

Refugee & Migrant Children's Consortium

Refugee & Migrant Children's Consortium response to the Department for Education consultation on the revised statutory guidance for local authorities on family and friends care

July 2018

Introduction

The Refugee and Migrant Children's Consortium (RMCC) is a group of over 50 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. We welcome the opportunity to respond to this consultation. Our views and suggested amendments are detailed below. For more information, please contact Ilona Pinter, Co-Chair of RMCC on ilona.pinter@childrenssociety.org.uk or 07713 878 207.

Key messages:

- We welcome the revised guidance as an important step in improving the outcomes of children being reunited with family members in the UK under Dublin regulations and we are pleased to see an emphasis on some of their enhanced and specific needs that may be different to other care arrangements like the need to claim asylum and regularise their immigration status.
- We are concerned about the 'no recourse to public funds' restriction on relatives who are looking after Dublin children. While relatives may be well placed to look after these children in every other way, without alternative support families may be barred from accessing vital support for children living in families on low income such as Free School Meals and Pupil Premium even when they need it.
- We believe that once children are living with their carers in the UK, the guidance should make clear that assessments of the child's needs, and concrete actions, are crucial in ensuring that children are getting initial support to settle in, access education, health and other vital services, and that their asylum claim is progressing. However, assessments also need to take place after a time of 'settling in' to make sure that children are thriving and accessing the services that they need.
- The provision of support and guidance to access appropriate services will go a long way to making sure that children can remain and thrive in their family placements, and local authorities need to work with families and children to make sure that not only are children's immediate safety needs met but that their long term best interests are considered early on.
- We look forward to working with the government on improving the outcomes for children transferred to the UK under Dublin regulations.

Informal family care arrangements

We welcome the recognition of cases of family reunion under the Dublin Regulation as 'informal family care' arrangements within the guidance. We are pleased to see that the guidance highlights the importance of support and the enhanced needs of many young people arriving under the Dublin Regulation. However, an 'informal family care arrangement' does not entitle the family to any specific support and the draft guidance confirms that any support provided continues to be at the discretion of the local authority, with very little direction given regarding identifying and addressing support needs. We have provided a number of examples in our response below which could help to address some of this (see detailed comments and recommendations). However, it will be necessary to review whether the revised guidance has provided effective safeguards for Dublin children.

Relatives' access to public funds

The draft DfE guidance states that relatives (as defined under Dublin 8.2) caring for young people who arrived under Dublin regulations, will need to support the child without recourse to public funds. We believe this restriction could potentially be unlawful, and appears to be discriminatory since in other informal family care arrangements (not involving an asylum-seeking child) carers are eligible for publically funded support.

Under the Dublin regulations there is no express requirement for financial support by the family. If a relative can in every other meaningful way 'take care' of a child¹, including providing accommodation, and it is in a child's best interests to be with that relative, then it cannot be right to refuse a take charge request because of an absence of financial support. Therefore placing a 'no recourse to public funds' condition on the relative imposes an obligation that does not exist in EU law.

RMCC members are concerned that placing these restrictions on carers of Dublin children may lead to families struggling to get by as well as potentially leading to differential treatment within the family, particularly where relatives already have children of their own who may otherwise be able to access public funds. This may result in more family breakdown and children ending up in extremely vulnerable and precarious circumstances, homeless or in the care of the local authority.

Recommendation 1: We urge the government to remove this restriction on relatives supporting children arriving under Dublin regulations. The benefits system is already limited only to those who need it the most and in times of crisis, following life events like unemployment, bereavement, disability or health issues. The benefits system, in place for families and individuals living on low income whether this is in times of crisis or for longer periods of time, is vital to ensuring that children are not disadvantaged by their family circumstances and that they can thrive just like their peers. For example by providing children on low income with free school meals and pupil premium, the benefits system aims to improve children's educational outcomes by making sure they are not hungry in schools and can learn effectively or get the additional support they need as they settle into their new environment. But children will only be able to access this vital support if their carers are eligible for benefits for them in the first place. In an effort to prevent family breakdown where families are struggling and to preserve the otherwise beneficial care arrangements, this should be a key change to the guidance. If the government is unwilling to make this change,

¹ Art. 8.2 of Dublin III refers to a family member being able to 'take care' of the child: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

the guidance should then advise social workers to support families to seek advice around whether they can seek to change to their circumstances in order to enable them to gain recourse to public funds and should provide support to the family under s17 of the Children Act in the meantime.

Detailed comments and recommendations

Assessments - Paragraph 13, page 11:

Paragraph 13 of the guidance usefully underlines that Dublin arrivals “*often present distinct challenges to the carers. Children have experienced exploitation and persecution in their country of origin or in what can often be a long, perilous and traumatic journey to Europe. In some cases, children may be joining family they know well, for example and older sibling – however in these cases their carers may themselves be seeking asylum and have had similarly traumatic experiences. In other cases, children may be joining relatives that have been in the UK for longer but whom they may not have seen in a long time, if ever, and who will need to be able to understand and adapt to the needs arising from the experiences they may have had. Families are likely to vary in their means and their ability to understand UK systems and processes, which will influence the level of support they might require*”.

We believe it would important to identify *how* social workers and others supporting Dublin arrivals can be made aware of the particular challenges facing these young people and their families, in order that needs can be correctly assessed and identified and adequate support provided.

Recommendation 2: The guidance should state that a social worker should visit any child arriving under the Dublin Regulation on at least two occasions when they are in the UK, once in the first week after arrival in order to assess immediate needs, and once after a month in order to assess ongoing support needs. The guidance should highlight that problems may not be apparent shortly after the child arrives, but can arise after a “settling in” period. During the second of these visits a ‘child in need’ assessment under Section 17 will help to identify the needs of the child and ensure that the family are given appropriate support. This should include considerations about children’s educational needs, physical and mental health needs, support needs such as whether they have access to or qualify for free school meals and the pupil premium, and support in helping to build their social networks. Importantly it should consider how children are accessing legal advice and representation with their asylum claim including making sure that they are able to present a comprehensive case in the absence of legal aid for non-asylum parts to their claim such as the fact that they have family ties within the UK. This could include applying for Exceptional Case Funding or ensuring pro bono support is provided.

Multiple adversities and support needs - Paragraph 19, page 13:

Paragraph 19 re-emphasises the enhanced support needs that Dublin children have, pointing out that “*many children in family and friends care have experienced multiple adversities similar to those of children who are looked after by local authorities. Where support services are identified as necessary to meet the child’s needs, these should not be withheld merely because the child is living with a carer under an informal arrangement rather than in a placement with a foster carer or with a person with a residence or special guardianship order or an adopter.*”

However, the guidance fails to specify *how* these needs will be addressed, particularly since the ‘informal care arrangement’ as outlined above does not entitle the family to any particular

support. Any support provided under Section 17 of the Children Act will depend on assessment and is at the discretion of the local authority. In addition, any Section 17 support, which will not be available until an assessment has been carried out, will cease when the child turns 18 (as indicated on page 16). So, for those young people arriving at 17 years old, the support available will be short-term, even though the needs are likely to continue beyond their 18th birthday.

Recommendation 3: As above in recommendation 2, the guidance should recommend at least two visits by a social worker should be carried out within a month of the child's arrival in order to ensure that needs are identified and addressed as soon as possible and family care arrangements are able to successfully continue in the best interests of the child. Given that the duties around promoting the welfare of children also entail thinking about their longer term outcomes and their life chances, it is important that these are considered within the assessment for children who will be transitioning into adulthood and may upon turning 18 in many cases be on their own, with very limited financial support and services, and may have a more limited support network to rely on within the UK, unlike other children who have grown up here.

Recommendation 4: We would also recommend stating in Paragraph 19 (or elsewhere as appropriate) the kinds of support that families could access. For example social workers could be helping families to access the Adoption Support Fund (<http://www.adoptionsupportfund.co.uk/>) and explaining the entitlements to them here (<http://www.adoptionsupportfund.co.uk/FAQs>). This may require the family to have a Special Guardianship order or an adoption placement but the government should consider whether Dublin families who don't yet have orders in place could access this form of support, particularly given the close alignment of the purposes of these support packages in trying to preserve the relationships and prevent family breakdown. It is particularly important that these options are explored where carers may not have experience in supporting children for example with older siblings or relatives who don't have children of their own or who have not had effective support in raising and supporting children up until this point.

Assessments prior to and post arrival - Paragraph 24, page 14:

Paragraph 24 on page 14 helpfully outlines the need for a two stage assessment in cases of arrivals under the Dublin Regulation, the first stage being carried out in order to assess whether the relatives/family members are able to take care of the child, the second being carried out post-arrival. Given the experience of RMCC members of supporting children arriving under Dublin, and the risk of family care arrangements breaking down due to lack of support including practical advice, guidance and administrative support from the local authority, it would be important to clarify throughout the guidance the importance of these assessments and their different objectives.

Recommendation 5: A table should be included in the guidance to clarify the objective at each stage of these assessments and to outline requirements and good practice. This should highlight the difference between pre- and post-arrival assessments, the difference in scope/purpose between cases of reunification with 'relatives' and 'family members'. It would also be helpful to highlight the key likely challenges that many asylum-seeking children will face and that should be carefully assessed including mental health support, financial and housing needs, access to education, and language/integration. It should be clear throughout

that both stages of assessments need to be centred around the best interests of the child. Clarity around assessments should be mainstreamed throughout the guidance as it is currently unclear in several places which assessment is being referred to.

Good practice or duty to assess – Paragraph 24, page 14 (and other sections):

There is some uncertainty around whether local authorities are obligated to carry out an assessment when children are reunited with families in their area or whether this is good practice (e.g. Paragraph 24, page 14; paragraph 3 of Annex B page 57; page 51). For example in paragraph 3 of Annex B (page 57), the local authority's assessment is referred to as "good practice" where it states "*As an informal family and friends care arrangement, the local authority does not have a duty to formally assess the arrangement, however it is good practice to undertake checks on the family member or relative...*"

On page 51, the local authority's assessment for Dublin cases is also referred to as "good practice", while the flow chart on page 58 (Annex B) implies that local authorities will complete the assessment and does not offer an alternative process if the local authority does not complete the assessment, at their discretion. It is therefore not clear if the local authority's assessment is required, or at their discretion.

Recommendation 6: The guidance should be clear about whether or not the local authority has a duty under the Dublin Regulations to complete the assessment, or if it is at their discretion. If it doesn't, then Paragraph 3 of Annex B could be amended to read: "*While the local authority does not have a specific duty to assess informal family and friends care arrangements, it is necessary, for Dublin cases, to ascertain that the reception arrangements are safe and adequate prior to the child's arrival. It is strongly recommended that a single child and family assessments provides a suitable model by which local authorities can satisfy themselves that the reception arrangements are suitable.*" This would echo Paragraph 24.

Support provided under s17 - Table 1, page 16:

Table 1 on page 16 outlines the support that may be provided under Section 17 to those in an 'informal care arrangement'. It does not specify, however, when or within what timeframe an assessment for Section 17 support should be provided for those arriving under Dublin.

Recommendation 7: Given the immediate needs that many families and young people will have on arrival and the delays and lack of support that most currently experience, as recommended above, the guidance should give a time-frame for a Section 17 assessment to be carried out.

Voluntarily accommodated - Paragraph 65, page 25:

Paragraph 65 states that "*Policies.... should seek to ensure that family and friends carers (whether or not they are approved foster carers) are provided, with support to ensure that children do not become, or remain longer than is needed, voluntarily accommodated by the local authority under section 20*".

In some cases it may be more appropriate for family members or relatives to become family foster carers so that children become looked after for example under s20 and get the support as any other child under those legal provisions. This may be particularly relevant in cases where children come to live with older siblings or single carers who can take care of them but who with additional caring responsibilities may need to stop working, or may need the additional support and oversight of social services to maintain the placement. This could mean that some financial support would be needed to support families as foster carers but

wouldn't require new registered foster carers to be found for the child who could still maintain their relationship with their family member or relative. However as suggested in paragraph 65, it is important that children do not stay on s20 for longer than needed and can secure a more permanent arrangement – for example an adoption, care or Special Guardianship order which would provide the carer with formal parental responsibility. This could be reviewed and actioned through the care planning process.

Recommendation 8: The guidance should recommend that in cases of 'family member' reunification (Dublin 8.2) where it has been assessed prior to arrival that the parent/sibling is not able to 'take care of' the young person, an assessment should be made within a month of arrival to establish what support the parent/sibling needs in order for the young person to be able to live with the family member. This would ensure that children do not remain under section 20 for longer than is needed and that more permanent placements are sought for the child early on.

Entitlements for carers - Paragraph 79, page 28:

Paragraph 79 highlights the importance of carers being informed of the different entitlements to support that they may have. This is key in the case of families caring for a young person under the Dublin Regulation as most are not aware of their entitlements, and given that 'informal carers' do not receive any specific support from the local authority.

Recommendation 9: The guidance should specify that clear information about entitlements will need to be given to carers of Dublin arrivals in the social worker visits described above.

Recourse to public funds - Annex A, Page 55:

On page 55, the draft guidance states that "*Relatives (as defined in Dublin III Regulation) will need to support the child without recourse to public funds*". As discussed earlier in our response, this means that unlike other children being supported in friends and family arrangements, children joining relatives under the Dublin regulations will not be able to access publicly funded benefits such as child benefit, child tax credit, free school meals or pupil premium aimed at supporting children in low income and thus facing educational disadvantage. This would leave many Dublin arrivals and their relatives, described above in the guidance as having 'experienced multiple adversities' and presenting 'distinct challenges to the carers', without access to basic financial support. The removal of this support would likely increase the risk of family care arrangements breaking down, leaving children and families more vulnerable and more likely to be placed in the care of the local authority. We also believe that this change would be potentially unlawful since children would be treated differently depending on their carers' status rather than on the basis of need. It is also questionable whether this approach is consistent with the Home Secretary's duty to safeguard and promote the welfare of children under s55 given their best interests and safety depends on them being reunited with their relatives in the UK. There is no requirement under any part of the Dublin III Regulation that the UK based relative must meet some form of income threshold or that they are to have a 'no recourse to public funds' condition attached to a Dublin transfer. That would impose an obligation that does not exist in law.

Recommendation 10: The second paragraph on page 55 stating that 'Relatives (as defined in the Dublin III Regulation) will need to support the child without recourse to public funds should be removed. If the government is unwilling to lift the NRPF condition imposed on relatives caring for Dublin children, then social workers should be instructed to support families to seek advice to help them lift this condition if the assessment of the child's needs

finds that relatives should be able to access public funds in order to support children effectively. Alternatively or in the meantime the local authority may need to step in to support families under its s17 duty to access support equivalent to that provided through mainstream benefits in order to promote the child's welfare, including helping them to access meals at school and additional support to facilitate their learning as far as their welfare demands this.

Entitlements for relatives - Annex B Flowchart, page 58:

Annex B lays out what the Dublin Regulation means for local authorities and the flow chart on page 58 lays out the assessment and transfer process. The box in the middle of the chart reiterates what was stated in Annex A of the draft guidance ie. "*For relative(s), who must be able to support the child without recourse to public funds, the social worker will also be asked to confirm whether according to the evidence they have seen, they consider that the relatives(s) will be able to do so*".

As above, we believe that under Dublin III considering whether the relative can 'take care of the child does not mean in isolation from support that the relative could be eligible for if the child were living with them.

Recommendation 11: Wording should be amended to state 'For relative(s), the social worker will also be asked to confirm whether according to the evidence they have seen, they consider that the relative(s) will be able to do so, taking into consideration any publically funded support and/or Section 17 support they may be eligible for'. This is to make clear that social workers can still support families who cannot access certain public funds with other forms of support that they may be eligible for such as s17 support under the Children Act 1989 and other services.

The flow chart on page 58 states that '*HO sends the family member or relative an undertaking letter which they are required to reply to stating whether they are willing and able to receive the child*'. Our understanding is that where the relative can take care of the child, then this transfer can take place. The assessment should be focussed on whether it is in the child's best interest to be reunited with the family member or relative in the UK. Considerations around housing and financial support for relatives should then be considered when children are reunited in the UK following a single child and family assessment of need.

Recommendation 12: Amendment to read 'HO sends the family member or relative an undertaking letter which they are required to reply to whether they can take care of the child'. The flow chart needs to clarify the options if relatives are not able to take care of the child but can still provide some support if children can be looked after by their local authority. This would ensure that the government is still acting in the best interests of the child by bringing them to safety and placing them close to relatives.

Correction – Annex B Flowchart, page 58:

Page 58 in the lower half of the flowchart under 8.1 it asks '*what is the immigration status of the relative(s)?*'. We believe this is intended to refer to Dublin 8.1 cases involving family members.

Recommendation 13: Replace 'relative' with 'family member'.

On Page 58 the flowchart does not make clear who informs the local authority about the arrival of the child. This is important to ensure that children are assessed and supported as soon as possible after arrival.

Recommendation 14: Clarify within the flow chart how the local authority is informed regarding the arrival of the child.

Child in need assessments - Annex B paragraph 1, page 59:

Paragraph 1 on page 59 of Annex B. states that “*within the unavoidable constraints of the circumstances, local authorities should treat cases of asylum seeking children joining family or relatives from another ‘Dublin State’ in the same way as any other informal family and friends care arrangement.*” This ignores the specific and complex needs of the vast majority of Dublin arrivals – referred to in paragraph 13 of the guidance - in terms of language, education most will have been out of education for many months or years), mental health issues (many suffer from post-traumatic stress and other mental health concerns from their early life in a conflict zone, and/or as a result of their journey), adjustment and settling into a new country and family.

Recommendation 15: Wording should be amended to state ‘local authorities should treat cases of asylum seeking children joining family or relatives from another ‘Dublin State’ as de-facto ‘children in need’ and identify and address their support needs as soon as possible after arrival’.

Carer entitlements - Annex B paragraph 3, page 59:

Paragraph 3 on page 59 of Annex B. highlights the legal obligation under Dublin III to assess the ability of family members/relatives to take care of the child. As stated above, there is no requirement under the Dublin III Regulation that the UK based relative must meet some form of income threshold or that they are to have a ‘no recourse to public funds’ condition attached. The focus of these assessments will always need to be the best interests of the child.

Recommendation 16: Paragraph 3 should be re-drafted to state ‘...as legally bound by the Dublin III Regulation, to accept reunification cases with relatives (as defined under Dublin 8.2) where it is the best interests of the child and the relatives can take care of the child. This means that they are able to accommodate and financially support them, taking into consideration any financial and other support they may be eligible to once the child is living with them. In cases of reunification with ‘family members’ (as defined under Dublin 8.1) these will be accepted where it is in the best interests of the child and there is no requirement for the ‘family member’ to be able to take care of the child.’

As above in relation to paragraph 24, it is important to clarify throughout the guidance which assessments are obligatory, what the objectives of these assessments are, how they are different in relation to ‘relatives’ and ‘family members’, and how they differ from post-arrival assessments.

Paragraph 3 on page 59 states that “*The Home Office will send a form for local authorities to fill in, which will contain further details of the information they require to make a decision on*

the case.” As we expect that this form will help to clarify the assessment requirements for local authorities, the RMCC asks that this form should also be circulated for consultation.

Recommendation 17: We would welcome the opportunity to be consulted on the form that local authorities will use to respond to Home Office requests in Dublin cases.