

About the Refugee Council

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.

Summary of main recommendations

1. The government should regularly publish statistics relating to the removal of former unaccompanied children, the outcome of children's appeals to the First Tier Tribunal, the number of people deemed adult by Immigration Officers as a result of the 'significantly over 18 policy' and the outcome of those cases.
2. Immigration Officers and Border Force officials should refer anyone claiming to be a child to a local authority for assessment, treating them as a child until an assessment is completed.
3. Government departments should work together to ensure that law and policy relating to unaccompanied children is adhered to and sufficient funding is provided e.g. to local authorities and legal representatives.
4. A child should not have to submit evidence or attend interviews without sufficient preparation with their legal representative.
5. Children recognised as refugees or granted humanitarian protection should be able to reunite with parents and/or siblings in the UK under the refugee family reunion policy.
6. The government should ensure that all unaccompanied children in the UK are appointed an independent guardian to protect their best interests, ensure their voice is heard and that they receive the services they need.
7. The UK should work collaboratively with fellow signatories to the Dublin III regulation to ensure each makes particular effort to reunite unaccompanied children as speedily as possible whilst ensuring their safety. This includes adequate resourcing of Dublin Units, collaborative working with NGOs assisting children on the move and generous use of the discretionary clause.
8. The UK and other EU Member States should draft a new Action Plan on Unaccompanied Minors, ensuring its focus is the protection of children and family unity. It should actively encourage Member States to implement good practice, including that identified in EU funded projects.

The Refugee Council's work in relation to unaccompanied children

1. The Refugee Council is proud to have helped unaccompanied children seeking asylum in the UK since 1994, mainly through the Children's Panel. We estimate that our specialist Advisers have supported about 25,000 children through the asylum process since the service was established. We are also members of the Separated Children in Europe Programme, a network of NGOs working with separated or unaccompanied children, including those seeking asylum.
2. Some of our recent policy and research work has focused on unaccompanied children including research in the UK examining the support for trafficked children (with The Children's Society)¹, research as part of pan European studies on access to legal advice² and most recently a project led by the International Organisation for Migration seeking to establish good practice in relation to the operation of the Dublin III regulation in reuniting unaccompanied children with family members in Europe³.

Unaccompanied children in the UK

3. The UK has relatively small numbers of unaccompanied children seeking asylum, compared with many other Member States. The data is reasonably reliable, in that the UK Home Office collects the numbers of

¹ Still at Risk http://www.refugeecouncil.org.uk/assets/0002/9408/Still_at_Risk-Report-final.pdf

² <http://www.ecre.org/component/content/article/63-projects/325-right-to-justice.html>

³ http://www.italy.iom.int/index.php?option=com_content&task=view&id=287&Itemid=90

asylum applications, and the outcome at first decision. These are published quarterly by National Statistics on the gov.uk website. There is data on gender, age and nationality. Unaccompanied children wishing to seek asylum are referred to the Refugee Council and to the relevant local authority for support. Both of the above keep their own statistics as well as central government.

4. Data is not routinely published on the outcome of appeals from unaccompanied children, although overall appeal rates are included in the quarterly bulletin. We do not know if this is available. Data is collected but not published unless required to by a parliamentary question or Freedom of Information Act request on a range of issues e.g. removals of those who arrived as unaccompanied children or reunifications under the Dublin III regulation. These are amongst statistics we would like to see made public on a regular basis.
5. The rate of recognition as a refugee has fluctuated over the years that the government has produced statistics, but in all but one year since 2010, a lower percentage of children have been recognised as refugees compared to the overall asylum population in the UK. In 2014, a higher proportion of children received refugee status but the number of decisions was relatively very low. Indeed, the number of decisions made on children's cases falls well below the applications made in any period e.g. in 2015 the number of decisions made overall was equal to 89% of the number of asylum applications made. The equivalent figure for children's claims, where a decision was reached whilst the child was still under 18, was 51%.
6. This anomaly may be explained by the fact that decision makers working on children's claims are specially trained in working on these applications. However, the Refugee Council would recommend that the Home Office ensures that it has enough of these decision makers to ensure that unaccompanied children do not have to wait longer than their adult counterparts to receive a decision about their future. Indeed the Immigration Rules state that 'Unaccompanied children may also apply for asylum and, in view of their potential vulnerability, particular priority and care is to be given to the handling of their cases' (paragraph 350).

Policy and practice

7. In comparison to policy in some EU Member States, the UK has several notable positive elements. Specific guidance published for decision makers who will consider the applications for unaccompanied children addresses procedural safeguards and includes limited useful guidance on child specific persecution. Decision makers receive particular training on children's issues. Children enter the generic care system for children who have been assessed as in need of state support. The Immigration Rules reflect a commitment to refer children seeking asylum to legal representatives. The Legal Aid Agency has more generous funding arrangements for children's cases, including funding for legal reps to attend interviews with children. Children seeking asylum are referred to the aforementioned Children's Panel at the Refugee Council, funded by the UK Home Office.
8. In practice the situation is rather varied and the rise in numbers of unaccompanied children arriving seeking protection has resulted in some children missing out on some of the positive elements mentioned above. Given the fluidity of the situation, it is hard to evidence with numbers, but we are aware of many children (hundreds) with no named social worker and similar numbers who have not been able to access legal advice. This needs to be addressed as a matter of urgency. The asylum process should not begin until a child has had sufficient time to discuss and prepare their case with a legal representative. Additional problems faced by those not identified as children are outlined separately below.
9. Through our work supporting trafficked children, and the aforementioned research on local authority responses to them, we have a particular concern relating to this cohort of unaccompanied children. If children are not already in the care of the local authority we will refer them for protection and support. The response from some local authorities varies widely; many social workers do not have sufficient

understanding of the need to provide a protective placement immediately and many are more inclined to dispute a young person's age, or inappropriately refuse the referral on other grounds, leaving children at risk of further exploitation and inadequate support. Despite much attention by government in recent years, including the introduction of the Modern Slavery Act 2015, more work needs to be done across social care and the criminal justice system in particular, to make sure the response to such children is protection focused.

10. The UK does not provide independent guardians to all unaccompanied children. Legislation provides for this in Scotland and Northern Ireland and a successful project has provided guardianship support on a non statutory basis for unaccompanied children in Scotland since 2010. Whilst we acknowledge that the UK as a whole fulfils the definition in most EU directives i.e. *'an organisation responsible for the care and well-being of minors or by any other representation'* as a result of local authorities' duties towards them, the Refugee Council continues to call for an independent guardianship scheme for all unaccompanied children in the UK.
11. Significant evidence exists to suggest that decision makers on children's immigration claims, including asylum claims, do not engage sufficiently with the best interests of the child. Two research reports⁴ published in 2015 made similar observations and recommendations; there is currently no clear process for examining the best interests of unaccompanied children and each highlights the need for such processes to be rooted in a child centred approach.

Age assessment in the UK

12. The UK has consistently refrained from subjecting asylum seekers whose age cannot be verified by documentation to medical tests. This approach is to be commended, as all the available evidence shows that it is flawed. The UK government's preferred approach is to refer those whose age is considered 'doubtful' to local authority social services for a more holistic assessment.
13. However, there are problems with the treatment of those whose claimed age is disputed. The UK Home Office reserves the right to make an on the spot decision that an applicant claiming to be a child is in fact adult, on the basis that the applicant's appearance and/or demeanour **very strongly suggests that they are significantly over 18 years of age**⁵. The emphasis (bold and underlining) is welcome, but in the Refugee Council's view, is an insufficient safeguard against those who may be children being incorrectly designated adult and denied the safeguards that have been put in place for children.
14. The Refugee Council's work includes a specific project working with children deemed adult, some of whom have been subject to the policy outlined above. We refer those who we support to children's social services for an assessment; some of which result in the identification of the applicant as a child. The Refugee Council believes that anyone claiming to be a child should be referred to the local authority for a social work assessment; Immigration Officers and Border Force officials are not qualified to perform this task.
15. Local authority practices vary considerably and we regularly encounter children whose assessments have been conducted unfairly, unprofessionally and with little thought to the impact on the child. We welcome the publication of statutory guidance from government in 2014⁶; the first of its kind relating to this group

⁴ <http://www.lawcentres.org.uk/policy/news/news/keep-children-s-best-interests-at-heart-of-asylum-system-new-report>

<http://www.childrensociety.org.uk/what-we-do/resources-and-publications/not-just-a-temporary-fix-durable-solutions-for-separated>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257462/assessing-age.pdf

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf

of children. The Refugee Council was particularly pleased with the inclusion of a clear statement that *'Age assessments should not be a routine part of a local authority's assessment of unaccompanied or trafficked children'*.

16. The Refugee Council has been part of an initiative by the Association of Directors of Children's Services to bring together key agencies interested in age assessment policy and practice as the Age Assessment Strategic Oversight Group. Some improvements have been made to policy and practice; the agreement between local authorities and Home Office aiming to reduce and resolve disagreements and agree information sharing arrangements has been updated. Most significantly, new guidance has been drafted by professionals experienced in working in this area, aimed to assist social workers in the very difficult task of assessing the age of young asylum seekers⁷.

Family unity for unaccompanied children in the UK

17. Currently unaccompanied refugee children do not enjoy the right to reunite their existing family, including parents and/or siblings in the UK under the refugee family reunion policy. As a non signatory to the European Council Directive on Family Reunion the UK makes its own policy on this issue; it is very disappointing that they have failed thus far to acknowledge that in recognising unaccompanied children as refugees they are consigning them to be separated from their family permanently. How this is justified in moral and legal terms is astounding. Child refugees have been through the same determination process; the same definition of a refugee applies to children here alone. It is simply wrong to deny them the right, enshrined in international agreements, to be brought up with his or her family where possible. In these cases, it is the UK government's refugee family reunion policy that is making it not possible. This needs to change.
18. Children who are separated from family members across Europe fare better in policy terms through the Dublin III regulation. Both the preamble and the specific sections relating to unaccompanied children (Articles 6 and 8) emphasise the importance of family unity, the best interests of the child and children's rights. Reunifications under Article 8 should be reasonably straightforward and the European Parliament should be commended for taking such proactive measures to resolve the issue of family members who find themselves seeking protection in different Member States.
19. However, the UK government has failed to update its guidance to staff, more than two years since Dublin III was implemented. Screening procedures have not been amended to reflect the need to give people information about their rights to reunite and our anecdotal experience is of a culture that sees the Dublin regulation primarily as a tool to return asylum seekers to other signatory states.
20. The difficulty in implementing the family unity clauses of Dublin III may find its roots in part in the different ways in which unaccompanied children are received in different EU Member States. In addition to general variations in asylum systems and reception conditions, there are particular inconsistencies in the way unaccompanied children are advised, their best interests examined and the access they have to asylum processes.

Action by the European Union

21. Given the significant changes in the European picture since the last EU action plan, it seems timely to work on a new one. In addition to the significant rise in numbers of unaccompanied children seeking asylum, particularly in 2015, the measures taken to control movement and close borders and the fear for

⁷ <http://adcs.org.uk/safeguarding/article/ground-breaking-practice-guidance-on-age-assessment-published>

unaccompanied children who do not enter processes or go missing from them, attention should be paid to:

- Examining the reasons why children move on; in particular identifying those with good reason to seek onward movement in search of family members, or countries where they see their rights will be recognised and safety afforded to them.
- Summarising research, pilots and recommendations made through EU funded projects on unaccompanied children, distilling and sharing good practice across member states.
- Making the plan protection focused; whilst the priority of the EU's policy making, as well as individual member states, remains that of protecting borders over people, the rights of unaccompanied children and their best interests will remain a vague hope rather than a realisable goal.

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