



Joint response to

Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children

This response is submitted on behalf of the following organisations:

Refugee Council

Migrant Helpline

Welsh Refugee Council

Refugee Action

May 2007

1. About the organisations

The Refugee Council is the largest non-governmental organisation in the UK working with asylum seekers and refugees. We not only give help and support to asylum seekers and refugees, but also work with them to ensure their needs and concerns are addressed by decision-makers. Our members range from small refugee-run community organisations to international NGOs, such as Christian Aid, Save the Children and Oxfam.

The Refugee Council has a long tradition of working with children, in particular through our Panel of Advisers for Unaccompanied Refugee Children (Children's Panel).

Migrant Helpline has a long history of working with asylum seekers, refugees and migrants in the South East. As well as providing direct services we proactively promote awareness of the issues surrounding our clients and work with host communities to assist with integration.

The Welsh Refugee Council (WRC) empowers refugees and asylum seekers to rebuild their lives in Wales. We provide advice, support and information to asylum seekers and refugees and advocate and campaign for refugee rights as enshrined in international law.

Refugee Action is an independent national charity that works with refugees to build new lives in the UK. With 25 years of experience in reception, resettlement, development and integration, we provide advice and support to asylum seekers and refugees in 10 regions across England. The Choices Team at Refugee Action provides advice and information to asylum seekers and refugees considering voluntary return.

We believe that every refugee or asylum seeking child in the UK should:

- feel safe and secure, be listened to and have a responsible guardian to turn to;
- receive accurate advice, appropriate guidance and support throughout the asylum determination procedure thus ensuring the fairest outcome for them;
- be seen as a child and a refugee rather than primarily a refugee.

2. Summary of response

As refugee agencies we have focused our response on the sections of the paper to which we feel most qualified to respond. The structure of our response reflects the chapters and sub-headings in the consultation document and within these sections we have addressed specific issues upon which we are invited to state our views. However, we have not specifically responded to each question in turn as we believe the majority of questions assume broad agreement with some fundamental assumptions underlying the proposals. In our view, these assumptions appear to be based on political perspectives rather than evidence.

We would also like to express our disappointment that the consultation paper does not propose a more radical overhaul of the asylum system for children. This is a great opportunity to introduce a system of guardianship for separated children seeking asylum as well as to ensure that our process for determining the international protection needs of children is responsive to the reality of their experiences.

We would welcome increased attention by the Government to monitoring the standards of assessment and care to ensure that local authority staff adhere to law, guidance and good practice as well as the codes of practice for social work professionals. However, the responsibility for this area of policy lies firmly within the Department of Education and Skills.

3. Scope of the Paper

We are pleased to see that definition of children those who are separated from their parent or usual carer but who, at the point of applying for asylum, are accompanied or state that they are joining another adult. We are aware through our own work and the discussions we have with local authority staff that many of these children are subsequently cared for by local authority children's services departments. Including these children in funding arrangements for local authorities will more accurately reflect the work they undertake with all separated children. However, it should be acknowledged that these children may have a greater need for remaining in the area in which they arrived in order that the local authority fulfils its duties under the Children Act 1989 with regard to facilitating contact with significant adults in the child's life.¹

We would like to express our disappointment that the paper itself does not address differences in statutory and policy frameworks across the four nations of the UK but leaves it to the respondents to work out to what extent and in what way the proposals will be implemented or even applicable in each devolved administration.

As refugee agencies we contest the assumptions underpinning in paragraph 7 which we believe completely misrepresent the truth about these children's experiences and subsequent needs. As stated in previous policy papers and guidance from government, these children arrive in the UK 'having experienced or witnessed traumatic events'² and are 'some of the children in greatest need'.³ We are concerned that the sentiments expressed in this paragraph underpin the entire document and seek to persuade stakeholders that these children can be provided with segregated services because the children themselves are different. This is a dangerous assertion and does not reflect the professional assessment of most statutory and voluntary agencies, which is that while these children may have additional needs arising from their immigration status they are children first and are no more a homogenous group than any other group of children in need of state support and care.

We are concerned at the statement in paragraph 9 that the options for change identified in this paper are, in the main, consistent with existing statutory arrangements. We expect arrangements for the support of children and young people who came to the UK as unaccompanied children seeking asylum to be completely within the current statutory and regulatory framework.

4. Why improvements need to be made

Whilst we cautiously welcome any policy proposals that seek to improve the outcomes for vulnerable children this paper makes some startling leaps of logic and important omissions. We are disappointed that the opportunity was not taken here to make more wholesale changes to the system of providing international protection to these children, including the provision of an independent guardian to assess and present the child's best interests to decision makers in protection and care.

¹ Children Act 1989 Section 23 (6) and Schedule 2; 15 (c).

² Framework for the Assessment of Children in Need and their Families, 2000.

³ Every Child Matters, 2003.

In terms of improvements to the system of care and support, whilst we recognise the need for more consistent levels of care and adherence to government guidance, we do not believe that these aims are best achieved through the proposals outlined in this paper. We believe that current difficulties exist largely as a result of long term under-funding of local authorities by central government and an increase in Home Office policies limiting the support given by local authorities to certain classes of people.⁴

It should not be the responsibility of the Border and Immigration Agency (BIA) to make proposals relating to the assessment and care of unaccompanied children. Standards for looked after children and care leavers already exist and recently published government proposals⁵ relating to both groups address issues such as improved support to prepare for independent living and improved commissioning arrangements for local authorities: these proposals are therefore unnecessary, confusing for local authorities and create an increasingly divisive system.

5. The Journey through the Asylum and Support System

Sponsoring key messages in countries of origin

We strongly object to the statement that begins this section. The primary duty of the government is to protect vulnerable children and respond to their needs, not to 'safeguard the system from abuse... and deter those who are not in genuine need of asylum'. If, as this appears, this paragraph (23) reflects the government's position on the international protection needs of unaccompanied children, it shows an alarming lack of understanding as to why children flee their countries and seek asylum in the UK. The starting point for a policy paper on the treatment of children seeking asylum should be the obligations and commitment of the Government to provide protection to those in need.

Whilst we do not want to generalise about the protection needs of an heterogeneous group of children and young people, each of our agencies encounters children with a wide range of reasons for seeking asylum, including those forced into armed conflict and those persecuted for their beliefs and in fear of their lives for reasons of real or perceived involvement with a political group. We also meet children whose circumstances may not fall neatly into the interpretation of the 1951 Refugee Convention but who are in need of protection to ensure that their human rights as lone children are not breached.

We object to the use of the term 'illegal migration' in this paragraph. As the Border and Immigration Agency is well aware, there is no legal route to the UK for people seeking international protection; our border controls are a blunt instrument and do not allow refugees to enter here other than illegally.

Finally, we believe that resources committed in countries of origin are better used to tackle the root causes of refugee flight.

Initial Assessments, including age determination

As refugee agencies we have long experienced the results of an ineffective and inconsistent system for assessing the age of asylum applicant claiming to be a child, where age is disputed by BIA. We are often at the forefront in negotiating for adherence to agreed protocols and guidance and see

⁴ E.g. Nationality, Immigration and Asylum Act 2002; Section 54 and Schedule 3 as amended.

⁵ Care Matters, 2006.

many young people who are exposed to significant risks as a result of inappropriate procedures as well as poor quality assessments.

We would agree with much of the sentiment in paragraph 24: it is in no-one's interests to allow adults to be treated as children and we recognise the challenge faced by statutory bodies in attempting to ascertain a person's age. However, the assertion that 'the number of age dispute cases is illustrative of a serious level of abuse of the system' is simply poor logic. The number of disputed age cases in no way relates to the number of adults claiming to be children; only the number of age disputed applicants who turn out to be adult after a full and holistic assessment can help us to ascertain the size of this problem. Research recently conducted by Dr Heaven Crawley for the Immigration Law Practitioners Association⁶ revealed significant failings in the current procedures for dealing with disputes over age including failure to give benefit of the doubt and refer all age disputed young people to the Refugee Council's Children's Panel. We would assert that only once the system for and quality of age assessment has been radically improved can we be confident that all children are being identified and protected appropriately.

We await with interest the results of the review of research into age assessment techniques mentioned in paragraph 27 as the assertion regarding the reliability of x-ray analysis is not supported by the published research summarised in the ILPA report⁷. We urge the government to consider this research before making any plans to amend the current system. The Refugee Council's Children's Panel would be particularly keen to assist with efforts to improve the quality of assessments and with the drafting of guidance to assist in the development of a system that consistently relies on 'a holistic approach to age assessment, with the final decision being made after taking account of several sources of information' (paragraph 27). We do not believe that local authority social workers conducting on the spot assessments at asylum screening units can ever meet this aim and we urge the Border and Immigration Agency to end this practice immediately.

We also firmly believe that a system based on the precautionary principle rather than a balance of probability approach is the only option if we are to be sure that all children are treated as such. The Government needs to acknowledge in practice that no assessment can provide absolute certainty and draft policies accordingly. We also recommend that local authorities should be reimbursed for the cost of conducting a good quality, robust assessment, regardless of outcome. We believe that improving the quality of assessments at the initial stage will result in both time and cost savings as fewer children are forced into litigation to access an assessment that adheres to the law.

Transfer to specialist authorities

The aim of providing more consistent services is clearly important; however, we would argue that restructuring service provision is rarely the only option and not always the most efficient method of ensuring that this aim is met. Working to improve relationships between practitioners at all levels of the many agencies involved in caring for separated children and the provision of high quality specialist training to them would also meet this aim. It may be that for some regions sharing commissioning as well as good practice would result in an improvement in services.

Making local authority funding arrangements conditional on meeting standards and adherence to government guidance is acceptable; making funding conditional on signing up to be a specialist authority is not. A local authority that can provide the care necessary to meet a child's needs must be funded to allow it to do so. For example, in cases where a child is already looked after by or has

⁶ When is a child not a child? Asylum, age disputes and the process of age assessment ILPA/Heaven Crawley May 2007

⁷ Ibid; chapter 2.

been living in a particular local authority area before claiming asylum careful consideration would need to be given to the impact on a child of moving them for any reason other than their safety or well-being.

We would also point to the dangers of assuming that unaccompanied children of all levels of vulnerability can be divided neatly into age groups. Assessment of needs must determine service provision and whilst a person's age may be one criterion to consider identifying an appropriate placement, there are many other relevant factors including the child's previous experience and need for emotional as well as practical help. Local authorities must be funded according to the cost of the care they provide; this is a more equitable method of funding than one determined by the age of the child.

As refugee agencies involved for many years in providing independent advice and support to asylum seekers and stakeholders we feel that our experience is invaluable in the development of the infrastructure necessary to establish an effective specialist authority transfer system.

In our view, considerable investment of resources is necessary to ensure that any new models are planned, monitored and properly evaluated. We are pleased to see that the Safe Case Transfer pilot is commended as a model of good practice in the paper (paragraph 32) as this is an example of such investment. In our view, only a similar level of investment in resources and time for full preparation will result in a system that will be capable of delivering any improvement in service provision. Similarly the investment in programmes such as the Gateway Protection Programme and the establishment of induction centres can provide valuable lessons with regard to a multi agency approach, long term planning and the involvement of regional consortia in mapping services and facilitating communication and sharing of good practice.

Our agencies can assist in identifying some of the difficulties encountered when establishing services in areas where neither the infrastructure nor vital services are already established. We strongly recommend that the government guarantees that high quality, specialist legal advice is in place before an area can be identified as 'specialist'.

Development of voluntary and community sector agencies, particularly Refugee Community Organisations (RCOs) takes long term investment and support, in order to build their capacity to provide high quality support services. Due to the nature of the refugee population and the need for agencies to respond to a range of individual needs, we would also warn that design of a system with limited flexibility is unlikely to result in a service to be proud of.

Specialist authority (criteria)

Careful thought must be given to the provision of an independent advice function. We welcome the single case owner model of the New Asylum Model and acknowledge that some children will have a trusting relationship with an allocated social worker. However, in our experience many children trust the advice and support that an independent agency can provide and we believe this model is essential if children are to fully participate in the asylum determination process.

We urge the government to ensure that agencies funded to provide the help and support to unaccompanied children seeking asylum are allowed the appropriate level of independence as well as sufficient resources to undertake this responsibility. To ensure such independence, and the stability of the provider agencies involved, we also urge the Government to provide funding for sufficient length of time and in accordance with the Voluntary Sector Compact.

Plans to ensure that children get appropriate legal advice need to take into account the **Page 6 of 8**

skills and relationships necessary to improve the child's access to the asylum process. Good legal advisers work at the child's pace, they build a trusting relationship with the person they represent as well as the significant adults in that child's life. They need to be properly funded to allow them to provide this good quality service over a long term period. The Government must also ensure that it provides considerable investment in high quality, specialist legal advice and representation for children across the country that is not disrupted by arrangements to transfer care. The proposals should be amended to ensure that a child can instruct the same legal representative throughout the process.

The Asylum Application and Return to Country of Origin

The statement made in paragraph 38 is welcomed; we share the view that improvements need to be made to the asylum determination process for children. We are concerned that proposals to develop plans to return children in a wider set of circumstances than those that currently exist are under discussion before any evaluation of the effectiveness of the New Asylum Model's decision making for children. We would add that before plans to return children to their country of origin must be delayed until a system of guardianship is introduced for these children. A guardian appointed to all separated children subject to immigration control would ensure that the child's best interests could be assessed and determined; this must be the determining factor in any decision of return for a child.

Our concerns are based on our experience of the way in which return to third countries is currently implemented. These returns, usually to a European country under the Dublin II regulation⁸ appear straightforward in principle as the EU Reception Directive⁹ is now in force in all signatory countries. However, in practice our experience is that significant numbers of unaccompanied children are placed in danger on return¹⁰ and currently no monitoring of these returns exists. The Refugee Council Children's Panel has worked with children denied access to both the asylum system and care in the European country to which they have been returned. Much more needs to be done before children will be confident that return will be safe for them.

Whilst acknowledging it is sensible and appropriate to discuss how a voluntary return package may be designed to apply more suitably to children, we are alarmed at some of the proposals contained in this paper. We would welcome a more open discussion as to how a voluntary return programme could be adapted to meet the needs of children and would recommend as a starting point an analysis of the current adult programmes. Involvement of agencies with a child protection focus is essential to ensure full inclusion of all relevant issues. Refugee Action's Choices Team are also ideally placed to assist with the analysis, based on its experience of advising children and young people as part of its programme. Unaccompanied children themselves could be consulted as part of the analysis.

We would like to make the following recommendations as a starting point for discussion. Return decisions are major decisions which are difficult for most people and cannot be made quickly. The speed at which a person makes a decision to return cannot be taken into account when deciding how much support that person may need to return. The standard 3 month period given for current VARRP to be completed is inadequate for children: a structured process to guide the young person through the decision making process and plans to facilitate return must be made at the child's pace. Finally, special attention must be provided to young people who have little experience of their country of origin.

⁸ Council regulation (EC) 343/2003; February 2003

⁹ Council Directive 2003/9/EC;

¹⁰ See Refugee Council briefing on Dublin II and unaccompanied children, November 2006.

Other Issues when the Young Person Reaches 18

We have serious concerns about the impact of withdrawing support to young people turning 18. As we know from our experience of working with destitute adults, destitution does not encourage people to return to their country of origin.¹¹ Instead young people will simply disappear. The recent Home Office Section 9 pilot found families not accessing healthcare, not going to police if they were the victims of crime and not returning to their country of origin¹². Our experience and that of local authority staff who contact us is that this also occurs with those turning 18 who lose their support structures. These young people are vulnerable, may be forced into criminal behaviour and prostitution because they are without support of any kind and are too afraid to access support from institutions such as the police.

This treatment of children is contrary to the principles of Every Child Matters and the Children (Leaving Care) Act. We urge the Border and Immigration Agency to suspend the application of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to ensure that all former unaccompanied children who have no leave in the UK are supported in line with other care leavers up until the point at which they actually leave the UK.

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¹¹ Asylum's untold story, Refugee Action, November 2006

¹² The End of the Road, Barnardos 2005 and Inhumane and Ineffective, Refugee Council and Refugee Action 2006
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