfer can be triggered when the number of unaccompanied asylum-seeking and refugee children under the age of 18 in a local authority area (the entry authority) reaches more than 0.07% of the area’s child population. The local authority can then request that a child is transferred to another local authority through the Home Office’s central administration team. The voluntary transfer protocol introduced new forms for local authorities to complete in relation to children they are caring for – the ‘Unique Unaccompanied Child Record’ (UUCR). The first of this (Part A) is to be completed for all children, regardless of whether they are entering transfer. The central administration team then aims to maintain a database of unaccompanied asylum-seeking children based on the financial receipt information submitted by each local authority and the forms associated with the transfer protocol.

The transfer protocol includes annex 1 on a child’s best interests. This sets out the best interest considerations:

- (a) the child’s views
- (b) the child’s identity
- (c) the child’s care, protection and safety
- (d) situation of vulnerability
- (e) the child’s right to health
- (f) the child’s right to education.

There is in fact a potential conflict between the requirements of the Protocol, and the statutory obligations a local authority is under when looking after a child. For example, the best interests

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<sup>13</sup> Unaccompanied young person involved in Coram’s Young Citizens programme

<sup>14</sup> <https://www.gov.uk/government/news/government-launches-national-transfer-scheme-for-migrant-children>

checklist does not consider a child's family, or the need to support contact between a child and any family they may have in the UK. The protocol cannot supplant any Children Act duties<sup>15</sup> and does not purport to, referring to the statutory guidance available to local authorities on their duties without explicitly highlighting that a looked after child awaiting transfer remains entitled to Children Act services on the same basis as any other looked after child in the area. However, in practice, local authorities refer to the appendix and the presumption of transfer, rather than to the welfare checklist, or their statutory obligations to looked-after children.

While the transfer scheme is not of itself contrary to a child's best interests, its implementation raises serious concerns about the adequacy of the best interests safeguards. The RCC has recently highlighted a number of problems with the NTS, including delays in transfer and problems with accessing services in the receiving local authority - the more detailed briefing can be found at: <http://refugeechildrensconsortium.org.uk/national-transfer-scheme/>. In many cases, children are not being transferred for weeks and even months, and are not being adequately prepared for transfer.

Many of these problems with the scheme relate to social work practice and the need for social workers to ensure that the best interests of any child in the NTS to be assessed on an ongoing basis – especially when there has been a period of delay. This needs to be properly communicated with young people and their carers. However, it is important that the Home Office also play its part in ensuring that the protocol and any accompanying guidance is sufficiently clear and robust, and in communicating the need for ongoing assessment and working with local authorities to ensure that children are sufficiently safeguarded through the process. This guidance also needs to address the issue of age assessment and what happens if a child is re-age assessed after transfer, risking them being left unsupported. There must be clearer protections for children stuck in administrative processes.

It should be explicit throughout the National Transfer Protocol that an expedite transfer will usually be in the best interest of the child, with clear steps and timelines to ensure that all parties are clearer about the transfer process. There should be a set timeframe in which transfer should occur, after which the young person must be updated in person and in writing, with the oversight of an Independent Reviewing Officer and support from an independent advocate. This would go some way to reducing the risk of children being transferred and then going missing.

When the transfer scheme was originally discussed, in March 2015, the Home Office committed to 'looking at access to legal aid as a priority and availability of specialist services'.<sup>16</sup> However, this remains an issue. The lack of available legal advice is a common concern throughout most receiving authorities. Within a number of regions, there are very few legal aid solicitors for asylum and capacity to take on a large batch of new cases quickly. These cases will require legal advisers who are accredited to level 2 under the IAAS scheme – this further limits the number of legal advisers available for these complex cases.

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<sup>15</sup> Children Act 1989 s1(3)(a) refers to wishes and feelings of a child during a family law process, s11(1) Children Act 2004 places an obligation on public authorities to safeguard and promote the welfare of children.

<sup>16</sup> Discussed in the National Asylum Stakeholder Forum Children's Subgroup on 29 March 2015

We have also had reports of cases where children who are potential victims of trafficking are still subject to transfer despite concerns around their safety and risk of going missing. It is questionable whether the child's best interests are taken into account in these circumstances and better coordination, with clearer rules for child victims of trafficking in circumstances surrounding transfer.

It is also important that the scheme does not become embedded without an assessment of whether it is functioning as planned. This requires information that it is both alleviating the pressures on entry local authorities caring for large numbers, and that the scheme is operating in a child's best interests. Robust data should be collected on transfer timescales, the age of children at transfer, and potential impact on asylum claims. The RCC would strongly encourage an independent assessment of the NTS and for the setting of standards by which the scheme will be assessed on an ongoing basis.

## **UASC Leave and best interests in decision making**

### Decision making

As highlighted above the best interests of a child must inform Home Office processes as well as Home Office decision making. RCC members routinely see poor quality decision-making in which the duty under section 55 of the Borders, Citizenship and Immigration Act is referred to, but not considered in detail. Recent research by Coram Children's Legal Centre looked at decision-making in family cases, and in our sample, 40% of decisions had not engaged with the child's best interests, and 20% devoted just a couple of sentences to the child's best interests.<sup>17</sup> This mirrored other research, including research related to the cases of separated children where the best interests decision did not engage with the legal arguments, or facts presented in each case.<sup>18</sup> In the report 'Put yourself in our shoes'<sup>19</sup>, the Law Centres Network examined 60 children's asylum claims. At the time of writing, 26 of the 60 children had received decisions refusing their international protection claims. Although the report did not deal in detail with the decision-making in these cases, it noted that:

- Of the 26 decisions, only 14 refusal decisions explicitly referred to the s55 guidance, largely by way of a generic paragraph (in identical terms) cited at the beginning (10) or the end (4) of the refusal letter.
- There was little additional evidence of decision-makers 'having regard to' or undertaking a child-specific analysis of the facts and issues in the reasons advanced for refusal.
- The UNCRC was mentioned in only six of the 26 decisions and again in standard paragraphs.
- The recognition and/or importance of finding a durable solution is mentioned in only one of the 26 decisions (when refusing a 16 year old child 'UASC' leave).
- There is limited reference to the children's maturity and development.
- The following standard paragraph is mentioned in three cases: "more weight has been placed on objective indications of risk than to your state of mind and understanding of your

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<sup>17</sup> Coram Children's Legal Centre, *This is My Home*, 2017, p16 at <http://www.childrenslegalcentre.com/this-is-my-home/>

<sup>18</sup> See MiCLU, *Precarious Citizenship: unseen, settled and alone – the legal and protection needs of 'undocumented' children and young people in England and Wales*, MiCLU 2017, p 79,

<sup>19</sup> Law Centres Network, *Put Yourself in our Shoes*, 2015, pp139-140

situation. It is considered that at your age you would still have some understanding of the situation.” And in one of the three cases: “Careful regard has been given to your age at the time of interview and the above answers provided in relation to the inconsistency presented.” The report concluded that “such generic reasons obscure rather than reveal whether the child’s credibility has been properly assessed”.

Research by the Children’s Society has also found that unaccompanied children’s best interests in England are not systematically and comprehensively assessed within immigration decision-making.<sup>20</sup> Participants in its research repeatedly highlighted that measures designed to consider what is in a child’s best interests are inconsistent, unclear or tokenistic.

While it has improved over the years, Home Office guidance in respect of best interests and decision-making in children’s cases remains limited, without any reference to case-law developing the points made by the Supreme Court in *ZH (Tanzania)* [2011] UKSC 4. The Asylum Instruction *Children’s Asylum Claims*<sup>21</sup> refers to *ZH (Tanzania)* but rather than set out the legal principles arising out of the case, the guidance instructs decision-makers to consider a series of questions, which do not take into account the primacy of a child’s best interests.

In commenting on the draft guidance, the Refugee Children’s Consortium suggested that decision-makers should also be asked to consider the guidance given by the Supreme Court in *Zoumbas v Secretary of State for the Home Department*<sup>22</sup>, (emphasis added):

*(2)... the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;*

*(3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;*

*(4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;*

*(5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;*

We do not believe that best interests can be properly assessed by answering the narrow questions set out in the current guidance, and that without a clear understanding of the legal principles, it is unlikely that decision-making will improve.

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<sup>20</sup> The Children’s Society, *Not Just a Temporary Fix: Durable solutions for separated migrant children*, 2015

<sup>21</sup> Home Office asylum instruction, *Children’s Asylum Claims*, version 2.0, p 63, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/650514/children\\_s-asylum-claims-v2\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650514/children_s-asylum-claims-v2_0.pdf)

<sup>22</sup> [2013] 1 WLR 3690, para 10

## UASC leave

The RCC has long raised concerns regarding the types of leave granted to unaccompanied asylum-seeking children in the UK and how the Home Office consider the best interests of the child during the asylum process. Many unaccompanied children are refused asylum and granted limited leave as an unaccompanied minor (UASC leave). In 2016, this type of leave was granted in 50% of all cases for children – in 2015, it was granted in 52% of cases.<sup>23</sup> ‘UASC leave’ only lasts until the child is 17.5 years old or 2.5 years, whichever is shorter. It is granted to children who are found not to be in need of international protection (they have been refused refugee and humanitarian protection) but who cannot be returned to their country of origin because there are no adequate reception arrangements in place there. Once a child reaches the age of 18, they can no longer be granted this leave, because as it is set out in the rules it requires the applicant to be a minor. There is still a lack of understanding of the options available to young people granted UASC leave, both amongst the young people themselves and social workers and others caring for them. As a result, many do not understand that a grant of UASC leave is still a refusal of asylum and therefore can be appealed.

In 2013, the Joint Committee on Human Rights has highlighted the shortcomings of grants of limited leave (Discretionary Leave at the time) stating that: *‘Discretionary leave to remain is used too readily at the expense of properly considering other options, such as asylum, which hinders access to further education and to the labour market in adulthood’*. Short grants of leave assume that return at 18 will be an option. Yet a recent study about the impact of removal on former unaccompanied children to Afghanistan showed that many were caught up in bomb blasts or suicide attacks and some were threatened or targeted as a result of issues connected to their original asylum claims made in the UK.<sup>24</sup> If return at 18 is not an option, then the decision to grant short term leave is not in the best interests of the child – instead it leaves them in limbo, unable to build their futures in the UK and increasing anxiety and possible mental health issues.

*“As an unaccompanied minor who has travelled through many countries, where many promises were broken and hopes weren’t met, getting to the UK and feeling like this is my home and I want to settle and then to be given a status where you have two years and then might be sent back - this affects your stability, your mental health and building relationships in school. It’s a cycle – you start off with uncertainty and then here you are again and given more uncertainty. This cycle needs to be broken.”*

*“It really affects you because you’re in an uncertain situation, lose motivation, feel hopeless, restricted, limited and can’t access services that other citizens can. Even if you go to college you don’t know what’s going to happen and you can’t concentrate, it affects you mentally – depression, anxiety because they don’t know what’s going to happen.”<sup>25</sup>*

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<sup>23</sup> Refugee Council, Asylum Statistics, August 2017

[https://www.refugeecouncil.org.uk/assets/0004/1347/Children\\_in\\_the\\_Asylum\\_System\\_Aug\\_2017.pdf](https://www.refugeecouncil.org.uk/assets/0004/1347/Children_in_the_Asylum_System_Aug_2017.pdf)

<sup>24</sup> Refugee Support Network (2015) After Return: documenting the experiences of young people forcibly removed to Afghanistan <https://refugeesupportnetwork.org/blog/after-return>

<sup>25</sup> Quotes from young asylum seekers involved in Coram’s Young Citizens programme

There is no reference in its asylum instruction to Home Office discretion to granting a longer period of UASC leave, presumably because the leave is dependent on the child being under 18. In policy regarding granting discretionary leave (DL) to children seeking asylum, 'in the event that the file contains information that would make it less likely that return would be likely upon turning 18, consideration to granting an appropriate period of DL must be given', including Indefinite Leave to Remain (ILR). However, it is the experience of RCC members that children in the asylum system rarely, if ever, receive a grant of leave longer than 30 months, regardless of their circumstances.<sup>26</sup>

The courts have held in relation to an old policy that there are problems with the Home Office granting short periods of leave without considering a child's need for stability and their best interests,<sup>27</sup> and that 'where there is strong evidence to suggest that the child's life would be adversely affected by the grant of limited leave', ILR should be granted.<sup>28</sup> In spite of this, the existing system of short periods of leave and drawn-out routes to settlement persists. If truly considering the best interests of the child, the RCC believes that decision makers should systematically be considering the option to grant indefinite leave to remain from the outset of considering a child's claim, rather than always using the default position of UASC leave if the relevant grounds for refugee status and humanitarian protection have not been met.

It is important to note also that the move to actively review refugee leave after at the point of application for indefinite leave to remain is also of concern because of its impact on a child's best interests. This requires a decision-maker to reassess whether someone still requires refugee status after five years. We are aware of cases of young people who have been refused indefinite leave to remain on the basis that their country of origin is now safe. Although they are likely to have strong additional reasons to remain in the UK, this must raise concerns that the period of refugee leave remains a period of limbo where permanence cannot be guaranteed. This may have a far greater impact on children who have sought asylum and who are unable to plan into adulthood without certainty that they will continue to be recognised as in need of international protection. We are concerned that there is no monitoring of the potential impact of the amended active review policy and believe that this should be introduced in order to evaluate the success of active review.

A grant of UASC leave is not a long-term solution for children and will place barriers to the child being able to integrate in the UK, including in education, employment and travel. UNCHR & UNICEF have stated that *"While regularising immigration status, this temporary leave does not constitute a durable solution for the child but instead leads to an uncertain future. Evidence suggests it also can create barriers for local authorities in undertaking any meaningful long-term planning with the*

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<sup>26</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/650514/children\\_s-asylum-claims-v2\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650514/children_s-asylum-claims-v2_0.pdf)

<sup>27</sup> *SM & Others v Secretary of State for the Home Department* [2013] EWHC 1144

<sup>28</sup> *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills* [2014] EWCA Civ 1216, para 78. It was felt that the Applicant's life would indeed be so adversely affected because of her inability to embark on a course of study at the right time in her life and was of the view that had she been able at the time, the appellant could have 'applied for ILR on the grounds that she would not otherwise have been eligible for student funding at an appropriate age and had she made clear her situation and the strong likelihood, if not certainty, that she would anyway be entitled to ILR in 2018, she ought, all other things being equal, to have been entitled to have been granted it at once.'

*child.*<sup>29</sup> A grant of refugee leave as short-term leave creates further instability among a wider group of children and young people.

Too often decisions show little regard and a lack of significant consideration of a child's best interests. The lack of a formal multi-agency procedure to determine the best interests of the child and therefore inform the immigration decision undermines the ability of decision-makers to protect and promote the rights of each individual child and find the best durable solution for them.

For more information, please contact Kamena Dorling, RCC co-chair, at  
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***The Refugee Children's Consortium (RCC) is a group of NGOs working collaboratively to ensure that the rights and needs of refugee and migrant children are promoted, respected and met in accordance with the relevant domestic, regional and international standards.***

***Members of the RCC are:***

*Action for Children, Asylum Aid, Asylum Welcome, AVID (Association of Visitors to Immigration Detainees), Bail for Immigration Detainees, BASW (The British Association of Social Workers), Become, Cambridge Refugee Resettlement Campaign, CARAS (Community Action for Refugees and Asylum Seekers), Children and Families Across Borders, Children England, Child Poverty Action Group, Children's Rights Alliance for England (CRAE), The Children's Society, CoramBAAF Adoption and Fostering Academy, Coram Children's Legal Centre, Coram Voice, Doctors of the World UK, DOST, ECPAT UK, Family Rights Group, The Fostering Network, Freedom from Torture, Gatwick Detainees Welfare Group, Help Refugees, Home for Good, Hope for the Young, The Immigration Law Practitioners' Association (ILPA), JCORE (Jewish Council for Racial Equality), Kent Refugee Action Network, Law Centres Network, Love to Learn, Medical Justice, Islington Law Centre, National Children's Bureau, NSPCC, Project 17, Project for the Registration of Children as British Citizens (PRCBC), RAMFEL, Refugee Action, Refugee Council, Refugee Support Network, Royal College of Paediatrics and Child Health, Scottish Refugee Council, Social Workers Without Borders, Student Action for Refugees (STAR), The Trinity Centre, Welsh Refugee Council, UNICEF UK.*

***The following all have observer status:***

*Barnardo's, The British Red Cross, Office of the Children's Commissioner (England), Save the Children UK, UNHCR*

<sup>29</sup> UNHCR & UNICEF, What the UK can do to ensure respect for the best interests of unaccompanied and separated children, June 2016