

Refugee Council information



Influencing parliament

March 2013

Introduction

The Refugee Council is a human rights charity, independent of government, working to ensure refugees are given the protection that they need, are treated with the respect and understanding that they are entitled to, and that they are assured the same rights, opportunities and responsibilities as other members of society. A key objective is to try to influence government policies which impact on refugees and asylum seekers. One of the ways in which we do this is via the evidence we submit to select committees and other groups in parliament.

Parliamentary Inquiries

The select committee system is an important mechanism for the scrutiny of government. In the House of Commons there is a select committee corresponding to each government department with the remit of scrutinising the work of that department.

There are also non-departmental select committees in the Commons, with broader remits, one example being the Environment Audit Committee which looks across the whole of government. House of Lords select committees are not linked to specific government departments but tend to cover broad issues, such as Economic Affairs. In addition there are a number of joint select committees, with members drawn from both Commons and Lords, such as the Joint Committee on Human Rights.

Select committees conduct inquiries into subjects within their terms of reference. Their inquiries provide an opportunity for organisations outside parliament to submit evidence on issues which are of concern to them and in which they have relevant expertise. Usually most of the evidence is in written form, but a committee may decide to invite a representative of the organisation to give oral evidence. At the conclusion of the inquiry the committee produces a report.

Select committee reports generally have recommendations for the relevant government departments and it is expected that the government will publish a response to the report.

In parliament there are a large number of registered All Party Parliamentary Groups (APPGs). APPGs have no formal or official part to play in parliamentary business. They exist to bring together members of both Houses who are interested in a particular subject, with the aim of trying to influence government policy on that subject. In order to be registered APPGs have to fulfil some basic rules about membership. They also have to declare any funding they receive.

In recent years a number of APPGs have undertaken inquiries, usually modelled on a select committee inquiry, where they have taken written and oral evidence, and then published a report with recommendations. Because APPGs have no official part in business there is no obligation on government

to respond, however it is becoming common for the relevant government department to do so, albeit not via a formal report to parliament.

Submissions by the Refugee Council

During 2012 the Refugee Council made submissions to three parliamentary inquiries which relate to government policies on children. These were:

Children first: the child protection system in England (Inquiry by the House of Commons Education Select Committee, report published November 2012)

Written evidence was submitted by the Refugee Children's Consortium, which includes the Refugee Council, and oral evidence by Judith Dennis from the Refugee Council.

Human rights of unaccompanied migrant children and young people in the UK (Inquiry by the Joint Committee on Human Rights, evidence gathered from October 2012)

Written evidence was submitted by the Refugee Council and oral evidence was given by Helen Johnson in November 2012

Children who go missing from care (Joint Inquiry by the APPG for Runaway Missing Children and Adults and the APPG for Looked After Children and Care Leavers, report published June 2012)

Oral evidence was given by Helen Johnson from the Refugee Council.

What the submissions said

Submissions to the Education Select Committee

Key concerns

The written and oral evidence from the Refugee Children's Consortium (RCC) asked the Education Committee to take into account the experiences of asylum-seeking, refugee and migrant children and young people who are often at risk of harm while being subject to immigration controls. Being seen as migrants first rather than children, decisions taken about their lives are frequently not conducive to their well-being and best interests, and often leave them at risk of serious, irreparable harm.

Refugee and migrant children and young people are at risk of different forms of abuse and exploitation; and the practices of non-social work agencies and other government departments, including the UK Border Agency, the Home Office and the Ministry of Justice, are currently not meeting their responsibilities towards these children.

The RCC expressed concern that the Home Office is not well placed to lead on policy for the care and support of separated refugee and migrant children, and that the exclusion of separated children from the Department for Education's remit sends a powerful signal that these children matter less than others. The result is an emerging two-tier system for these children, so that they are still seen as immigrants first, rather than children, and do not receive the protection they need.

While there are pockets of good practice, overwhelmingly statutory agencies still see child trafficking as an immigration issue rather than a child protection one and children's services often refuse to help

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children if they do not have an immigration status or where they do not have documentation. However, local authorities have a statutory duty to protect the welfare of all children in the UK under the Children Act 1998, regardless of their immigration status or nationality.

The RCC believes that there is a conflict of interest in the UK Border Agency's immigration officers (rather than child protection specialists) assessing whether an individual is a victim of trafficking as one of the two competent authorities for the National Referral Mechanism (NRM) while at the same time assessing credibility for immigration and asylum claims. The NRM was introduced in April 2009 to formally identify victims of trafficking following referrals from local authorities, police, immigration staff and selected voluntary organisations.

Private fostering

Considerable numbers of children in the UK are currently housed in unregistered private fostering arrangements. The charity Children and Families Across Borders (CFAB) estimates there are 10,000 unregistered Private Fostering Arrangements (PFAs) in the UK, with 4,000 of the children involved in these arrangements originating from outside of the UK. According to a recent report on the nature of trafficking and exploitation of children within the home, child abuse through domestic servitude can occur in tandem with the commercial and economic exploitation of that child, including forced labour, begging and pretty crime, and sexual exploitation.

The Children's Society's research 'Hidden Children' in 2009 revealed that there is a lack of awareness about these young people among professionals and within the community and their exploiters deliberately act to keep them and their treatment hidden. Some of these have not been brought to the UK to be trafficked – they may have been sent here to live with relatives or carers - but have ended up living in abusive private fostering arrangements. The children come from various countries and backgrounds and suffer many different types of exploitation, including domestic servitude, benefit fraud, sexual exploitation or prevention from going to school or accessing support. The research found that young people also stay in the abusive situation because they often do not know their treatment is illegal, they risk being homeless if they run away, they fear that they will be removed or they do not know anyone they can trust to disclose that they have been abused.

Age disputes

An ongoing child protection concern for those working with children in the asylum and immigration process is the issue of age disputes which can leave already vulnerable children at risk of serious harm, and further exploitation and abuse particularly if they find themselves detained, destitute or unable to access the support they need. Although rates have declined compared with 5 years ago an average of about 30% of those who present as separated children claiming asylum have their age challenged by the UK Border Agency each year. Over the last 5 years, over 3,500 children who have applied for asylum have had their age disputed.

There is a very entrenched belief among some officials and statutory agencies that the majority of age-disputed young people are adults posing as children, and children are too often not given the benefit of the doubt leading to their age being disputed. The UKBA says that adults posing as children create a child protection risk if they are accommodated with other children, but such accommodation is in a supervised setting where social services are responsible for children's welfare and safety. By contrast, when children are wrongly assessed and mistreated as adults they are accommodated in an adult setting with none of the specialist provision for supervising let alone ensuring their welfare and safety. They may also be detained with adults. Given the examples and evidence highlighted above of the potential irreparable damage caused to children who are wrongly assessed, the application of the benefit of the doubt is vital. In particular, physical appearance is not an accurate indicator of chronological age and

therefore should not be overly relied upon. The 'benefit of the doubt' needs to be given at the initial screening stage.

Despite the fact the government has committed to ending child detention, the RCC is concerned that children whose ages have been disputed will continue to be detained until the process of age assessments is overhauled.

Section 55

Since the introduction of the Section 55 (Borders, Citizenship and Immigration Act 2009) statutory duty and guidance in November 2009, a series of judgments by the courts illustrate how the actions or inactions of the UK Border Agency have routinely failed to take into account the best interests of the child, leading to decisions which have raised serious safeguarding concerns.

Legal Aid

The Refugee Children's Consortium expressed concern that children's safety would be further compromised by limiting their access to legal remedies due to with the changes made by the Ministry of Justice in the Legal Aid, Sentencing and Punishment of Offenders Bill. The Bill, which has now been passed by parliament and become an Act, will take effect from April 2013. Legal aid will no longer be provided for children and young people (18-24 year olds) in significant areas of law including immigration which will have implications for children's welfare and safety. This is likely to have a particular effect on separated migrant children and victims of trafficking, as well as many more children within families who will suffer as a knock-on effect from their parents being unable to access legal aid.

Submission to the Joint Committee on Human Rights

Responsibility for unaccompanied children

A similar point to that made in the evidence to the Education Committee was that overall responsibility for unaccompanied migrant children and young people in the UK should lie with the Department for Education, with other government departments sharing responsibility with regard to particular aspects of their lives. The Department for Education should administer the grant funding to local authorities and ensure that it provides for the additional costs incurred by local authorities in providing a good level of care for the children and young people for whom they are responsible.

Assessing and determining the best interest of unaccompanied migrant children should be the responsibility of more than one agency, not led by the UK Border Agency and involving the family courts.

Specific attention was drawn to the treatment of unaccompanied children at the age of 18, and the funding mechanisms for local authorities.

The Children (Leaving Care) Act 2000 recognised the need to fully support young people into adulthood; its aim was to ensure that young people, leaving care, as they enter adulthood, are not isolated and participate socially and economically as citizens. Its implementation in 2001 was soon undermined by the Nationality, Immigration and Asylum Act 2002, introducing restrictions on the support that could be provided to unaccompanied children as they turn 18 years of age and become former relevant children under the Children (Leaving Care) Act. These restrictions continue to impede local authorities in their provision of leaving care support according to the professionally assessed needs of a young person for whom they are responsible.

Funding for local authorities

The grant funding from the UK Border Agency to local authorities in relation to unaccompanied children has a mixed effect in practice. Whilst providing necessary support for the additional costs of caring for unaccompanied children, there are a number of difficulties arising from the arrangement:

The fact that it is administered by the UK Border Agency and that the document has the strapline 'Securing our Border Controlling Migration' sends an important message to those responsible for the care of these children. In discussions with senior government officials it appears that the grant is seen as part of the overall cost of asylum support. This would not be the case if the government department that administers grant funding for other children were to also take control of this grant funding.

The differential rate of funding applied to children and young people aged below sixteen years and those aged sixteen and seventeen years of age implies that the cost of caring for older young people is or should be lower. In our experience, children arriving in the country aged sixteen and seventeen frequently need as much support and care as their younger counterparts and the grant should not distinguish between the two groups.

Decision making on children's asylum claims

The current decision making process on children's asylum claims allows some safeguards for children in that child specific persecution is recognised in the UK Border Agency instructions to their caseworkers asylum process instruction and those making decisions on children's claims receive training specifically on children's issues. However, the most recent audit of decision making in children's claims revealed a lack of consistent application of the guidance, a lack of understanding of the responsibility of the UKBA to ascertain and gather evidence in support of the claim and some examples of lack of preparedness for interview, lack of understanding of imputed political opinion and inappropriate speculation in relation to a child's actions.

The Refugee Council has no reason to believe that the situation has improved since this audit; in our experience some UKBA decision makers treat child asylum applicants with compassion and understanding and fully implement the instructions and guidance with regard to claims made by children. However, we still encounter many examples of decision makers failing, in their interviewing or reasoning, to take into account the child's minority. We attend substantive interviews with children and witness poor preparation, inappropriate and lengthy questioning and decision making that does not allay our concerns that there has been little, if any improvement. Auditing and reporting on the results of such exercises on children's claims should remain a high priority for the government.

Legal representation

In the Refugee Council's experience, the ability of children to access the system of appeals against asylum and immigration decisions is very mixed. In our experience legal representatives may not advise the child at all about his or her appeal rights, or decline to act in a child's appeal without explanation of the reasons for this decision. We have seen many cases of children whose chances of success at appeal were opined to be very poor by one legal representative, only for another representative to believe that the case was strong and indeed result in a successful appeal.

The concession by the Legal Services Commission in order that they may access legal representation for their asylum appeal was very much welcomed by the Refugee Council and indeed assists many children with whom we work to get legal advice at the appeal stage. However, appeal rights are limited as a result of Section 83 of the Nationality, Asylum and Immigration Act 2002 which restricts appeal rights for those with less than 12 months leave to remain in the UK. This means that in practice many child asylum seekers are unable to access an appeal right until a further immigration decision is made when

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they have already reached their 18th birthday. Whilst this remains, the good intention of the policy concession on Controlled Legal Representation is undermined.

The point made in the evidence to the Education Committee about the forthcoming restrictions on legal aid was reiterated.

A further recommendation was made about the need for support for children. Most of the unaccompanied children we encounter have no-one in the UK who is able to exercise parental responsibility for the child, resulting in a legal anomaly for this group of children, making them vulnerable to breaches of their rights. The provision of a truly independent guardian with statutory powers may assist a child to receive the protection and support necessary for the government to fully recognise the child's rights under the United Nations Convention on the Rights of the Child (UNCRC).

Age disputes

Similar points were made to those in the evidence to the Education Committee about the current problems in relation to age disputes accompanied by a recommendation that a cross departmental, multi agency review of age assessment procedures and good practice must be conducted in order that children may access their rights.

Family reunion

The right to live with one's family, enshrined in Article 16 of the European Convention on Human Rights, does not specify that the right is different for adults and children. 'The family is the fundamental and natural unit of society and requires the full protection of the state'. The right is also fundamental to the UNCRC and is protected in the 1951 Convention relating to the Status of refugees. However, those refugees who received protection as unaccompanied children do not have the same rights as adults to be reunited in safety with members of their immediate family.

This position fails to take account of the reasons a child will be recognised as a refugee and is of profound concern to the Refugee Council. It is a misunderstanding of the law to state that children may benefit from family reunion for any other reason than they are recognised as refugees. It is discriminatory for the UK government to hold such a position. The Refugee Council believes a child should have the right to bring pre-existing family members, particularly parents and siblings under the age of 18, in order that their rights under international law and Conventions are not breached.

Submission to the Joint APPG Inquiry on children who go missing from care

Extracts from the oral evidence from Helen Johnson

It is very helpful on the one hand to have some overarching recommendations to fit certain groups of children, and I should like to make some of those, on the other hand I think it is very helpful to remember that each child is an individual child, so while, for example, I would like to make recommendations about what to do with Vietnamese trafficked children, of course within that, every individual Vietnamese child is an individual child with a separate history and experiences. So I think having that duality in mind is helpful, yes broad recommendations are helpful, but also individual children need different things, and one of my frustrations of the care planning process for children is that it is incredibly slow and bureaucratic, and a decision will be made on a child which within twenty four hours may need to be changed but it won't be changed for days or weeks afterwards because that's the plan, and we can't work like that with children in this situation.

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One of the recommendations we would like to make is that as professionals we need to take risks to make children safe, rather than playing it safe and leaving children at risk, and right at that very starting point, we need to take the risk and move children well away from where they have been found. If in a day, or three days or a week's time you think actually they didn't need to be moved, fine you can move them back and little harm is done, but if you don't move them a lot of harm can be done.

More training is needed for everybody across the country, across different specialisms, so within social services, within the police, within other criminal justice systems and so on. Coming back to my earlier point, if you have a resource that people know is available to be used, then at least for a number of children you can start to hope to protect them from the beginning, and if that works then you can look at spreading that elsewhere, but at the moment if someone gets picked up this afternoon nobody really knows what it is the right thing to do or where to send them.

I wouldn't want them to be taken out of the protective care system, I wouldn't want them to be taken out of the auspices of the Children Act, I would want them to remain within that because it offers lots of protection.

I could certainly advocate guardians for children, trafficked or otherwise, but just picking up your point about a role - within our organisation we have advisers who are allocated to work with individual children, and one of my colleagues here today works specifically with victims of trafficking, and whilst it is not a guardianship role as we want it, and there is no statutory power, she very often for these children is the only person who knows and understands their immigration status. She knows and understands their social care, knows and understands what the foster carer has to do, what the education service has to do, this one individual the child knows she can ring and ask, she will explain it and she will take them to the appointment with a solicitor and take them to the court hearing, so they are playing a sort of guardianship role, although I am not saying that is enough - to have a statutory role would be much better - but to have that one adult who is working in the interests of the child and has an overview is incredibly helpful.

Relevant recommendations from the inquiries

Education Select Committee

The Committee accepted that legitimate concerns had been raised about the correlation between Government policies on immigration and the incidence of destitution amongst asylum seeking and migrant children. They said that it would be outrageous if destitution were to be used as a weapon against children because of their immigration status and called on the government to review the impact of immigration policy upon child protection and children's rights to ensure this is not the case.

The Committee recommended that the Department for Education be given specific overall responsibility for the welfare of all children including those who have been trafficked or are seeking asylum.

The committee felt that the issues raised by trafficked children, and possible changes to the guardianship system, required far more detailed attention than they had been able to give during this inquiry. They raised concerns about the number of children going missing once identified by the authorities and said that the government must work more effectively with others to address this.

The committee also called for greater use of multi-agency training.

Government Response to the Education Select Committee

The government's response to the report from the Education Select Committee was published as an appendix to the Committee's report in February 2012, together with a response from Ofsted.

The government agreed that it would be totally unacceptable for destitution to be used as a weapon against children, but did not believe that it is. They did not believe that there was any need to review policies on this issue.

The government stated that they strongly believed that children should be treated as children first, but did not accept that this would be assisted by giving the Department for Education specific overall responsibility for children's welfare. Rather than this every government department should ensure that the services it is responsible for should place the needs of children first.

The government has awarded a grant to the Refugee Council and The Children's Society to undertake a joint independent review of the practical care arrangements for trafficked children in care. The review will highlight any issues arising and also good practice.

The government accepted the value of multi-agency training.

Joint Committee on Human Rights

The Committee is still in the process of gathering evidence and will report for some time.

APPG Joint Inquiry

The Group recommended that the pilot scheme run by Department for Education and Barnardo's to train more foster carers to support trafficked children and/or sexually exploited children should be rolled out nationally with support to help local authorities engage effectively with the scheme.

They also recommended that a legal advocate with parental responsibility should be appointed for all unaccompanied migrant children.

The Group recommended that the Children's Improvement Board should lead a programme of work to support local authorities to meet the needs of trafficked children through child protection frameworks.

A further recommendation was for a comprehensive and independent national system of data collection on trafficked children who go missing to be established.

For unaccompanied migrant children there was a recommendation that all such children who go missing should be identified and circulated on the Police National Database to ensure that the case was kept active and monitored.

Government Response to the APPG Inquiry

The then Children's Minister, Tim Loughton MP, sent a detailed letter to Ann Coffey MP, who had chaired the APPG inquiry. In it he accepted the core analysis of the APPG report. He announced the commissioning of a review into the practical care arrangements for potentially trafficked children. He also said that a better data collection system would be developed. His letter, and a simultaneous written statement to parliament, was a positive response to the APPG report.

Links

The full documents referred to above can be found via the links below:

Education Committee report and evidence (Oral and written)

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/993/99302.htm>

Joint Committee on Human Rights; details of the inquiry

<http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2010/human-rights-of-unaccompanied-migrant-children/>

APPG report and evidence

<http://www.childrensociety.org.uk/what-we-do/policy-and-lobbying/parliamentary-work/oral-evidence-sessions>

Letter from Minister to Chair of the APPG inquiry

<http://media.education.gov.uk/assets/files/pdf/l/letter%20to%20ann%20coffey%20mp.pdf>

Children's Society Report: Hidden Children

<http://www.childrensociety.org.uk/what-we-do/policy-and-lobbying/young-refugees-and-migrants/trafficking-and-exploitation#downloads>

United Nations High Commissioner for Refugees audit

http://www.unhcr.org.uk/fileadmin/user_upload/pdf/QI_Sixth_Report.pdf