

## Asylum process for unaccompanied children

Spring 2007

The Home Office defines an unaccompanied child as “a person who, at the time of making the asylum application, is under 18 years of age or who, in the absence of documentary evidence, appears to be under that age, and who is applying for asylum in his/her own right and is without adult family member(s) or guardian(s) to turn to in this country.” This definition excludes children who are cared for by a distant relative, or a sibling who is also little over the age of 18.

With the changes to the asylum process as a result of the New Asylum Model, also come proposals for a new process to handle asylum applications from children. The asylum process for unaccompanied children seeking asylum will remain slightly different to take account of children and young people's particular vulnerability. The new proposals are:

- Children over the age of 12 will be interviewed about their asylum claim;
- Unaccompanied children seeking asylum will also be given a designated Case Owner trained to work with minors. The Case Owner will see the case through from the time the child claims asylum until the end of the process; and
- To ensure more frequent contact between children seeking asylum and their designated Case Owner.

For more information, please see the Home Office consultation paper *Planning better outcomes and support for unaccompanied asylum seeking children* (March 07) ([www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk) > law & policy > current consultations)

See also sections 3 and 4 of the [Refugee Council Information Service](#) and the Refugee Council website for more information.

Note: At the time of writing, the Home Office was carrying out a consultation on the processes surrounding unaccompanied children. The consultation is to close on 31 May 2007. It is too soon to know what impact the proposals in the consultation will have on current practice.

➤ See the BIA website for more information about the consultation paper:  
[www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk) > law & policy > consultation papers.

### Refugee Council Panel of Advisers for Unaccompanied Refugee Children

The Refugee Council Panel of Advisers for Unaccompanied Refugee Children supports vulnerable children and young people who apply for asylum on their own in the UK. Advisers deal with immigration, social services departments, and help find interpreters and legal representatives for the young person. They may also assist in age dispute cases. The Home Office should refer an unaccompanied asylum-seeking child or young person to the Panel within 24 of hours of the young

asylum seeker lodging an application.

- Any questions about an unaccompanied child you are working with, please contact the Panel of Advisers' Helpline: 020 7346 1134.

## Claiming asylum

Beginning 5 March 2007, all unaccompanied children claiming asylum will go through the NAM process.

- When an individual claims asylum, they are immediately screened to assess how s/he entered the UK, to establish identity, and are fingerprinted then given an Application Registration Card (ARC). This is also when the applicant's age is discussed (see below)
- Unlike adults, children seeking asylum are still given a 'Statement of Evidence Form' (SEF). This must be returned by post within 20 working days. Your client should seek legal advice for assistance with completing the SEF

## Assessing age

During the screening, the immigration officer will ask about the age of the applicant. If the individual alleges to be under the age of 18 and does not have the documents necessary to support this, then as of 5 March 2007, the young person will be assessed by an on-site social worker. If the social worker is unable to assess the age at this stage, the individual will be routed as an age-disputed case to a Case Owner trained in working with minors. Thus, a young person will be treated as an 'age dispute' child unless and until s/he is proven otherwise in an age assessment carried out by social services. The BIA Case Owner and the assessing social worker should discuss any delays that prevent a decision on age being made within 25 days of the screening.

## First reporting event (FRE)

10 days after claiming asylum, the child will be expected to attend his/her first reporting event. This is when the child seeking asylum will:

- first meet his/her NAM Case Owner;
  - have the asylum process explained;
  - receive the date for his/her asylum interview; and
  - be instructed on reporting requirements; and be offered help in finding legal representation.
- The child should attend the first reporting event with his/her legal guardian and social worker. Legal representatives are also permitted to attend, however the Legal Services Commission (LSC) is currently not funding legal reps to attend FRE so most won't go.

## Asylum interview

Children over the age of 12 will be interviewed by their NAM Case Owner. They must have a responsible adult present at the interview. The interview cannot go ahead if there is no responsible adult present.

The legal representative should also attend the asylum interview – LSC will provide funding for this. The LSC will also fund legal representatives to attend interviews with age disputed young people as long as there is a reason to think that the applicant may be a child.

## What can I do if...

### **My client has completed his/her SEF?**

Your client's legal advisor will more than likely post it to the BIA. However, if this is not the case, your client should post it directly using the attached self addressed envelope. If for whatever reason the client doesn't have this, inform the named Case Owner.

### **The Home Office disputes my client's age?**

As stated above, all new cases going through the NAM process will be treated as 'age disputes' with the timescales and other safeguards that apply to applications from children until assessed by social services.

### **Social services do not believe my client is under 18?**

If social services decide that the young person claiming to be a child is over 18, they will not house or support them.

- As an adviser, insist that the social service department sees all those who claim to be minors, and put in writing their reasons if they refuse support. It is better to have social services, as the child care professionals, making the decisions about support for these young people and not the BIA.
- A young person refused support by social services should obtain a letter or statement from social services to present to his/her NAM Case Owner or the BIA for support. The BIA will not house people as adults whose papers say that they are under the age of 18, unless they also have something in writing from social services to say that they have been assessed as over 18.
- Legal representatives can apply for legal aid to arrange an independent medical assessment in age disputed cases (note: medical evidence is not conclusive – see Section 3 of the Refugee Council *Information Service* for more information).

For more information about cases from before 5 March 2007, see the Refugee Council briefing *The Home Office does not believe I am under 18 – what can I do?* ([www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk) > information for asylum seekers and refugees) or IND policy bulletin 33 ([www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk) > applying > asylum > asylum support policy bulletins)

## Legal representation

Like adults, unaccompanied children seeking asylum need good legal advice. Although there is no requirement that applicants have a legal representative, it is strongly advisable. Like with adult asylum seekers, the Legal Services Commission (LSC) provides legal advice for unaccompanied children seeking asylum.

- The LSC will fund legal representatives attending the screening and interview and assisting with the completion of the SEF for children.
- The LSC will not fund legal representatives to attend the first reporting event (FRE)
- The LSC recently decided that appeals by unaccompanied children should not be subject to a merits test for legal help or controlled legal representation (CLR).

## Asylum support

For information on the support entitlements, see the [Asylum support for unaccompanied children seeking asylum](#) section. See also the [Refugee Council Information Service](#).

## What can I do if...

### **My client is going through the NAM system and is unsure what to expect?**

The New Asylum Model is too new for us to be aware of common problems that arise and how to address them. At the time of writing, we do not have guidance on many specific issues so we are unsure how every aspect will be implemented in practice. Therefore, we recommend when any problems or queries arise to:

- First speak to your client's NAM Case Owner about the query/concern.
- If the problem is still not resolved satisfactorily, speak to the Case Owner's manager.
- If there still continues to be a problem, speak to your local One Stop Service (see *Contacts*).
- You may also need to contact your client's legal advisor.

### **I am the responsible adult for a child due to be interviewed?**

- At the time of writing, we do not have guidance on interviews of children. As the responsible adult, you are expected to attend the interview with the child. Your role is to support the child and help him or her communicate during the interview.
- Speak to the young applicant's NAM Case Owner to discuss the case
- Also have your client's legal advisor to brief you on the case beforehand.

### **My client applied for asylum before 5 March 2007 and therefore is not part of the NAM system?**

Your client will then be part of what the BIA calls 'legacy cases'. As with adult legacy cases, the Home Office intends to send all child legacy cases a questionnaire to update the information held by the Home Office, in order to decide what action is appropriate, for example, a further interview. At the time of writing, a team is focusing on those who 'pose a threat to the public', separated children, and those on section 4 support.

- Questionnaires must be returned within 14 days – failure to return the questionnaire will lead to closure of the case.
- Those given a questionnaire should also be assigned a Case Owner (as in the NAM model). If your client has queries about the questionnaire, help him/her learn who their Case Owner is. Your client should also speak with his/her legal representative.
- Speak to your client about the upcoming questionnaire so they know to expect the letter at some point and to contact you and his/her legal advisor immediately when s/he receives it.

## Asylum decisions

The way the Home Office considers asylum applications by young people is largely the same as it is for those made by adults. For more information, see the Asylum Policy Instructions from April 2006: [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk) > applying > asylum > asylum policy instructions

The Home Office aims to make decisions on children's asylum claims within 35 working days.

### Positive decisions

Unaccompanied children have the same rights as adults if they meet the criteria set out in the Refugee Convention, or if they can prove that their human rights would be breached if they were returned home. (See *Asylum support for unaccompanied children seeking asylum* and *Asylum decisions* for more information on entitlements for successful asylum applicants.)

### Refusal

#### *Prior to 1 April 2007*

If unaccompanied children did not qualify for asylum or leave to stay in the UK on a human rights ground, the Home Office could only remove them to their home country if it could ensure that adequate reception and care arrangements were in place for them on arrival. Otherwise it would grant discretionary leave for three years or until they turned 18 - whichever period was shorter.

- If the child was from a country that was on the non-suspensive appeal list, then the Home Office would grant discretionary leave for 12 months, or until the young person turned 18 - whichever period was shorter.

#### *After 1 April 2007*

The Home Office amended the policy relating to discretionary leave for unaccompanied children seeking asylum. As above, those children who are refused asylum or leave to stay in the UK on human rights grounds, are still unable to be removed to their home country because of child protection issues. Instead, those granted discretionary leave after 1 April 2007 will be given it for three years or until the child turns **17.5**. The Home Office intends to consider any reviews and appeals before the child turns 18.

### What can I do if...

#### **My client is an unaccompanied minor who was refused asylum, but granted discretionary leave?**

Many young people are refused asylum but cannot be returned to their country of origin because there is no guarantee of a safe reception. Therefore, they are granted discretionary leave for three years or until their 18th birthday (or until 17.5 if the decision is made after April 1<sup>st</sup> 2007). At the end of this period, they can apply for further leave but if this is not granted (or if they do not apply) they will be expected to leave the country. It is very important that an application for further leave is made in time (before the expiry date of the current leave).

Refusals accompanied by discretionary leave to 17.5/18 can be appealed against in the same way as any appeal against refusal of asylum.

- Legal representatives should advise their clients to appeal against a Home Office refusal to extend discretionary leave, unless clients are prepared to return to their home country when they reach 18.

**My client is about to turn 17.5/18?**

Your client can apply to have his/her discretionary leave extended but must do so before it expires. If the Home Office does not get the application for extension of current leave before it expires, the applicant will be considered an “overstayer”.

If the discretionary leave was granted on the basis that the applicant was a child, and therefore could not be returned as there were no adequate safe reception and care arrangements available to him/her, the review will consider whether any new information is available to warrant reconsideration of the decision that the person may be removed once reaching adulthood.

- Speak to your client’s legal representative 2-3 months before the leave is about to expire and ensure they are prepared to assist your client apply for extension.
- If your client is going through the NAM system, speak to his/her NAM Case Owner as well.
- Speak to your client about the process and ensure they are aware of their rights, as well as the possibility of being returned after turning 18.

## Further resources

*Unaccompanied refugees and asylum seekers turning 18: a guide for social workers and other professionals* by Save the Children 2006. To order, go to [www.savethechildren.org.uk](http://www.savethechildren.org.uk) > resources > policy resources > search for 'turning 18'.

Refugee Council response to *Care Matters: Transforming the Lives of Children and Young People in Care*

[www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk) > policy and research > responding to policy 2007

### **Children's Legal Centre**

Independent national charity concerned with law and policy affecting children and young people.

[www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)

### **Youth Justice Board**

The Youth Justice Board for England and Wales (YJB) is a public body working to prevent offending and reoffending by children and young people under the age of 18, and to ensure that custody for them is safe and secure.

[www.yjb.gov.uk](http://www.yjb.gov.uk)

### **Asylum seeking and refugee children and young people good practice website**

A National Children's Bureau project aimed at practitioners working with unaccompanied asylum-seeking and refugee children.

[www.ncb.org.uk/arc](http://www.ncb.org.uk/arc)

### **BAAF Adoption and Fostering**

Has publications, advice services and training for foster carers who look after refugee and asylum seeking children.

[www.baaf.org.uk](http://www.baaf.org.uk)

### **[www.asylumsupport.info](http://www.asylumsupport.info)**

Independent website with information and updates on asylum support policy and practice issues plus links to other sites.

### **[www.multikulti.org.uk](http://www.multikulti.org.uk)**

Culturally appropriate translated information in the following areas of welfare law: debt, employment, health, housing, immigration and welfare benefits.

### **[www.lasa.org.uk](http://www.lasa.org.uk)**

London Advice Services Alliance website designed for those providing advice and information services.

### **[www.lga.gov.uk/lga/asylum](http://www.lga.gov.uk/lga/asylum)**

The Local Government Association has information about local authorities' work on asylum as part of the interim arrangements and the Immigration and Asylum Act 1999.

### **[www.refugeeaccess.org.uk](http://www.refugeeaccess.org.uk)**

Website for asylum seekers, refugees and agencies working in Yorkshire, Humberside and the Liverpool area.

### **[www.rightsnet.org](http://www.rightsnet.org)**

An expert resource for advisers, Lasa's welfare rights website provides access to the most up-to-date welfare benefit and tax credit information on the web.