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House of Commons
Joint Committee on Human
Rights

Human Rights of unaccompanied migrant children and young people in the UK

First Report of Session 2013–14

Report, together with formal minutes

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

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Summary

Unaccompanied migrant children are those who arrive in the United Kingdom separated from their parents and other relatives, and who are not being cared for by an adult with a legal or customary responsibility for doing so. In 2012 around 1,200 such children sought asylum in the UK, and around 2,150 unaccompanied migrant children were being cared for by local authorities.

These children are entitled to protection under domestic legislation and international agreements, the most universally accepted of which is the UN Convention on the Rights of the Child (UNCRC). Providing protection and support effectively is crucial: the asylum and immigration process can be complex, and the stress it can cause can be particularly acute for children. In this Report we examine how effectively support is provided at present, and how it could be provided more effectively in the future.

Bringing best interests to the fore

The best interests of unaccompanied migrant children must be at the heart of all asylum and immigration processes affecting them. However we find that immigration concerns are too often given priority instead. We call for change to shift the emphasis accordingly.

Leadership from the Government

We welcome the Government's pledge to give greater consideration to the UNCRC, but call for more concerted efforts to put the best interests of children and young people at the heart of policymaking. We urge the Government to ensure that all those working with unaccompanied migrant children are given clear guidance about the importance of these best interests, and that it evaluate whether more formal processes are required to properly determine best interests in cases involving unaccompanied migrant children. We also call for the establishment of a clear strategy for coherent joint working within the Government, and for the UNCRC to be used as a yardstick by which to judge departmental performance.

We urge the Government to examine whether there should be a greater role for the Department for Education (DfE), as the department responsible for safeguarding children and young people, in overseeing the support of unaccompanied migrant children. We recommend in that regard that the DfE should be given responsibility for administering grant funding to local authorities for the care of unaccompanied migrant children, as a clear signal that best interests should be given priority in its distribution.

The asylum and immigration process

Best interests should also be a focus throughout the asylum and immigration process. However, we find that there is too little emphasis on the needs of children and of the need to tailor processes to their age and background. This manifests itself when screening children at the outset and when gathering information about their asylum claims, and we call on the Government to make clear to staff the importance of supporting children throughout their time in the UK. More broadly, we call on the Government to develop and deliver a training programme designed to improve awareness and understanding among safeguarding and

immigration staff of the UNCRC, particularly with respect to best interests.

It is also important to identify unaccompanied migrant children and to provide support appropriate to their age and situation. We find that there is an unwelcome “culture of disbelief” in assessing the age of those claiming to be unaccompanied migrant children, with too little multi-agency input in the process of doing so. We consider improvements in this area to be of paramount concern. We urge the Government to produce robust data on the number of cases in which age is disputed to inform public debate. We also recommend the development of clear statutory guidelines which make clear that children should more often be given the benefit of the doubt in a more collaborative age assessment process, and that x-ray examinations should play no part in assessing age.

Some of those children who arrive in the UK have been trafficked, and those children must be quickly identified and supported. We are concerned by evidence that the framework for doing so, the National Referral Mechanism (NRM), is identifying too few cases of trafficking and is failing prevent children being brought within the criminal justice system as perpetrators rather than victims. The framework should be reviewed independently, with robust statistics produced on its operation to inform public scrutiny. We also call for sole responsibility for the NRM to be transferred to the UK Human Trafficking Centre, to give a greater perception of its independence from the immigration authorities. Finally, we conclude that there must be more awareness of the NRM, driven by targeted materials and training for those in the safeguarding workforce, the police and the Crown Prosecution Service.

Making decisions about the futures of unaccompanied migrant children

We must also make sure that when decisions are made about the future of unaccompanied migrant children, it is with their best interests in mind. We are not convinced that this is the case at present. Discretionary leave to remain is used too readily at the expense of properly considering other options, such as asylum, which hinders access to further education and to the labour market in adulthood. The Government should ensure that all unaccompanied migrant children have asylum claims evaluated fully, have decisions made about their future on robust evidence as early as possible, and are able to appeal decisions that are made regardless of their leave period. We urge the Government to establish a pilot tribunal that can take on decision-making in a small number of cases, in order to evaluate whether the decision-making framework requires fundamental reform.

There is also an insufficient focus on welfare when making decisions about whether to return children to their country of origin or third countries. The Government should affirm that it will not participate in any programme that would return children to countries such as Afghanistan or Iraq where there are ongoing conflict or humanitarian concerns.

Supporting unaccompanied migrant children

Support structures

In keeping best interests in mind, we must provide a strong support network to help children navigate the asylum and immigration processes. Local authorities play an essential and invaluable role in providing that framework, but support is too inconsistent across the country. This is especially so during the transition to adulthood, where resource constraints,

uncertainties about the applicable legal framework and a lack of specialist expertise all hinder the support services provided.

The Government should take clear action to remedy these issues. It should build up a clear picture of where good practice is located, and use that knowledge to develop centres of excellence that can spread that practice more widely. It should also ensure that the grant funding it provides to local authorities to support unaccompanied migrant children covers the full costs of their care. Finally, it should ensure that there is a clear and well-understood legal framework in place to provide support for children during the transition into adulthood, even where their appeal rights are exhausted.

Such support includes providing for children's educational needs. However, in our evidence we saw concerning accounts of the educational provision on offer, and dissatisfaction that children were being hindered in their access to higher education by funding arrangements. The Government must affirm its commitment to ensure equal access to education, regardless of immigration status.

Specialist advice and advocacy

Unaccompanied migrant children also require specialist support, including legal advice. However, we are concerned by evidence that it can be difficult for children to get access to good quality legal advice, particularly outside London, and are concerned that changes to the legal aid regime could exacerbate the situation. We urge the Government to conduct an immediate assessment of legally-aided asylum and immigration legal services in England and Wales, to identify and remedy issues in their provision, and to give serious consideration to the cost-benefit case of bringing all cases involving unaccompanied migrant children into the scope of legal aid.

There may also be a role for other individuals to advocate the best interests of unaccompanied migrant children. We are persuaded that providing children with a guardian could support children more effectively in navigating asylum, immigration and support structures and help them to have their voices heard. We therefore support establishing pilot programmes in England and Wales to examine the case for guardianship in more depth.

1 Introduction

1. This Report examines the provision made in the United Kingdom for unaccompanied migrant children: those who arrive in the United Kingdom who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

SCOPE OF THE INQUIRY

2. The inquiry focused in particular on unaccompanied children who enter the asylum system in the United Kingdom. In 2012, around 1,200 unaccompanied migrant children sought asylum in the United Kingdom—about 5% of the nearly 22,000 applications lodged in that year.¹ Most of those who arrive unaccompanied will be taken into the care of local authorities as looked after children. As of 31 March 2012, there were 2,150 such children in local authority care in England—3% of the total number of looked after children. Of these, 550 were under the age of 16.²

3. Our report distinguishes unaccompanied asylum-seeking children from those children who are separated from their parents or primary care-giver, but who may nevertheless be accompanied by extended family members or other adults, and those who are within the asylum and immigration process as part of a family group. However, where possible we intend our recommendations to apply more widely, to ensure that the best interests of all children are properly considered.

4. It should be noted that while immigration policy is a reserved matter, responsibility for the care and support of unaccompanied children rests with the devolved administrations. This Report directs itself to matters about which it can make recommendations to the Government, recognising the remit of the devolved assemblies to hold their respective administrations to account in; the recommendations are framed accordingly. Nevertheless, we draw upon relevant evidence and examples from the whole of the United Kingdom.

THE HUMAN RIGHTS FRAMEWORK

5. Unaccompanied migrant children are entitled to protection under a broad range of international instruments including the UN Convention on the Rights of the Child (“UNCRC”), the European Convention on Human Rights and the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol.

6. The UNCRC is the most universally accepted of these instruments and the most comprehensive in its promotion of children’s rights, informing other human rights standards through a framework of state responsibilities applicable to all children within signatory states’ jurisdictions.

1 Home Office, *Immigration Statistics: October–December 2012*, February 2013: <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2012/immigration-statistics-october-to-december-2012#asylum-part-2-appeals-unaccompanied-asylum-seeking-children-age-disputes-and-dependants>

2 Supplementary submission from HM Government

7. Although not directly incorporated into domestic law, the principles of the UNCRC guide domestic law and practice, and are often referred to by the courts when interpreting obligations imposed by human rights and other legislation. Since November 2008, when the United Kingdom removed a reservation to allow it not to apply the Convention to decisions concerning children and young people subject to immigration control, the Government has accepted that all children, irrespective of their immigration status, must enjoy all the rights and protections of the UNCRC without discrimination, as specified under Article 2 of the Convention.

8. The Government has also made clear its commitment to improving consideration of the UNCRC in policy and decision-making. Since December 2010, the Government has been committed to ensuring that all new laws and Government policies are compatible with the Articles of the UNCRC.³ In an evidence session with this Committee in April 2012, the then Minister of State for Children and Families told the Committee that efforts were being made to embed that commitment across Whitehall.⁴

9. This Report makes reference throughout to those Articles of the Convention that most directly pertain to the matters we address. Some of the most relevant are set out in Box 1.

3 HC Deb 6 Dec 2010, Col 7WS

4 Oral evidence to the Joint Committee on Human Rights on the role and independence of the Office of the Children's Commissioner for England, April 2012: http://www.parliament.uk/documents/joint-committees/human-rights/Transcript_24_April_2012_%5bUncorrected%5d.pdf

Box 1: UNCRC Articles

Article 1 (Definition of the child): A 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood to be younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

Article 2 (Non-discrimination): The Convention applies to all children without discrimination. No child should be treated unfairly on any basis.

Article 3 (Best interests of the child): The best interests of children must be a primary concern in making decisions that may affect them. All relevant adults should do what is best for children. When decisions are made, the impact on the child must be considered. This particularly applies to budgetary authorities, policymakers and legislators.

Article 4 (Protection of rights): Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled. This includes assessing domestic legislation and practice to ensure that the minimum standards set by the Convention are being met. Article 41 of the Convention points out the when a country already has higher legal standards than those seen in the Convention, the higher standards always prevail.

Article 12 (Respect for the views of the child): A child capable of forming his or her own views will be given the right to express those views freely in all matters affecting the child, with those views being given due weight in accordance with their age and maturity. In particular, a child will be provided with the opportunity to be heard in any judicial or administrative proceedings affecting them, either directly, or through representatives.

Article 19 (Protection from all forms of violence): Children have the right to be protected from being hurt or mistreated, physically or mentally.

Article 20 (Children deprived of family environment): Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language.

Article 27 (Standards of living): Children have the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 28 (Right to education): Children have the right to free primary education. Secondary education should be available to every child, and higher education should be accessible on the basis of capacity by every appropriate means.

Article 29 (Goals of education): Children's education should develop each child's personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people. It should also develop respect for the child's parents and for their cultural identity and values.

Article 39 (Rehabilitation of child victims): Children who have been neglected, abused or exploited should receive special help to recover and reintegrate into society. Particular attention should be paid to restoring the health, self-respect and dignity of the child.

10. To assist in the interpretation of the rights under the Convention, the UN Committee on the Rights of the Child, a body of independent experts which monitors implementation of the UNCRC, issues documents known as General Comments. In the context of unaccompanied and separated children, assistance is provided in particular by General

Comments No. 6. This further outlines the principles applicable when UNCRC rights are engaged. In short, it sets out the importance of children being properly represented, cared for and supported throughout the immigration process, with their interests considered at the heart of all decision-making.

11. In addition to the international framework for addressing the needs of unaccompanied migrant children, there are various duties imposed by domestic legislation through the Children Acts 1989 and 2004, the Children (Northern Ireland) Order 1995, the Children (Scotland) Act 1995, the Rights of Children and Young Persons (Wales) Measure 2011, the Children (Leaving Care) Act 2000, and Section 55 of the Borders, Citizenship and Immigration Act 2009. The last of these provisions places a duty on the Secretary of State and the immigration authorities to discharge all immigration functions while having regard to the need to safeguard and promote the welfare of children in the United Kingdom, mirroring the safeguarding duties on other agencies and ensuring that all relevant public bodies are covered by such a duty.

12. We have held these human rights principles at the forefront of our deliberations and we examine the provisions made for unaccompanied migrant children in the light of them. In doing so, we seek to provide recommendations to ensure that these rights are effectively implemented and upheld, particularly where there may be tension between safeguarding and other imperatives, such as in discharging immigration functions.

13. We are grateful to those who submitted oral and written evidence to the inquiry. We received oral evidence in November and December 2012 from non-governmental organisations, the United Kingdom Children's Commissioners, immigration law practitioners and the chair of the Project Advisory Group for the Scottish Guardianship Service. We also heard evidence in January 2013 from local authority representatives, voluntary sector organisations and an academic researcher working in the field. We wish to express our gratitude in particular for the work of Professor Heaven Crawley of Swansea University and Professor Ravi KS Kohli of the University of Bedfordshire, the Specialist Advisers to the inquiry.

14. We also received evidence in February 2013 from Mark Harper MP, the Minister of State for Immigration at the Home Office. We thank the Minister for his contribution, though we note that we were not given permission to hear oral evidence from immigration authority officials.⁵ The Committee's deliberations would have benefited from this evidence, and we regret that assistance in obtaining it was not forthcoming.

STRUCTURE OF THE REPORT

15. The Report first outlines the most effective means by which to focus on the best interests of children, the central theme of the report and the touchstone for our recommendations. Having established this focus, we then discuss suitable mechanisms with which to uphold children's rights and best interests in policymaking and practice.

16. The Report then considers how well asylum and immigration processes protect those unaccompanied migrant children who are subject to them. This includes how information

⁵ Letter from the Chair to the Rt Hon Theresa May MP, Secretary of State for the Home Office, 26 November 2012: http://www.parliament.uk/documents/joint-committees/human-rights/Letter_to_T_May_26_Nov.pdf

is gathered to evaluate claims by unaccompanied migrant children, as well as how decisions are made about their future, including when children are returned to their country of origin or to third countries. It also examines mechanisms established to protect those unaccompanied children who have been trafficked, and to assess the age of unaccompanied young people where it is disputed.

17. Finally, the Report examines the support structures in place for unaccompanied migrant children during these often complex processes. It starts by considering the case for a system of guardianship. It then examines how local authorities discharge their support responsibilities to unaccompanied migrant children, including in relation to educational needs. It concludes by assessing the specialist legal support available to unaccompanied migrant children.

2 The best interests of children

18. One of the core principles of the UNCRC is that the best interests of children should be properly considered. Article 3 of the Convention requires that ‘in all actions concerning children and young people, whether taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’.

19. The concept is developed further in the work of the UN Committee on the Rights of the Child. General Comment No. 5 calls for the systematic consideration of the interests of children in relation to all decisions and actions that affect them.⁶ General Comment No 6 stresses the importance of a proper determination of the best interests of a child in order to guide decisions that “fundamentally impact on the unaccompanied or separated child’s life”.⁷ We also note in this respect that the UN Committee is soon to publish General Comment No. 14, which will provide further guidance on the best interests principle.

20. The importance of giving due consideration to the needs of the child is also set out in domestic legislation. As we noted in our introduction, relevant public authorities are under legal obligations to safeguard children and promote their welfare under both Section 11 of the Children Act 2004 and Section 55 of the Borders, Citizenship and Immigration Act 2009.

21. It is clear from these sources that the best interests of a child must be at the forefront of the minds of all those making decisions regarding the welfare of unaccompanied migrant children during the asylum and immigration process. This was made clear by the Supreme Court in the case of *ZH Tanzania v Secretary of State for the Home Department*.⁸ Lord Kerr of Tonaghmore indicated that a child’s best interest “is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them [...] the primacy of this consideration needs to be made clear in emphatic terms.”⁹

22. The Government stated in its written evidence that it took the responsibility to uphold best interests “very seriously” throughout the asylum and immigration process, starting with proper consideration of any asylum or humanitarian protection claims made. If refused, the next steps were considered in the light of an assessment of the child’s best interests, with the child playing a “central role” in the process. According to the Government, best interests are assessed based upon available evidence, balancing the likely conditions the child is likely to face upon return and the child’s experiences in the United Kingdom against “other relevant considerations”. It noted such decisions were made in line

6 UN Committee on the Rights of the Child, General Comment No. 5, *General measures of implementation of the Convention on the Rights of the Child*, 2003

7 UN Committee on the Rights of the Child, General Comment No. 6, *Treatment of unaccompanied and separated children outside their country of origin*, 2005.

8 [2011] UKSC 4

9 *Ibid*, paragraph 46

with the UNCRC and domestic obligations, and highlighted that children were given access to support and representation during the process.¹⁰

23. Despite this, a significant number of organisations questioned whether the best interests of unaccompanied children were in fact being systematically assessed and upheld throughout the asylum and immigration process.¹¹ Sarah-Jane Savage, Senior Protection Associate at the UN High Commissioner for Refugees (UNHCR), did not consider that best interests were being considered “as well as they could be”.¹² The Refugee Children’s Consortium was concerned that best interests were considered only as part of a *pro forma* exercise, rather than in a substantive determination.¹³

24. Many of those who gave evidence considered that problems in assessing best interests arose because immigration concerns too often took priority.¹⁴ The UNHCR said that “the current practice of the UK is only to consider the best interests through an immigration prism, rather than as a process where the decision maker is required to weigh and balance all the relevant factors of a child’s case”¹⁵ The Coram Children’s Legal Centre noted that, despite clear legislation, guidance and case law, “asylum-seeking and migrant children’s rights remain subsidiary to the government’s restrictive interpretation that the public interest rests solely in maintaining effective immigration control.”¹⁶ Dr Maggie Atkinson, the Children’s Commissioner for England, accepted that “the law is there” to enable best interests to be considered, but questioned “whether or not it is actually implemented”.¹⁷ Reflecting this concern, Keith Towler, the Children’s Commissioner for Wales, wanted to ensure that the focus was on “practical implementation that is followed up by inspection and monitoring.”¹⁸

25. By contrast the Coram Children’s Legal Centre wanted to see a root-and-branch review of how best interests are considered, to drive forward fundamental change.¹⁹ To that end, Helen Johnson, Operations Manager of the Children’s Section at the Refugee Council, considered it inappropriate that immigration authorities were making determinations in this sphere, and argued for a child’s best interests to be determined by independent child professionals.²⁰ Yesim Devici, Director of the Dost Centre for Young Refugees and Migrants (Dost), agreed that a “holistic needs-assessment process” was needed.²¹ Dragan Nastic, Domestic Policy and Research Officer at UNICEF UK, pointed to the multi-

10 HM Government

11 Refugee Children’s Consortium, Children’s Society, Refugee Council, Barnardo’s, Charlotte Nuboer-Cope, Royal Holloway and Tavistock Centre (Sue Clayton, Anna Gupta, Jessica Walsh and Gillian Hughes), Coram Children’s Legal Centre, Centre on Migration Policy and Society at Oxford University (COMPAS)

12 Q9

13 Refugee Children’s Consortium. See also Migrant Legal Project, Immigration Law Practitioners Association (ILPA)

14 ILPA, Refugee Children’s Consortium, Children’s Society, Barnardo’s, COMPAS, Coram Children’s Legal Centre, ECPAT, UNICEF, NSPCC, Q52 (Dost)

15 UNHCR

16 Coram Children’s Legal Centre. See also NSPCC

17 Q29

18 Q29

19 Coram Children’s Legal Centre

20 Q9. See also Dr Christine Mounge, Q14 (UNHCR)

21 Q55

disciplinary approach in Finland as a best practice example of how such a system could be constructed effectively.²²

26. The UNHCR thought that the adjudication of best interests in fact required a formal procedure: a Best Interests Determination (BID).²³ It said that the existing process was insufficiently systematic and that this had negative consequences for decision-making. The UNHCR considered that a BID, with procedural safeguards and formal representation for children, and involving a wide range of decision-makers, would lead to more sustainable solutions; it is producing guidance to flesh out the concept. The UK Children’s Commissioners, who supported the establishment of a formal process, urged the Government to pay heed to that guidance when it arrived. They were especially keen for a wider range of expertise to be employed when decisions were made.²⁴

27. Mark Harper MP, the Minister for Immigration, did not consider that there were any systemic issues negatively affecting the present process. He noted that those involved—including local authorities, independent advocates and legal representatives—had not identified any major issues.²⁵ Indeed, he thought that the fact that leave was routinely granted until the cusp of adulthood for those children not granted asylum or humanitarian protection (see paragraph 108) “demonstrates that we put their best interests first, as that is not what we do with adults. I do not quite know what it is that we are not doing that people think we would be doing if, in their view, we were putting the interests of the child first.”²⁶ As to a BID, the Government was wary of the potential administrative impact, stating that “any guidance must complement [the UK’s] established processes”, and not add “unnecessary delays and costs into the system”.²⁷

28. On the balance of evidence we received, we are not persuaded that best interests are being considered adequately at present. Immigration concerns are too often being given too much weight, which must change. Forthcoming guidance on best interests from the UN Committee on the Rights of the Child and from the UNHCR in relation to Best Interests Determinations, will provide timely opportunities to properly assess the framework in this regard.

29. The UN Committee on the Rights of the Child has long called for States to ensure that best interests are a primary objective of decision-making. One way to achieve this might be via a formal Best Interests Determination, and it may be that such a process is necessary. However, we should only put children through additional bureaucratic processes where this improves the support they receive, and the quality of decisions that are made. It might be a better course to work to improve the existing system. We accordingly urge the Government to evaluate the case for a BID in the United Kingdom, in consultation with the devolved administrations. We would support any system that puts the best interests of children at its heart and which draws upon all appropriate expertise to do so.

22 Q22

23 UNHCR. See also UNICEF.

24 UKCC

25 Q88

26 Q90

27 HMG supplementary submission

30. In the meantime, the Government must ensure that it receives expert advice on how to ensure that those who interact with, and make decisions about, unaccompanied migrant children properly take their best interests into consideration. This advice should be provided independently.

31. We recommend that the Government's guidance to those safeguarding and making decisions about the future of unaccompanied migrant children should reassert the primary need to uphold the welfare and wellbeing of those children throughout their time in the United Kingdom, and to consider properly their best interests during the asylum and immigration process. Guidance should also call for consultation and cooperation with external experts who are able to provide assistance.

32. We recommend that the Government establish an independent advisory group, composed of experts from voluntary organisations, academia and practice, to provide guidance to Ministers about how to consider the best interests of unaccompanied migrant children most effectively. Its framework for scrutiny should be based on the UNCRC and applicable domestic duties, to ensure that the group's work is child-focused.

33. Finally, we recommend that the Government should evaluate the case for the establishment of a formal Best Interests Determination process. This evaluation should analyse the potential benefits of a new and formal process against the alternative of seeking to make improvements to the existing decision-making model. We would be content with either model, provided that the result is a system that brings the best interests of unaccompanied migrant children to the fore.

3 Upholding the rights of unaccompanied migrant children

SAFEGUARDING RESPONSIBILITIES WITHIN GOVERNMENT

34. For children’s best interests to be properly considered, the concept must be at the heart of the Government’s work when formulating policy and overseeing its implementation. Under the UNCRC and domestic legislation, the United Kingdom is obliged to identify, protect and assist unaccompanied migrant children. This responsibility spans a number of departments. The Department for Education is responsible for safeguarding, education and upholding UNCRC rights for all children regardless of their status. This means that it is responsible for overseeing many of the support structures that children would enter into, including foster care, schools and social care.

35. By virtue of their status, unaccompanied migrant children also interact with the asylum and immigration system, the administration of which is the responsibility of the Home Office. The UK Border Agency administered the system as an executive agency until April 2013, when its agency status was revoked and immigration services, visa services and immigration law enforcement were brought within the Home Office.²⁸

36. As children navigate the asylum and immigration process, or wish to challenge support entitlements, specialist legal representation may be required, engaging the work of the Ministry of Justice. Where a child has been trafficked, they may also come into contact with the UK Human Trafficking Centre, a multi-agency body led by the Serious Organised Crime Agency. Finally, unaccompanied children who arrive in the UK and require support are looked after by local authorities, by virtue of duties to care for children in their area.

37. Given the range and variety of actors involved, it is essential that work is coherent and connected. The Government acknowledged in its evidence that joint working was crucial to safeguarding the welfare of children.²⁹ However, witnesses expressed concern about a lack of joined-up working and called for more consultation and cooperation between departments.³⁰ Particular issues were noted with respect to higher education access (see para 218),³¹ legal aid funding (see para 222)³² and the protection of trafficked children (see para 125).³³

38. Some said that immigration authorities were overly dominant in decision-making.³⁴ Kent County Council thought that the “tension between immigration and childcare

28 Oral statement by the Home Secretary to the House of Commons on the future of UK Border Agency, 26 March 2013, HC Deb 26 March 2013–columns 1500–1510

29 HM Government

30 Refugee Children’s Consortium, Rosemary Demin, Children and Families Across Borders (CFAB), Children’s Society, Office of the Children’s Commissioner for England, Scottish Refugee Council, COMPAS, ILPA, NSPCC, Refugee Council, Dr Christine Mounge. Q9 (UNHCR), Q51 (BAAF, Praxis), Q38 (Northern Ireland Commissioner for Children and Young People)

31 ILPA, Children’s Society, Refugee Children’s Consortium, Refugee Council

32 Q5

33 ECPAT

34 Office of the Children’s Commissioner for England, Welsh Refugee Council, ILPA

legislation has led to a disjointed approach”, with a “perceived lack of clarity in relation to who is driving practice and decision-making”.³⁵ A number of witnesses therefore wanted to see more clarity of approach. UNICEF UK noted that “in reality there is no strategy or action plan ensuring a joined-up approach”.³⁶ The NSPCC suggested that there should be firmer guidance provided to ensure consistency and minimise arbitrary variations in local practices.³⁷ The Welsh Refugee Council wanted to see a greater commitment to ensuring that devolved competencies, such as education and support services, were properly respected.³⁸

39. To facilitate greater coherence and a greater focus on the best interests of children, many witnesses called for the Department for Education to take on responsibility as the “lead department” for unaccompanied migrant children.³⁹ The Children’s Society thought that to do so would “facilitate the development of more effective, child-centred policy”.⁴⁰ Andrew Ireland, Corporate Director for Families and Social Care at Kent County Council, and Janet Patrick, Strategic Adviser for Unaccompanied Minors at Croydon Council, both agreed that a single lead department would allow for greater clarity, co-ordination and standardisation of care.⁴¹ Barnardo’s said that such a shift would make clear the primacy of safeguarding children over immigration concerns.⁴² The Law Centre (Northern Ireland) supported the idea of a lead department, but thought that the responsibility should be devolved to the relevant safeguarding departments in devolved regions.⁴³

40. Others felt that the situation had to be more flexible given the varied issues affecting unaccompanied migrant children. John Simmonds, Director of Policy, Research and Development at the British Association for Adoption and Fostering (BAAF), thought that it was legitimate for different departments to lead in different areas, but urged them to work closely together.⁴⁴ The Immigration Law Practitioners’ Association (ILPA) wanted to ensure that the lead department for any issue mirrored the department responsible for children more generally.⁴⁵

41. The Government maintained that the present arrangements were sufficient. It said that it would be “unrealistic” to bring oversight of the UNCRC, child welfare and immigration policy under one department. The Minister said that “because of the issues and their complexity, the idea that you can brigade all the responsibilities in one government

35 Kent County Council

36 Q2

37 NSPCC

38 Welsh Refugee Council. See also Scottish Refugee Council, British Association for Social Workers (BASW), Refugee Children’s Consortium

39 Rosemary Demin, Alan Morice, CFAB, Children’s Society, Refugee Children’s Consortium, ECPAT, Royal College of Paediatrics and Child Health (RCPCH), COMPAS, NSPCC, Kent County Council, Refugee Council, Office of the Children’s Commissioner for England, Coram Children’s Legal Centre. Q2 (Children’s Society, Refugee Council), Q51 (Jim Wade, Dost and Praxis), Q65 (Association of Directors of Children’s Services).

40 Children’s Society. See also Refugee Children’s Consortium

41 Q66. See also Q66 (ADCS)

42 Barnardo’s. See also Kent County Council, ECPAT, Children’s Society, Refugee Children’s Consortium

43 Law Centre (Northern Ireland). See also Scottish Refugee Council

44 Q51. See also Dr Christine Mounge, Salusburty World

45 ILPA

department is not practical”.⁴⁶ The Government said instead that “the most important factor is the effectiveness of joint working”. It insisted that there was already close working between immigration authorities, Local Safeguarding Children Boards, local authorities, devolved administrations and civil society, and that the focus should be on outcomes rather than process.⁴⁷

42. However responsibility is arranged, policymakers must ensure that the focus is on the welfare of children, rather than just on immigration concerns. The evidence that we received raised serious doubts as to how effectively the present framework ensures that focus. While we see the merits in principle of establishing a clear “lead department”, we agree with the Government that to do so may cause difficulties in practice. It is right that the Home Office, for instance, takes responsibility for the integrity of the asylum and immigration policy as a whole, and adding oversight from another department may complicate more than it clarifies.

43. At the same time, the present allocation of responsibility is not always defensible. There should be a clear assessment to determine where safeguarding responsibilities should lie. Such an assessment is especially important in the light of the reform of the UK’s immigration authorities, during which it was not made clear to which directorate responsibility for unaccompanied migrant children was entrusted. Although the Government insisted that the changes to the immigration authorities would not affect the care provided to unaccompanied migrant children,⁴⁸ we remain concerned at their lack of prominence in the debate around reform. It is therefore proper to examine where responsibilities are most appropriately placed to ensure that the children’s best interests are properly considered.

44. We recommend that the Government evaluate where responsibility for areas of policy concerning unaccompanied migrant children should best lie, to establish whether some policy areas would be more appropriately overseen by those responsible for safeguarding the welfare of unaccompanied migrant children. The Government should then transfer responsibility and funding accordingly.

45. One area where it would be appropriate to transfer responsibility would be in the administration of grant funding to local authorities for the care of unaccompanied migrant children (see also paragraph 211). This should be wholly the responsibility of the Department of Education, to demonstrate that such funding is given in order to protect the wellbeing of children. A transfer of responsibilities would also be suitable should the Government follow our recommendation regarding the future role of the UK Human Trafficking Centre in the National Referral Mechanism (see paragraph 141).

46. Regardless of how policy responsibilities are organised, effective joint working is crucial. We are struck by the lack of a clear strategy to establish joint working protocols and coherent thinking. We were impressed in this regard by two pieces of work: the Scottish Government’s *Do the Right Thing* action plan, which outlines clear service

46 Q83

47 HM Government, See also Q83 (Mark Harper MP)

48 Letter from Mark Harper MP, Minister for Immigration, to the Chair, 15 April 2013: http://www.parliament.uk/documents/joint-committees/human-rights/M_Harper_letter_150413.pdf

protocols, including work with voluntary bodies;⁴⁹ and the development of service standards for separated children by the Department of Health, Social Services and Public Safety in Northern Ireland.⁵⁰ We support similar efforts here, building on the recent revised *Working Together to Safeguard Children* statutory guidance, which is in the process of being revised.⁵¹ A strategy which puts unaccompanied migrant children's welfare first, and which is coordinated accordingly, could realise the benefits suggested by the establishment of a lead department and encourage a stronger culture of joint working.

47. The Government should develop a strategy document for dealing with unaccompanied migrant children which outlines clear lines of responsibility and detailed service standards in relation to the protection, health and development of children, as well as long-term care planning in their best interests. The Department for Education should be tasked with co-ordinating the development and continuing oversight of the strategy, and appointing a national lead for its implementation.

IMPROVING THE CONSIDERATION OF CHILDREN'S RIGHTS

48. Any structure that puts children's best interests at its heart must give proper consideration to the United Kingdom's international obligations. In the context of unaccompanied migrant children, this is particularly important in relation to the UNCRC.

Decision-making and practice

49. There were widespread concerns about the extent to which the UNCRC was being effectively incorporated into decision-making and practice relating to unaccompanied migrant children. UNICEF noted that, although Cabinet Office guidelines on making legislation stressed the importance of considering the UNCRC,⁵² more needed to be done to improve how effective children's rights were being considered.⁵³ The Children's Society, while welcoming the intention to give proper consideration to the UNCRC, said that it "continues to see unaccompanied children's rights compromised in favour of tighter immigration control and budgetary constraints".⁵⁴ A number of witnesses queried the effect of the Section 55 duty on immigration authority practice;⁵⁵ the UNHCR noted the "lag" between relevant guidance being updated and its implementation.⁵⁶

50. Some linked these issues to a lack of familiarity with the UNCRC and children's rights among staff dealing with unaccompanied migrant children, in particular with respect to

49 Scottish Government. *Do the Right Thing—a progress report on our response to the 2008 concluding observations from the UN Committee on the Rights of the Child 2012*: See <http://www.scotland.gov.uk/Publications/2012/05/3593>.

50 Law Centre (Northern Ireland)

51 HM Government *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*, March 2013: <http://media.education.gov.uk/assets/files/pdf/w/working%20together.pdf>

52 Cabinet Office, *Guide to Making Legislation*, April 2013, para 11.30: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185961/Guide_to_Making_Legislation_April_2013_1.2.pdf

53 Q7

54 The Children's Society. See also Barnardo's, Coram Children's Legal Centre, ILPA

55 Office of the Children's Commissioner for England, NSPCC

56 UNHCR, COMPAS

the question of best interests.⁵⁷ The UNHCR noted that staff felt that “the guidance and the training they get on assessing best interests does not help them to do it properly, and they are taking instructions from the courts at this stage”.⁵⁸ UNICEF UK and the Refugee Council both pointed to “huge gaps” in “limited” staff training on child rights.⁵⁹ The Office of the Children’s Commissioner for England said it was unaware of General Comment No. 6 being considered in any immigration or local authority guidance.⁶⁰ It therefore called for more training and awareness-raising about children’s rights among those dealing with unaccompanied migrant children, a call echoed elsewhere.⁶¹ The Children’s Commissioner for Wales highlighted in particular the need for more training in local authorities, especially where staff dealt with unaccompanied children on a less regular basis.⁶²

51. In response to criticisms about training and awareness, the Government pointed out that 13,000 members of immigration authority staff had been trained to date on “safeguarding and Section 55 issues”, with a further 5,000 taking up the option of further training modules where dealing with unaccompanied migrant children more regularly. It also highlighted the network of 40 safeguarding co-ordinators based within the immigration authorities that aimed to raise awareness of best practice. These initiatives, it argued, had led to better engagement by staff, more scrutiny of welfare arrangements, and a stronger emphasis on joint working. Local authorities also insisted that there were strong training networks for local authority staff, even in areas where there were fewer unaccompanied migrant children, citing in particular the London Asylum Consortium and its training co-ordination work.⁶³

52. It is imperative that the UNCRC operates as a touchstone for all those dealing with unaccompanied migrant children, and the Government has made clear strides to ensure that this is the case. However, we do not consider that due consideration of the Convention is sufficiently embedded among those developing policy and practice in relation to unaccompanied migrant children. The devolved administrations have shown a far greater commitment to embedding the Convention in this way, and we urge the Government to follow suit.

53. There should be a concerted effort made to train those in the safeguarding workforce about children’s rights. We see particular value in developing a model with the UNCRC at its core, which could be tailored to the safeguarding environment in which it would be used. This should be delivered by independent providers. The training would ideally be accompanied by guidance from the Children’s Commissioner for England to promote understanding of the UNCRC, and its application to unaccompanied migrant children,

57 NSPCC, COMPAS, UNHCR, ILPA, Barnardo’s, Office of the Children’s Commissioner for England, Coram Children’s Legal Centre, Refugee Action

58 Q9

59 Q7. See also Refugee Action

60 Office of the Children’s Commissioner for England. General Comment No. 6 provides States with guidance on the protection, care and proper treatment of unaccompanied children

61 Office of the Children’s Commissioner for England. See also ILPA, CFAB, Barnardo’s, Dr Christine Mounge, No Recourse to Public Funds Network, NSPCC, Coram Children’s Legal Centre, RCPCH, Klevis Kola Foundation, Royal Holloway and Tavistock Centre, Unseen, BASW, Refugee Action, UK Children’s Commissioner, Q7 (UNICEF), Q35 (Children’s Commissioner for England)

62 Q38

63 Q71

among practitioners. This would be timely in the light of proposed reforms to the Office of the Children’s Commissioner for England in the Children and Families Bill which would put the UNCRC at the heart of the Commissioner’s functions.

54. The effectiveness of efforts to safeguard unaccompanied children’s rights should be overseen more comprehensively. Within the immigration authority there is a “Children’s Champion” for this purpose, though the Office of the Children’s Commissioner for England noted that the post has not been evaluated publicly.⁶⁴ We also note with regret that the Minister, without due explanation, did not allow the Children’s Champion to appear before this Committee. As a result, the effectiveness of the post remains unclear. It should serve as a check and balance within the immigration authority to ensure that all relevant obligations are met.

55. We also consider that there should be more independent oversight of safeguarding across the Government as a whole. We see a clear role for the Office of the Children’s Commissioner for England in this respect, and welcome the provisions in the Children and Families Bill to that effect.⁶⁵

56. We recommend that the Government work with child welfare and safeguarding experts to develop a specific training programme to improve awareness and understanding of the UNCRC and its application to unaccompanied migrant children, particularly with respect to properly considering children’s best interests. Such a programme, delivered by external providers, should be rolled out first to staff in frontline immigration and asylum roles, and to those in local authorities that deal regularly with unaccompanied migrant children. The programme should then be rolled out more widely as resources allow.

57. We welcome the Government’s commitment to give greater consideration to the UNCRC in legislation and policymaking. We welcome also the provision in the Children and Families Bill which would expressly empower the Office of the Children’s Commissioner for England to monitor the implementation in England of the UNCRC,⁶⁶ and to publish a report on that monitoring.⁶⁷ We expect the Commissioner to be resourced accordingly.

58. We recommend that the Government define the role of the Children’s Champion in the immigration authority, confirming that it is invested with a proactive duty of care to ensure that the agency meets its international and domestic obligations, and seeks expert input in exercising that duty.

59. We also recommend that the UNCRC be used as a metric in departmental performance monitoring processes within Government for departments with policy responsibilities that relate to the safeguarding of unaccompanied migrant children.

64 Office of the Children’s Commissioner for England

65 See also Joint Committee on Human Rights, 6th Report (2012–13): *Reform of the Office of the Children’s Commissioner: draft legislation* (HL Paper 83/HC 811)

66 Proposed new s. 2(3)(i) Children Act 2004, inserted by clause 77 of the Children and Families Bill.

67 Proposed new s. 2(3)(j) Children Act 2004.

Children’s rights in domestic law

60. One way to give greater consideration to the UNCRC would be to bind it more strongly into domestic law; at the furthest end of the spectrum, this could involve incorporating its provisions directly into domestic law. Indeed, the NSPCC noted that the UK had been criticised by the UN Committee on the Rights of the Child for not pursuing full incorporation, and called for this to be rectified.⁶⁸ Incorporation of the UNCRC into domestic law was also one of the recommendations which came out of the UK’s recent Universal Periodic Review (UPR) by the UN Human Rights Council.⁶⁹

61. However, the Children’s Commissioner for England highlighted that there was a lack of enthusiasm for full incorporation in England. She nevertheless thought that it was important for the Convention to be “one of the lenses through which [the Government] judges all legislation”.⁷⁰ Confirming the lack of appetite for incorporation, the Minister thought that the UNCRC itself was not “worded precisely enough to put directly into law”; one could not, he said, “just do a straight lift and put it into UK legislation”.⁷¹ He insisted that the Section 55 duty “delivers on our responsibilities under the UN Convention”,⁷² in an immigration context, and that the Government was “delivering on the principles and articles of the Convention” more generally.⁷³

62. The devolved administrations have given stronger recognition to the UNCRC, though none has sought full incorporation. The Children’s Commissioner for Wales noted that the Rights of Children and Young Persons (Wales) Measure placed a duty on Welsh ministers to have “due regard” to the UNCRC when making decisions.⁷⁴ Patricia Lewsley-Mooney, Northern Ireland Commissioner for Children and Young People, said that an “even stronger” duty was placed on authorities there.⁷⁵ Tam Baillie, Scotland’s Commissioner for Children and Young People, noted that the Scottish government had stepped back from an initial commitment to incorporate the Convention fully—though he saw value in doing so—but was nevertheless intent on bringing forward proposals to give more robust consideration to the rights of children.⁷⁶

63. As we have stated, the UNCRC must be a central consideration in those processes that deal with unaccompanied migrant children. In principle, incorporating the UNCRC into domestic law could serve to bring children’s rights into the mainstream in the same way as the Human Rights Act 1998 did for the European Convention on Human Rights. We recognise, however, the Government’s concern as to the practical obstacles that lie in the way of full incorporation.

68 NSPCC

69 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review, United Kingdom of Great Britain and Northern Ireland*, July 2012, Recommendation 110.9: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx>

70 Q28

71 Q89

72 Q84

73 Q89

74 Q28

75 Q28

76 *Ibid*

64. We note that the Government has recently taken a number of significant steps which have the potential to increase the practical significance of the UNCRC considerably, including its commitment to pay due regard to the Convention when formulating law and policy, and reconfiguring the mandate of the Office of the Children's Commissioner for England to put the UNCRC at the heart of its role

65. We do not express a view as to the merits of incorporating the UNCRC into domestic law at this stage. We urge the Government to keep under review the different approaches taken in recognising the UNCRC in the devolved jurisdictions, in order to evaluate the case for full incorporation.

4 Protecting unaccompanied migrant children

66. The asylum and immigration process is a crucial first point of contact for unaccompanied migrant children. It is therefore essential that the system ensures that their best interests are properly taken into account throughout.

INFORMATION-GATHERING: SCREENING AND BEYOND

67. When an unaccompanied migrant child comes into contact with authorities in the United Kingdom, the first step is to process the child in order to enter them formally into the asylum and immigration system. This process is called screening. Travel documents are checked, details logged and a short interview is conducted about the application being made. It should be noted that not all unaccompanied migrant children come into contact with the authorities and their presence and situation in the UK may be unknown.

68. Where it is accepted that an applicant is under 18 years of age and therefore a child, he or she will be referred to the relevant local authority for accommodation and support while an application for asylum or other leave is being considered. If the age of an applicant is disputed, he or she will be referred to a local authority social services department for an age assessment to be undertaken (see paragraph 79). If it is considered that the applicant is significantly over 18 years of age, he or she is not directed to a local authority but is instead treated as an adult for the purposes of determining the claim for asylum and providing support. Those adjudged to be adults are liable for a process of fast-track detention, where immigration officials decide that an application can be dealt with quickly and the individual is suitable for detention in the interim.

69. The Minister insisted that the process was clear. He said that, after being screened, children were then given a delay of four days to recover from their journey before any substantive information-gathering was conducted.⁷⁷ The Government was clear that “no questions relating to the basis of the claim” were to be asked during screening.⁷⁸

70. But there was widespread concern as to how the screening process worked in practice. Alison Harvey, General Secretary of ILPA, expressed “grave concerns” about screening, saying that it was “aiming to do far too much” and was a “disastrous model doomed to failure”.⁷⁹ The Refugee Council thought that having such procedures at the very outset was “very detrimental to children”.⁸⁰ The Northern Ireland Commissioner for Children and Young People called screening facilities “totally inadequate”, and said they were not “young person friendly”.⁸¹ Baljeet Sandhu, of the Migrant and Refugee Children’s Legal Centre at

77 Q85

78 HM Government

79 Q15

80 *Ibid.*

81 Q30

the Islington Law Centre, suggested that the screening process could often be “very frightening”.⁸²

71. There were also more general concerns about the efficacy of the information-gathering process as a whole. The Refugee Council and ILPA raised concerns about delays and administrative backlogs.⁸³ It was also suggested that the answers given during screening were later used to damage the credibility of an asylum claim.⁸⁴ A particular theme in evidence related to the adequacy and availability of interpreting facilities, and their impact on children’s abilities to articulate their concerns.⁸⁵ Barnardo’s suggested that interpreters often lacked experience of the asylum process generally, and of working with children in particular,⁸⁶ while the Law Centre (Northern Ireland) said that delays were common in securing interpreting services.⁸⁷

72. There was also a sense that information-gathering failed to give sufficient regard to the age and status of the child, in terms of the length of interviews, and the techniques and reasoning employed during questioning.⁸⁸ Ilona Pinter, Policy Adviser on Young Refugees and Migrants at the Children’s Society, said that “minimal adaptations” were made for children”.⁸⁹ The Northern Ireland Commissioner for Children and Young People agreed that there was a need for a more “young person friendly” environment.⁹⁰ ILPA noted that the system as a whole was “incomprehensible to most adults [...] It is unsurprising that it vexes these children as well”.⁹¹ The Children’s Commissioner for England agreed with these concerns, and noted that making changes in this respect “cannot just be at the point of entry”.⁹²

73. The Minister acknowledged that there were “bound to be cases in which people do not do as the policy sets out”, but he did not believe that there was a “systemic problem”, or that difficulties with screening and information-gathering were widespread”.⁹³

74. We are grateful for the work of the Office of the Children’s Commissioner for England in this area, particularly in relation to screening. Its two reports, *Landing in Dover*⁹⁴ and

82 Q44

83 Refugee Council, ILPA

84 Office of the Children’s Commissioner for England. See also Rosemary Demin

85 Brighter Futures visit, Office of the Children’s Commissioner for England, Klevis Kola foundation, Rosemary Demin, Q30 (Children’s Commissioner for Wales), Q48 (Baljeet Sandhu)

86 Barnardo’s. See also Office of the Children’s Commissioner for England, UNHCR

87 Law Centre (Northern Ireland)

88 Refugee Council. NSPCC, Law Centre (Northern Ireland), Refugee Action, Office of the Children’s Commissioner for England

89 Q15

90 Q30

91 Q44

92 Q35. See also Office of the Children’s Commissioner for England

93 Q87

94 Office of the Children’s Commissioner for England, *Landing in Dover: the immigration process undergone by unaccompanied children arriving in Kent*, January 2012

Landing in Kent,⁹⁵ provide a clear window into some of the problems that are faced by children when they first enter the country, often after traumatic experiences on the way.

75. Those reports, and evidence to this inquiry, make clear that there is an insufficient focus on the needs of children when gathering information about them during the asylum and immigration process. This begins with screening, but the concerns we heard addressed the system more widely, including the substantive process of interviewing children and assessing their claims.

76. The gathering of substantive information on a child's claim for asylum or other protection should come well after the screening process, to allow children to be settled and to articulate their views properly. Guidance distinguishes clearly between the two stages of the process, but our evidence indicates that screening too often blurs into wider information-gathering. This must change, to bring children's best interests to the fore.

77. A new asylum and immigration process introduced in April 2013 reformed how the system operates. The system will now operate on a hub model nationally, and will seek to focus on priority cases more quickly.⁹⁶ It remains to be seen how these changes will work in practice, but the Coram Children's Legal Centre expressed concern that the changes would "undermine the idea of a child-focused determination".⁹⁷ We will remain alert to how the system operates, but note that there is simply too little evidence to draw any conclusions at this stage. We urge the Government to work hard to ensure that this new system adheres to the model we have outlined above.

78. The Government should ensure that there is a clear focus on welfare needs as well as immigration control when gathering information from unaccompanied migrant children relating to an asylum claim. There should be a clear and well-understood distinction between the screening process and substantive information-gathering. Screening a child should be expressly limited to gathering biographical and biometric data at the outset of a claim, while gathering information with which to assess a claim should begin only when children are settled and supported. Furthermore, children should be provided with proper access to interpreting facilities and rest periods, and should be engaged with in a way that takes proper account of their age, status and background.

Age Assessments

79. The assessment of an applicant's age has, over recent years, become increasingly prominent in the asylum and immigration process. The correct assessment of an applicant who is under 18 years of age is necessary to ensure that the United Kingdom upholds its domestic and international obligations to those who are children. If assessed incorrectly, children could be accommodated inappropriately, supported insufficiently, and be placed at risk of harm, detention and deportation.

95 Office of the Children's Commissioner for England: *Landing in Kent: the experience of unaccompanied children arriving in the UK*, February 2011

96 Immigration Law Practitioners' Association, *Asylum Operating Model*, May 2013: <http://www.ilpa.org.uk/data/resources/17810/13.05.02-Asylum-Operating-Model-info-sheet.pdf>

97 Coram Children's Legal Centre Visit

80. The age of an applicant is assessed in various ways. In the first instance the immigration authorities will take an initial view as to whether an individual is under 18 years of age when the asylum claim is made. The Government insisted that where a person claimed to be below the age of 18 in those circumstances, the benefit of the doubt was given unless two agency officers of sufficient grade concluded that the individual's physical appearance or demeanour "very strongly suggests that they are significantly over 18", or there was credible documentary evidence to that effect. It indicated that no person would be detained when claiming to be a child unless one or other condition was met.

81. Where this is not the case, a referral will be made to a local authority in order that a full age assessment can be conducted in line with the duties established in *R (B) v London Borough of Merton*, which set out that local authorities must assess age where an individual may be a young person entitled to support under the Children Act 1989. According to the conditions laid down in that case, such assessments, conducted by two social workers, should be comprehensive, clear and fair.⁹⁸ The Government noted that it would usually accept the findings of such a determination, and if not that it would seek to reach consensus with the local authority by sharing relevant information.⁹⁹

82. Where an applicant disagrees with the assessment made by a local authority, he or she can seek judicial review of the decision, and the court's determination of age binds both parties.¹⁰⁰ The Government indicated that it would also respect a determination by an immigration judge, unless compelling evidence to the contrary had emerged since the judgment and had not been the subject of direct adjudication.¹⁰¹

Age dispute data

83. Over the last five years, age was disputed in around 30% of cases of unaccompanied asylum-seeking children presenting a claim. The overall number of cases where age is disputed has fallen, and there has also been a fall in the proportion of cases where age is disputed (See Table 1).

98 *R (B) v London Borough of Merton* [2003] EWHC 1689 (Admin).

99 HM Government

100 *R (A) v London Borough of Croydon* [2009] UKSC

101 HM Government

Table 1: Age dispute figures in the last five yearsSource: Home Office immigration statistics¹⁰²

Year	Asylum applications from unaccompanied asylum-seeking children	Age dispute cases	Percentage of unaccompanied asylum-seeking children whose age is disputed after an asylum application
2008	4,285	1,401	33%
2009	3,174	1,129	36%
2010	1,717	489	28%
2011	1,398	374	27%
2012	1,168	328	28%

84. There was a widespread view that the data available were insufficient.¹⁰³ The Children’s Commissioner for England noted that the immigration authorities were not recording cases for those considered to be “significantly” above 18, as a result of a policy change in 2007,¹⁰⁴ though the UK Children’s Commissioners noted an “encouraging communication” regarding a possible pilot of more detailed data recording by the immigration authorities.¹⁰⁵

85. The Coram Children’s Legal Centre noted that the immigration authorities did not “publicly report on all cases where age is disputed”, while there were “limited alternative sources of information”.¹⁰⁶ It was particularly concerned with the lack of clarity around cases of individuals whose age was disputed being detained as adults.¹⁰⁷ The Refugee Children’s Consortium also noted that there were no means to monitor cases as they progressed through the system.¹⁰⁸ The UK Children’s Commissioners insisted that effective, disaggregated data was required, including outcome data.¹⁰⁹

86. The Government said that it had “no reason to believe” that the fall in case numbers was because of recording failures, a point echoed by Philip Ishola of the Association of Directors of Children’s Services (ADCS) and Croydon Council.¹¹⁰ However, the

102 Home Office, *Immigration Statistics: October–December 2012*, February 2013, *op. cit.* See also Supplementary submissions from Coram Children’s Legal Centre, which originally tabulated this data.

103 See for example, Q22 (Refugee Council, Children’s Society), Law Centre (Northern Ireland)

104 Office of the Children’s Commissioner for England. See also Q22 (Refugee Council, Children’s Society)

105 UK Children’s Commissioners

106 Coram Children’s Legal Centre

107 *Ibid*

108 See also ILPA

109 UK Children’s Commissioners. See also Office of the Children’s Commissioner for England, Coram Children’s Legal Centre, Refugee Children’s Consortium, Refugee Council, Children’s Society

110 Q72

Government was considering undertaking a formal assessment of compliance with the requirement to record age dispute cases.¹¹¹

87. The case for providing comprehensive, robust and transparent data is absolutely clear. It is only by doing so that policy and practice can be properly examined, and issues identified. We therefore endorse the call for full, disaggregated statistics to be provided for all age dispute cases, to enable cases to be tracked through the system.

88. We recommend that the Government should record and publish statistics of all those who claim to be children whose age is disputed. This should include, but not be limited to:

- **The number of asylum applicants who claim to be children but who are treated as adults by the immigration authorities on the ground that their appearance or demeanour very strongly suggest that they are significantly over 18;**
- **The number of cases where an individual claiming to be a child is placed in immigration detention, and any subsequent action in relation to those cases;**
- **The number of cases in which age is assessed by local authorities, and, in such cases, how many children are determined to be adults and how many are determined to be children;**
- **The number of cases that are challenged by judicial review, and the number of such challenges that are successful.**

89. These statistics should be disaggregated to allow scrutiny of the gender and nationality of all cases. Local authorities should also be required to produce statistics for any cases where those requesting support and claiming to be children emerge outside of the usual asylum and immigration processes.

The effectiveness of age assessment

90. Regardless of the quality of the data, it is important that the process of assessing age is accurate and sensitive to the needs of children. Witnesses suggested that there was a strong “culture of disbelief” in the process.¹¹² Asylum Aid said that immigration authorities seemed “to dispute the age of child applicants as a matter of default”.¹¹³ The Refugee Council said that this meant there were “hundreds of children going through unnecessary assessments about their age”.¹¹⁴ The Children’s Society thought that the culture of disbelief put children at risk of harm and exploitation, and failed to pay heed to the best interests of the child.¹¹⁵ Indeed, ECPAT thought the act of disbelief itself had consequences for the mental health of unaccompanied children.¹¹⁶

111 Supplementary submission from HM Government

112 Refugee Children’s Consortium, Children’s Society, Asylum Aid, Refugee Council, ECPAT, Barnardo’s, Coram Children’s Legal Centre visit, Brighter Futures visit

113 Asylum Aid. See also Refugee Children’s Consortium, Q49 (Baljeet Sandhu, Islington Law Centre)

114 Q15

115 Q6

116 ECPAT. See also Refugee Council, Asylum Aid, ECPAT, Royal Holloway and Tavistock Centre

91. The Office of the Children’s Commissioner for England was particularly vociferous, noting that disputes between immigration authorities and local authorities over age had a serious impact on the support available to children.¹¹⁷ Dost said that much of the current process was “really quite meaningless and a massive waste of resources”, as cases were often about the specific age of a child who was recognised as below the age of 18 in any case.¹¹⁸ ECPAT said there was an “over-reliance on physical appearance and credibility as indicators of age”.¹¹⁹ Her Majesty’s Inspectorate of Prisons expressed particular concern about the use of the appearance-based test by immigration authorities, which it did not consider “sufficiently robust”, particularly as detention could result from a negative determination.¹²⁰

92. Some witnesses considered there to be a potential conflict of interest in the process, as local authorities were responsible for assessments and were also liable for the costs of those determined to be children as a result.¹²¹ There was therefore a concern that funding pressures could be incentivising local authorities to assess children either as adults, or as older than would otherwise be the case. Some also noted that local authority grant funding arrangements, which rely on age assessments being conducted within 21 days, provided an unhelpful incentive to complete age assessments too quickly.¹²² The Children’s Commissioner for England also expressed concern over the level of training given to those staff carrying out the assessments.¹²³ This reflected the view of many witnesses that the age assessment process varied inconsistently between local authorities, and indeed immigration authorities, due to a lack of statutory guidance.¹²⁴

93. Many witnesses called for those claiming to be less than 18 years of age to be given the benefit of the doubt more regularly, as part of a more sensitive process with clear guidelines for practitioners and the courts to that effect.¹²⁵ The Refugee Council thought that a more sensitive determination process, with multi-disciplinary input, would “take an awful lot of heat out of this, and save a lot of time and money”.¹²⁶

94. There was also a widespread call for more independence in the process. Some, including the UNHCR, insisted that age assessments should at least be kept separate from the asylum process.¹²⁷ Others called for an entirely independent process. Vaughan Jones, Chief Executive of the voluntary organisation Praxis Community Projects (Praxis) said it was “pretty obvious” that there should be a single age assessment process, undertaken by

117 Office of the Children’s Commissioner for England

118 Q64

119 ECPAT

120 Her Majesty’s Inspectorate of Prisons. See also Coram Children’s Legal Centre, ILPA, NSPCC, Refugee Children’s Consortium, Children’s Society, BASW, Office of the Children’s Commissioner for England

121 Rosemary Demin, Barnardo’s, Office of the Children’s Commissioner for England, UNHCR, Coram Children’s Legal Centre, Children’s Society

122 Office of the Children’s Commissioner for England

123 Q35

124 ECPAT, Barnardo’s, Office of the Children’s Commissioner for England, Praxis, Coram Children’s Legal Centre, Refugee Action, Refugee Children’s Consortium, Q64 (Praxis, Dost)

125 See also CFAB, UNHCR, ECPAT, Refugee Council, Office of the Children’s Commissioner for England, ILPA, Children’s Society, NSPCC, Q19 (Children’s Society), Q49 (ILPA), Q64 (Dost)

126 Q19. See also UNHCR and ILPA

127 UNHCR. See also Unseen, ILPA

an independent organisation.¹²⁸ The Refugee Council thought a regional assessment centre model would be a “very good approach”.¹²⁹ The Office of the Children’s Commissioner for England thought that an independent panel might provide a “more transparent, fairer process for assessing age”, although it acknowledged that it may be “too costly to establish in the current financial climate”.¹³⁰

95. Some witnesses opposed such fundamental reform. Dost feared that a large multi-agency panel could be intimidating for children.¹³¹ ILPA was “anxious” not to “build an institution that then demanded a throughput of children”.¹³² Kent County Council said any proposal for a multi-agency approach would need “careful consideration to ascertain what the additional partners would bring to the process and which agencies would be involved”.¹³³

96. There was, however, strong support for greater multi-agency involvement in the existing process. The Children’s Society thought a “multi-agency approach, whereby social workers, paediatricians, support workers, teachers and all those who are involved in the child’s life can contribute, is really the best approach”.¹³⁴

97. The Minister noted the practical difficulty of assessing age: “it is not a science, it is an art”.¹³⁵ However, the Government said that careful decisions were reached following consideration of all available evidence, and it was keen to examine and continuously improve the process. The Minister highlighted in that context proposals from the Royal College of Paediatrics and Child Health (RCPCH) to involve paediatricians in age assessments.¹³⁶ The RCPCH said that such guidance would allow the “vitaly important” skills of paediatricians to contribute to a more multi-agency approach, but noted it had not yet been supported with Government funding.¹³⁷

98. Our predecessor Committee expressed significant concerns regarding the process of assessing age.¹³⁸ It was not convinced that the benefit of the doubt was being given often enough. It wanted to see the age assessment process reformed to ensure that it was robust and considered a wide range of evidence, with the caveat that such evidence should not include x-rays. It also wanted to ensure more training for those involved in age assessments, and to prevent the detention of those claiming to be children.

99. We note with disappointment that many of these recommendations made in 2007 and 2009 remain unfulfilled. The “culture of disbelief” remains of concern, there is still too little

128 Q64. See also Barnardo’s, British Red Cross, Scottish Refugee Council, Rosemary Demin

129 Q22

130 Office of the Children’s Commissioner for England

131 Q64

132 Q49. See also UK Children’s Commissioners

133 Kent County Council

134 Q19. See also CFAB, RCPH, Welsh Refugee Council, Coram Children’s Legal Centre, ILPA, Refugee Children’s Consortium, UKCC, Q49 (ILPA)

135 Q103

136 Q103

137 RCPH

138 Joint Committee on Human Rights, 25th Report (2008–09): *Children’s Rights*, (HL Paper 157/HC 318); Joint Committee on Human Rights, 10th Report (2006–07): *The Treatment of Asylum Seekers* (HL Paper 81–I/HC 60–I)

input from relevant professionals, and the potential for inconsistency persists. Furthermore, there remains a continuing risk of detention for those claiming to be children, despite the Government's commitment to end child detention. Improving the process of age assessments is therefore of paramount importance, especially given the inertia since our predecessor Committee's last report.

100. Those whose ages are disputed should be given the benefit of the doubt unless there are compelling factors to the contrary. Doing so could save significant sums of money—between April 2011 and the end of 2012, Croydon Borough Council spent £1.6m on legal costs related to age assessments¹³⁹—which could be better spent providing effective support to children, particularly where disputes pertain to those who would be recognised by both parties as below the age of 18. This is particularly important where those whose age is disputed are at risk of detention or fast-track removal.¹⁴⁰ The risks of treating a child as an adult in such circumstances far outweigh the risks and costs of giving the benefit of the doubt to a person later assessed to be an adult.

101. We agree that the solution is not a new system of independent age assessment panels, especially as such a system could encourage a high caseload to justify its existence. It would be more effective and realistic to seek change within the existing framework. To do so, the Government should work to develop good practice in local authorities. Some local authorities and the Association of Directors' of Children's Services have already worked to produce informal guides to case law and practice, but these are insufficient to drive truly consistent approaches. Clear guidance issued by the Government, would provide a strong steer towards a more effective system.¹⁴¹ Guidance could also draw upon the Separated Children in Europe Statement of Good Practice.¹⁴²

102. Any guidance produced to assist local authorities in the complex and difficult process should insist upon the involvement of a far more diverse range of professionals than at present. Local authority professionals should be trained to play a central role (see para x), but expert assistance should be welcomed as a means to ensure the process is more robust. Supporting the proposals from the RCPCH could be a starting point. Not only would more widespread input improve the accuracy of the process, it may also discourage expensive litigation. Guidance should make clear that x-rays should play no part in assessing the age of a child.¹⁴³

103. We recommend that the Government work alongside the Association of Directors of Children's Services to develop a clear set of statutory guidelines for assessing the age of unaccompanied migrant children. This guidance should make clear that young people should be given the benefit of the doubt unless there are compelling grounds to

139 Coram Children's Legal Centre *Happy Birthday? Disputing the age of children in the immigration system*, May 2012: http://www.childrenslegalcentre.com/userfiles/HappyBirthday_Final.pdf. See also Coram Children's Legal Centre visit which noted that Croydon also spent more than £800,000 on legal costs on court cases relating to age assessments in 2009/10.

140 Supplementary submission from the Coram Children's Legal Centre.

141 See Q37 (Scottish Commissioner for Children and Young People), which reference such guidance being produced in Glasgow.

142 This is a joint initiative of the UNCHR and non-governmental organisations, supported by the European Commission: http://separated-children-europe-programme.org/good_practice/SGP_2009_final_approved_for_print.pdf

143 Refugee Children's Consortium, ILPA, Welsh Refugee Council, Scottish Refugee Council, CFAB, Q35 (Children's Commissioner for England,

discount their claim. It should also make clear that any person who claims to be a child whose age is disputed and who is to be assessed by local authorities or in judicial review proceedings is not to be made eligible for fast-track removal from the United Kingdom. Guidance should also ensure that examinations are never forced, nor culturally inappropriate, and always pursue the least invasive option for assessment.

104. **As part of developing age assessment guidance, the Government should evaluate how to incorporate a greater range of expert input into the process. In particular, the Government should commission the Royal College of Paediatric and Child Health to develop guidelines for a stronger contribution from paediatric consultants in assessing age.**

105. **We see no reason to depart from our predecessor Committee’s view that x-rays should not be used in assessing age.**

DECISION-MAKING

106. Considering the best interests of unaccompanied migrant children requires an effective framework for making decisions on their future, so as to allow children to develop to their maximum potential, as called for under Article 6 of the UNCRC. The UN Committee on the Rights of the Child stresses that the plans made for children must be “durable”—sustainable, giving protection from harm and meeting the needs of the UNCRC.¹⁴⁴

107. Children who arrive unaccompanied into the United Kingdom and who claim asylum are first subject to a decision as to whether to grant refugee status or another form of humanitarian protection. If protection is granted, then the child has leave to remain in the country by virtue of that status. If the claim is refused, and there are no suitable reception arrangements in the country of origin, then a period of discretionary leave will be granted until the age of 17 and a half or for 30 months, whichever is shorter. At the end of that period, the child has the opportunity to submit a further application for leave. Both asylum and leave determinations are subject to appeal and judicial review where a child has leave to remain exceeding 12 months.¹⁴⁵

108. Many witnesses highlighted that discretionary leave was by far the most common determination in cases featuring unaccompanied asylum-seeking children.¹⁴⁶ This is borne out by the statistics over the past five years (see Table 2). In 2012 around 40% of the initial decisions for unaccompanied asylum-seeking children resulted in grants of discretionary leave—a proportion that increased to more than half when the initial decision was made when the child was 17 or under—while less than a quarter were granted asylum. In comparison, asylum was granted in around about 30% of adult cases in the same period.¹⁴⁷ However, the proportion of cases in which asylum is granted to children has increased over time.

144 See, for example, UNHCR

145 583 of the Nationality, Immigration and Asylum Act 2002

146 Refugee Children’s Consortium, ILPA, Children’s Society, Barnardo’s, Office of the Children’s Commissioner for England, Refugee Action. BASW, Coram Children’s Legal Centre

147 Home Office, *Immigration Statistics October—December 2012*, February 2013 *op. cit.*

Table 2: Initial asylum decisions for unaccompanied migrant children, UK totals in the last five years*Source: Home Office immigration statistics¹⁴⁸*

Year	Total initial decisions	Grants of asylum or humanitarian protection	Refused asylum, granted discretionary leave to remain	Outright refusal (including on non-compliance and third country grounds)
2008	3,377	10.4%	53.2%	36.4%
2009	3,479	10.5%	55.8%	33.7%
2010	2,359	14.4%	47.2%	38.4%
2011	1,353	18.5%	45.6%	35.9%
2012	870	24.1%	39.8%	36.1%

109. The Government insisted the decision making process was “robust and thorough”, and enabled children “to approach adulthood knowing what their immigration status is”. This, it said, represented the “durable solution that is required to enable the child to plan for their future”, upholding the best interests of children.¹⁴⁹ Croydon Council said that limited leave was “realistic” and allowed for the situation to be re-appraised at a point when it could be possible to return a child.¹⁵⁰

110. Many witnesses disagreed. The UNHCR considered that discretionary leave was used too readily, with considerable variation in practice. It noted that “child-specific forms of persecution” were not being recognised, leading to grants of “a lower form of leave”.¹⁵¹ It thought that this reflected a failure to consider asylum claims made by children properly, and was a further instance of immigration policy taking precedence over children’s best interests.¹⁵² For some, the main issue was the lack of credibility given to children making claims. Asylum Aid thought the process burdened children “with far too high a standard of proof”, leading to fewer grants of asylum as a result.¹⁵³

111. For a number of witnesses, the grant of discretionary leave did not represent a durable solution.¹⁵⁴ The Children’s Commissioner for England said discretionary leave was “much more like a stay of execution than anything else”.¹⁵⁵ The Refugee Children’s Consortium considered the granting of discretionary leave an unsatisfactory “limbo” that could compound the distress involved in making an asylum claim.¹⁵⁶ ILPA thought it was

148 See also Supplementary submission from the Coram Children’s Legal Centre, which provided the original tabulation

149 HM Government. See also Q90 (Mark Harper MP)

150 Q 87

151 Q11

152 UNHCR. See also Coram Children’s Legal Centre visit

153 Asylum Aid. See also Charlotte Nuboer-Cope, Refugee Council, Refugee Action

154 Refugee Action

155 Q32

156 Refugee Children’s Consortium. See also ILPA

especially lacking in durability owing to the limited system of appeals when leave is granted for less than a year.¹⁵⁷ The NSPCC said this was exacerbated by a widespread lack of understanding about appeal rights.¹⁵⁸ A linked concern related to the difficulty of claiming further leave upon reaching 18,¹⁵⁹ even though some children whose claims were refused would not be able to return in any case.¹⁶⁰

112. The Children's Society also thought that the uncertainty and instability of discretionary leave hampered the transition into adulthood, particularly in the pathway planning process (see paragraph 192).¹⁶¹ Barnardo's agreed, stating that the grant of discretionary leave could leave young people "anxious and de-motivated" as they feared losing the way of life and ties they had built in the United Kingdom.¹⁶² It thought that trafficked young people were particularly vulnerable to such effects.¹⁶³ Delays were also of concern. Jim Wade, a Senior Research Fellow at York University, noted that he had found that 80% of young people in one study were waiting for a final status determination; the uncertainty, he said, led to children living "with a foreshortened sense of the future".¹⁶⁴ Witnesses drew attention to the impact of such uncertainty on children's development.¹⁶⁵

113. A number of witnesses also noted that unaccompanied migrant children who were granted the right to remain in the United Kingdom did not have a right to family reunion, despite such a right being afforded to adults in the same situation. The Office of the Children's Commissioner for England considered the failure to grant reunion rights contrary to the UNCRC.¹⁶⁶ It was not persuaded that allowing reunion would lead to families sending their children to the UK in order that they could join them at a later date.

114. The Refugee Council called for more pragmatic decision-making that recognised that earlier grants of refugee status may be more appropriate than delaying decisions until children approached adulthood.¹⁶⁷ The UNHCR agreed: it said that postponing decisions only increased anxiety and emotional harm, and contravened the child's best interests by taking away the safeguards offered by the UNCRC.¹⁶⁸ Coram Children's Legal Centre said that, if decisions were to continue to be made in that way, it was at least better to do so at 18 rather than 17 and a half, to allow further education or other qualifications to be completed.¹⁶⁹ The Children's Society argued that the decision-making system in Sweden

157 ILPA. See also, Q12 (Refugee Council)

158 NSPCC. See also Royal Holloway and Tavistock Centre, and Office of the Children's Commissioner for England, Asylum Aid.

159 NSPCC, Refugee Council, British Red Cross, Refugee Action

160 Barnardo's

161 Q11, Q22. Office of the Children's Commissioner for England. Kent County Council agreed that it made future planning significantly more difficult

162 Barnardo's. See also COMPAS, Royal Holloway and Tavistock Centre

163 Barnardo's. See also ECPAT

164 Q62

165 OCCE. See also NRPFN, Law Centre (NI), Refugee Council, Coram Children's Legal Centre visit

166 OCCE. See also Scottish Refugee Council, BASW, Refugee Council, Q13 (UNHCR)

167 Q12

168 UNCRC

169 Coram supplementary submission

took a far more child-focused approach, giving prominence to integration and development, and recommended it as a suitable alternative model.¹⁷⁰

115. Coram Children’s Legal Centre wanted to see fundamental change to the framework within which decisions were made, to move to a system akin to care proceedings in the family courts.¹⁷¹ It also sought the establishment of a pilot court along the same lines as the Family Drug and Alcohol Court used in family proceedings where there were issues relating to substance abuse in a number of London boroughs, with the court given the flexibility to take on decision-making in a more collaborative manner.¹⁷²

116. For some witnesses, the best course was to grant indefinite leave far more often to allow children to plan for the future. Praxis thought this would allow for clear pathway plans to be established and for children to access education at domestic rates (see paragraph 218).¹⁷³ Dost agreed, arguing that it would make a “phenomenal difference”, particularly for educational ambitions, and lead to a far greater sense of security.¹⁷⁴

117. The Minister, however, insisted that any widespread system of granting indefinite leave to remain would be “misconceived”.¹⁷⁵ He stressed that to do so would “incentivise people to have children travel alone”, which would “drive a coach and horses through the asylum system”.¹⁷⁶ He accepted that there may be a case for setting out the decision-making process more clearly to children,¹⁷⁷ as well as delaying decisions at least until further education had been completed at age 18,¹⁷⁸ but did not support any fundamental change in the decision-making process for unaccompanied asylum-seeking children.

118. The current decision-making framework is clearly unsatisfactory. The widespread granting of discretionary leave to remain, with further determinations delayed until just before adulthood, serves administrative convenience more than the best interests of children. We are particularly concerned because it appears that asylum claims are not being properly considered because of the availability of discretionary leave. Making decisions in this manner requires children to relive earlier traumas, punctuates children’s formative years with uncertainty, and inhibits access to services and to the labour market in the future. This uncertainty is only worsened by slow processes and limited appeal rights for those with leave of less than 12 months.

119. Asylum claims must be properly determined in all cases regardless of age under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The determination must be sensitive to the needs and experiences of children seeking asylum. Children should be provided with funded specialist legal advice and

170 Q12

171 CFAB also proposed a new courts system, though it wanted to see the merging of family and immigration courts.

172 Coram Children’s Legal Centre visit. See Tavistock and Portman NHS Foundation Trust, Family Drug and Alcohol Court: <http://www.tavistockandportman.nhs.uk/FDAC>

173 Q61. See also Children’s Society, Refugee Children’s Consortium

174 Q62. See also Barnardo’s, Q11 (Children’s Society)

175 Letter to the Chair from Mark Harper MP, Minister for Immigration, 14 February 2013: http://www.parliament.uk/documents/joint-committees/human-rights/Letter_from_Mark_Harper_140213.pdf

176 Q93

177 *Ibid*

178 Q102

representation during this process. Where a child is granted refugee status he or she should have the possibility of being reunited with family members, as is the case for adults in the same situation.

120. We recommend that the Government amend the eligibility requirements under section 83 of the Nationality, Immigration and Asylum Act 2002 to ensure that appeal rights are available for all those subject to a negative decision in relation to an asylum or leave claim, regardless of the remaining period.

121. Where an asylum claim is refused but a child cannot be returned during their childhood, it is right that other forms of leave are granted. However it would give more certainty to children if proper consideration could be given to the future early on, with decisions based upon country of origin reports, engagement with the child and an evaluation of the ties they have formed in the United Kingdom. We acknowledge the Minister's concerns as to the possible resource implications of more widespread grants of further leave to remain, but the alternative merely passes on costs to local authorities (see paragraph 201) as well as being detrimental to the children affected.

122. Where children are granted discretionary leave, we recommend that the leave period should run until the age of 18, in accordance with the definition of a child in Article 1 of the UNCRC.

123. During a period of discretionary leave, decision-making should be encouraged as soon as there is sufficient evidence against which to evaluate a claim. Where it is in the best interests of the child to remain in the United Kingdom, indefinite leave to remain should be granted as early as that judgment can be made, to enable children to access higher education and enter the labour market. Where return is considered to be appropriate, a care plan should be constructed to inform and prepare a child for return in adulthood. In either case, support should persist until the objectives of a properly considered care plan are met.

124. There may also be benefits to establishing decision-making on a more child-friendly footing that borrows from care proceedings under the Children Act 1989, though we are not convinced that it is currently realistic to call for a fundamental restructuring of the court system. We do consider, however, that there is merit in establishing a pilot tribunal with adapted procedures to take on decision-making responsibilities in some cases. The pilot should be conducted on a similar scale to that of the Family Drug and Alcohol Court.

125. We recommend the establishment of a pilot tribunal with adapted procedures, drawing on expertise from both the child and family and immigration courts, to take on responsibility for the decision-making, welfare and support arrangements of unaccompanied asylum-seeking children in a small number of cases. Its work should be independently reviewed, in order to identify possible adaptations to the decision-making framework more generally that may emerge.

PROTECTING TRAFFICKED CHILDREN

The National Referral Mechanism

126. Some children who arrive in the United Kingdom have been trafficked, most commonly for the purpose of work or sexual exploitation. Although such children do not necessarily apply for asylum or other protection, support must be provided. To that end, the National Referral Mechanism (NRM), introduced in 2009 in order to meet the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings, provides a framework for helping young people suspected of being trafficked. It is intended to provide for either voluntary return to the country of origin or a grant of discretionary leave. The process is described in Box 2.

Box 2: NRM

Source: Material summarised and adapted from the Serious Organised Crime Agency website¹⁷⁹

To be referred to the NRM, victims must be referred to one of the UK's two competent authorities – the UK Human Trafficking Centre (UKHTC) for cases involving referrals from the police, some NGOs or local authorities, or the immigration authorities where cases emerge during the immigration process. The referral is made by a body authorised for the purpose, such as the police and local authorities. These are known as “first responders”.

After referral, a case is assessed and a decision is made as to whether there are “reasonable grounds” to believe the individual is a victim of trafficking. The threshold is that a case manager “believes but cannot prove” that the individual is a potential victim of trafficking.

If the decision is affirmative, the potential victim will be allocated a place within safe house accommodation, and if required granted a recovery and reflection period of 45 days. During that period, further information is gathered, following which a conclusive decision is made, for which the threshold is that on the balance of probability “it is more likely than not” that the individual is a victim of human trafficking.

After that, the victim may be granted discretionary leave to remain in the UK for one year to allow them to co-operate fully in any police investigation and subsequent prosecution. The period of discretionary leave can be extended if required. If a victim of trafficking is not involved in the criminal justice process, the authorities may consider a grant of discretionary leave, which would usually be the case for unaccompanied migrant children in line with usual decision-making practice. Victims can also receive help and financial assistance to return home.

If the person concerned is not determined to be a victim of trafficking, then they will be referred to a law enforcement agency if appropriate, or otherwise processed in line with usual asylum and immigration processes.

A determination under the NRM can only be challenged by judicial review

127. This is one of a number of developments since our predecessor Committee last reported on the issue of trafficking.¹⁸⁰ Other developments include the development of a human trafficking strategy,¹⁸¹ the introduction of statutory guidance to support national and local agencies in helping trafficked children,¹⁸² and the passage of an EU Trafficking

179 <http://www.soca.gov.uk/about-socal/about-the-ukhtc/national-referral-mechanism>

180 Joint Committee on Human Rights, 26th Report (2005-06): *Human Trafficking* (HL Paper 245-I / HC 1127-I)

181 HM Government, *Human Trafficking: The Government's Strategy 2011*: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97485/human-trafficking-strategy.pdf

182 Department for Education, *Safeguarding Children Who May Have Been Trafficked*. See <https://www.education.gov.uk/publications/eOrderingDownload/DFE-00084-2011.pdf>

Directive which includes a requirement to appoint a guardian for trafficked children (see paragraph 173).¹⁸³ We are pleased to see this heightened awareness of the importance of combating human trafficking.

128. The Government insisted that the NRM was a “valuable framework for ensuring important information about a child’s potential trafficking is recognised and shared appropriately with the relevant agencies”. It said that a referral under the NRM allowed victims to “receive the bespoke support and care they need as victims of trafficking”, and allowed support services to “focus on the particular needs that a trafficked child/unaccompanied trafficked child is likely to have”.¹⁸⁴

129. The Government also noted that it had worked to raise awareness of the NRM, including through the provision of designated training for decision-makers, and the development of targeted materials to help practitioners in children’s services to understand the process. It said that the increase in the number of referrals—from 186 in 2010, to 234 in 2011, and 373 in 2012—demonstrated “that the use of the NRM is becoming more widespread as its value as a collaborative framework is recognised”.¹⁸⁵

130. Nevertheless, many witnesses thought that the NRM was ineffective and was failing to identify trafficked children. UNICEF UK, while acknowledging that the NRM was an “achievement”, said that there was “certainly space for improvement” in expediting the identification of child victims of trafficking”.¹⁸⁶ The Scottish Commissioner for Children and Young People said that the NRM was not “fit for purpose”, with low numbers of children receiving positive determinations under the system.¹⁸⁷ The Children’s Commissioner for England noted that high-risk groups “continue to go missing from care and, we must assume, fall into the hands of traffickers”, despite a protective duty under Article 19 of the UNCRC.¹⁸⁸ The Refugee Children’s Consortium queried the benefits of referral under the system, and said that there was a “lack of trust in the effectiveness of the process” among frontline agencies.¹⁸⁹

131. Indeed, a report from the UK Human Trafficking Centre, one of the two competent authorities under the NRM, found that fewer than half of the 2,000 potential victims encountered in 2011 were referred into the NRM.¹⁹⁰ The UK Children’s Commissioners noted a significantly higher positive determination rate in cases examined by the UKHTC compared to those made by the immigration authorities, the other competent authority under the NRM, and a higher rate of positive determinations in cases featuring adults.¹⁹¹

183 Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims OJ L101 (15 April 2011) p1: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?ur=OJ:L:2011:101:0001:0011:EN:PDF>.

184 Supplementary submission from HM Government. See also Q80 (ADCS)

185 *Ibid*

186 Q18

187 Q34. See also Refugee Children’s Consortium

188 Office of the Children’s Commissioner for England. See also Migrant Legal Project, Welsh Refugee Council, Refugee Children’s Consortium

189 Refugee Children’s Consortium. See also Q18 (UNICEF), Q34 (Scottish Commissioner for Children and Young People)

190 UK Human Trafficking Centre ‘A Baseline Assessment on the Nature and Scale of Human Trafficking in 2011’, August 2012: <http://www.soca.gov.uk/news/462-human-trafficking-assessment-published>

191 UK Children’s Commissioners See also Refugee Children’s Consortium, Office of the Children’s Commissioner for England

They were therefore concerned at the lack of an independent review into the scheme, which they thought left the NRM open to “criticism of poor decision making, unfairness and bias”.¹⁹²

132. Criticism of the awareness and training levels of the safeguarding workforce was widespread.¹⁹³ ECPAT and the UK Children’s Commissioners noted that a survey of local authorities suggested that only eight—a quarter of those surveyed—had confirmed their implementation of the London Safeguarding Trafficked Children Toolkit and Practical Guidance, materials designed by the London Local Children Safeguarding Board to assist local authorities in tackling child trafficking.¹⁹⁴ Her Majesty’s Inspectorate of Prisons said that referrals from prison were not “consistent”, and that not all immigration authority staff were “fully trained in child protection and welfare”.¹⁹⁵

133. The ADCS was also concerned about the lack of a statutory framework for the system, which meant there were no formal timescales and no duties incumbent upon agencies to make referrals into the system.¹⁹⁶ The UK Children’s Commissioners said that “these structural flaws lead to a variable quality of referral and may contribute to an overall picture of under recording and reporting, low recognition rates, prosecution of victims, low levels of investigation by the police and placing victims back into the hands of their traffickers”.¹⁹⁷ ECPAT also criticised the “ineffectiveness” of the Inter-Departmental Ministerial Group on human trafficking, the steering group established to co-ordinate efforts in this area.¹⁹⁸

134. Witnesses identified a number of possible avenues for reform. Some wanted to see the existing system improved by granting the power to make referrals into the NRM to a wider range of bodies. ILPA argued that immigration solicitors should be so empowered,¹⁹⁹ while others thought that powers should be granted to those working in the youth justice estate (see para 152).²⁰⁰ The UK Children’s Commissioners also wanted to see a keener sense of awareness among all those who already had first responder status.²⁰¹

135. Others wanted more fundamental reform of the system. UNICEF UK, highlighting the support of the Council of Europe’s trafficking monitoring body for more decentralised decision-making,²⁰² supported decentralisation in the devolved context.²⁰³ The Scottish

192 See also ECPAT

193 ECPAT, Migrant Legak Project, Unseen, Refugee Children’s Consortium, UK Children’s Commissioners

194 ECPAT. See also UK Children’s Commissioners.

195 Her Majesty’s Inspectorate of Prisons

196 Q80.

197 UK Children’s Commissioners See also NSPCC, CPAT

198 ECPAT

199 ILPA. See also Migrant Legal Project

200 NSPCC, Migrant Legal Project

201 UK Children’s Commissioners. See also Refugee Children’s Consortium, Coram Children’s Legal Centre

202 Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, First evaluation round*, September 2012: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMcKJNWh9TX9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA_Report+United+Kingdom+2012_en.pdf&fileName=GRETA_Report+Unite+d+Kingdom+2012_en.pdf

203 Q18

Commissioner for Children and Young People agreed: he said there were people “who could be acting as the competent authority who are closest to those children, but who do not actually have capacity to do that because of the way that it has been set up”.²⁰⁴ The UK Children’s Commissioners thought that the competent authorities should “at least include the child care professional organisations that provide the child with safe accommodation and care”,²⁰⁵ while the Refugee Council thought that making the process independent from the Home Office “might be a big step forward”.²⁰⁶

136. We welcome the development of the National Referral Mechanism and the framework it provides to meet the needs of children who have been trafficked. However, we are concerned by the negative reports of its operation in practice, particularly regarding the differential determination rates within the system. We are also concerned that its operation has not yet been reviewed.

137. We also agree that there should be greater awareness of the NRM and its requirements among the safeguarding workforce. Otherwise, the Government’s good work, including the dissemination of an NRM pack for local authority staff, could be wasted. There is scope to take this work further as part of a broader training drive.

138. Finally, we are persuaded by the case for greater independence in the operation of the NRM. The low level of NRM determinations by the immigration authorities fails to dispel perceptions of an inherent conflict of interest, which could undermine goodwill towards the mechanism and put trust in the system at risk. At the same time, we support central oversight of the determinations process with a view to achieving greater consistency, and we do not support instituting more bodies as “competent authorities” under the scheme.

139. We consider instead that the UKHTC should be vested with responsibility as the sole “competent authority” under the NRM. Though not an independent body, it receives input from a range of agencies, and is supported by civil society organisations. It would be a suitable body to provide leadership in this area, and could take on the role more quickly than if responsibility were to be devolved to an entirely separate body. It should, however, be properly resourced to enable it to decentralise its operations to ensure it is a visible organisation with credibility across the country. The reconfiguration of the immigration authorities provides an opportunity to effect this change.

140. We recommend that the Government commission an independent review of the operation of the National Referral Mechanism, which should in particular consider whether a statutory framework for the mechanism is necessary.

141. We recommend that the Government integrate NRM training into pre- and post-qualifying training for the safeguarding workforce (see paragraph 56).

142. We recommend that the UK Human Trafficking Centre be given sole responsibility as the “competent authority” under the NRM. The Government should

204 Q34. See also Unseen, which supported the development of regional assessment centres

205 UK Children’s Commissioners. The Scottish Refugee Council also supported the involvement of child protection professionals.

206 Q18

ensure that the UKHTC is properly resourced to engage other agencies in its work and to foster trust and support for the system at a local level.

Data collection and oversight

143. There was widespread concern that the NRM was insufficiently transparent. At present the Inter-Departmental Ministerial Group on Human Trafficking reports to Parliament, a process designed to inform public debate. However, the UK Children’s Commissioners criticised the present picture given of trafficking as “incomplete”. They said the combination of NRM referral figures, which they considered under-estimated case numbers, and the lack of a centralised tracking and tracing mechanism, led to a systematic under-reporting of cases and a lack of detailed outcome data.²⁰⁷ ECPAT agreed that there was a “lack of reliable and representative data” on the scale of trafficking.²⁰⁸ The Office of the Children’s Commissioner for England was also concerned that there had not yet been a formal assessment of the number of young people in either youth or adult custody who were victims of trafficking.²⁰⁹

144. Several witnesses accordingly called for the institution of an independent anti-trafficking co-ordinator to monitor arrangements with respect to trafficked children. ECPAT thought an independent mechanism with a specific focus on data collection was “essential”.²¹⁰ The UK Children’s Commissioners argued that an independent post with oversight of the NRM would avoid the present perception of a conflict of interest.²¹¹

145. It is imperative that the operation of the NRM can be scrutinised by civil society and by Parliament. It is therefore vital that there is a system in place to collect and analyse data about its operation. The Inter-Departmental Ministerial Group on Human Trafficking cannot, by virtue of its nature as policy co-ordination body, provide such oversight independently.

146. We recommend that disaggregated data on human trafficking be collected, monitored and analysed systematically. We recommend that an independent anti-trafficking coordinator be empowered to oversee the dissemination and analysis of such data, to report at least annually.

Criminalisation of trafficked children

147. Concern was expressed over those children who, rather than being assisted by the NRM, are brought within the criminal justice system as a result of activities undertaken owing to trafficking.²¹² Examples cited included trafficked Vietnamese young people

207 UK Children’s Commissioners

208 ECPAT

209 Office of the Children’s Commissioner for England, Scottish Refugee Council, NSPCC, Law Centre (Northern Ireland)

210 See also CFAB, Refugee Children’s Consortium

211 UK Children’s Commissioners. See also CFAB

212 ECPAT, Welsh Refugee Council, Refugee Children’s Consortium, Office of the Children’s Commissioner for England, NSPCC, Coram Children’s Legal Centre

working on cannabis farms, and individuals holding false documentation given to them in the process of trafficking.²¹³

148. Crown Prosecution Service (CPS)²¹⁴ and police authority guidance,²¹⁵ which counsel against prosecution or detention where a child is suspected or determined to have been trafficked, is already in place. However, several witnesses expressed concern that staff were unaware of or unfamiliar with the guidance, leading to inconsistency in practice, and called for efforts to improve awareness.²¹⁶ The NSPCC stressed that such awareness had to extend to those dealing with children in the prison estate. It called for “first responder” status to be given to trained prison staff, who were “amongst the most skilled practitioners in identifying possible victims of trafficking”.²¹⁷

149. The Government stressed its commitment to raising awareness around the criminalisation of children, a “key issue in the Government’s Human Trafficking Strategy”. It noted that CPS guidance provided mechanisms for the courts and prosecutors to take into account the child’s trafficked status, before, during and after prosecution, and made clear that work to ensure that “trafficked children found involved in criminal activity are safeguarded and are not unnecessarily criminalised is ongoing.” It wanted local authority staff to be vigilant to the possibility of trafficking, and acknowledged that there was work to be done in this area.²¹⁸

150. Children who are trafficked are victims of crime and should be treated as such. Their involvement in the criminal justice system puts them at risk of further harm, including to their mental health. This is particularly acute where age is disputed and children may be at risk of being detained in adult facilities (see paragraph 80).

151. The Government should demonstrate its commitment to preventing unnecessary criminalisation by developing awareness. To do so it should encourage participation in training, and it should develop targeted materials for relevant staff. Finally, it should give prison staff the tools to contribute to the fight against human trafficking as “first responders”.

152. We welcome the production of CPS and police guidance which makes clear that authorities should seek not to prosecute or convict child victims of trafficking unnecessarily. We recommend that the Government develop targeted materials to raise awareness of this guidance and of the NRM among police and CPS staff.

213 ECPAT

214 Crown Prosecution Service, *CPS Policy for Prosecuting Cases of Human Trafficking*, August 2011: http://www.cps.gov.uk/publications/docs/policy_for_prosecuting_cases_of_human_trafficking.pdf

215 See, for example, Association of Chief Police Officers, *Position from ACPO Leads on Child Protection and Cannabis Cultivation on Children and Young People Recovered from Cannabis Farms*: http://www.ceop.police.uk/Documents/ceopdocs/externaldocs/160810_ACPO_leads_position_on_CYP_recovered_from_cannabis_farms_FINAL.pdf

216 Office of the Children’s Commissioner for England, Welsh Refugee Council, Migrant Legal Project, ECPAT, NSPCC, Refugee Children’s Consortium

217 NSPCC. See also Migrant Legal Project, Unseen

218 HM Government

153. We recommend that suitably trained prison and youth offending institution staff be vested with “first responder” status under the NRM, to give them the power to refer possible victims of trafficking into the mechanism.

RETURNS

154. Returning an unaccompanied migrant child, either to their country of origin or to a third country, may be considered appropriate by the immigration authorities in some cases. Return is most often considered where an application for asylum has been refused and the period of leave has ended. It may also be considered in cases where a child has been trafficked, or where a young person chooses to return, as part of a voluntary scheme.²¹⁹

155. There are also international mechanisms that relate to returns. For children who have previously travelled through another European country, enforced removal to that country can be taken forward under the Dublin II Regulation.²²⁰ However, this makes clear that no child should be removed until a clear process has shown that an individual’s needs and rights under the UNCRC, including best interests, have been considered.²²¹

156. Finally, the European Return Platform for Unaccompanied Minors (ERPUM) brings together a number of governments, including those of the United Kingdom, Sweden, Norway and the Netherlands, to seek to develop a co-ordinated returns mechanism for unaccompanied migrant children whose asylum applications are unsuccessful. Under the scheme, negotiations are ongoing with the governments of Afghanistan and Iraq to put in place arrangements to return children either to family situations or to institutional care.²²²

157. Whatever the mechanism, facilitating the return of a child is a central part of deliberating on a child’s future. Where it would benefit a child’s long-term emotional and personal development, returning a child could form part of a suitable care plan. It is essential that such decisions are underpinned by a comprehensive and transparent assessment of the best interests of the children concerned.²²³

158. Witnesses expressed widespread concern that best interests were not being assessed thoroughly enough when making returns decisions in relation to unaccompanied migrant children.²²⁴ Some witnesses thought this was a reflection of the fact that there was insufficient information on which to base a decision, and too little sensitivity shown in assessing that information. Dr Christine Mounge, a social anthropologist working with unaccompanied migrant children, thought those factors precluded a “balanced consideration” of the best interests of children.²²⁵ The Children’s Society called for more

219 Schemes include the Voluntary Assisted Return and Reintegration Programme, and the Assisted Voluntary Return of Irregular Migrants. See <http://www.ukba.homeoffice.gov.uk/asylum/outcomes/unsuccessfulapplications/voluntaryreturn/>

220 Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L50 (25.02.2003).

221 See *MA v United Kingdom* (ECJ, C-648/11), where the Cruz Villalon AG stressed the importance of best interests in these determinations.

222 See, for example Office of the Children’s Commissioner for England

223 See UNHCR, UNICEF, Refugee Action

224 CFAB, Children’s Society, Welsh Refugee Council, NSPCC, Refugee Children’s Consortium, UNICEF

225 Dr Christine Mounge

attention to be paid to experiences and ties formed in the United Kingdom when considering the question of returns.²²⁶ ILPA called for post-return evaluation as well, to ensure that any arrangements made are shown to be sufficient.²²⁷

159. Anxiety was expressed over the possibility of returning children to countries where there were ongoing humanitarian issues or conflict. Proposals to return children to Afghanistan and Iraq under the ERPUM were particularly criticised, and witnesses urged the Government not to institute returns while those concerns persisted.²²⁸ The UNHCR put the case simply: “country-of-origin evidence shows that the situation in Afghanistan is really not suitable for children to be returned.”²²⁹ Human Rights Watch said that returning children to Afghanistan without proper family tracing could lead to a “real risk of irreparable harm”, citing problems in relation to education, healthcare and possible underage military recruitment.²³⁰ The Refugee Council said that discussing returns in such circumstances “illustrates how far we are removed from looking at the best interests of children and the human rights of children”.²³¹

160. We repeat that the best interests of children must always be at the heart of the returns process. It is legitimate to keep migration policy objectives in mind, as they cannot be divorced from all considerations in this area, but not at the expense of properly determining how to safeguard unaccompanied migrant children. We therefore welcome the strong statement from Cruz Villalón AG, in a recent case in the European Court of Justice, stressing the importance of considering best interests when making decisions about returns under the Dublin II Regulation.²³²

161. The Government should ensure that decision-makers make child-focused assessments of the overall benefits of returns. Such decisions should be made with the UNCRC in mind. Arrangements need not necessarily be with a family member, but they must be secure and effective, they should support the child’s development needs, and they should be evaluated after return.

162. We are deeply concerned that returns are being considered to institutional care facilities in Afghanistan and Iraq under the ERPUM project. There are credible humanitarian concerns as to their suitability as locations for the return of unaccompanied children, as was the case for similar—and aborted—proposals to return children to Albania in 2003.²³³ Taking forward proposals for enforced returns before such conditions have

226 Q17

227 ILPA. See also UNHCR

228 CFAB, Children’s Society, Refugee Children’s Consortium, Royal Holloway and Tavistock Centre, Office of the Children’s Commissioner for England, Human Rights Watch, Charlotte Nubber-Cope, Coram Children’s Legal Centre, Welsh Refugee Council, Alan Morice

229 Q16. See also Q16 (UNICEF), Q33 (Scottish Commissioner for Children and Young People)

230 Human Rights Watch. It is suggested that to return a child in such circumstance would violate the principle of non-refoulement, the concept of international customary law expanded upon in the UNCRC and in General Comment No. 6, that refugees or potential victims of persecution should not be returned to a situation where there is a “real risk of irreparable harm”.

231 Q16. See also Coram Children’s Legal Centre, COMPAS

232 MA v United Kingdom Secretary of State (get caseref)

233 See International Detention Coalition, *Seeking Asylum Alone*, 2009: <http://idcoalition.org/wp-content/uploads/2009/06/seeking-asylum-alone.pdf>

abated is in conflict with the UK's obligations under the UNCRC. The Government should either curtail these activities within the platform, or cease cooperation with it.

163. All decisions on returning children to their country of origin should be made only after a full assessment of whether return is in the best interests of the child. Such a decision should be made in the light of a full country-of-origin report framed according to the UNCRC, and after a full assessment of the needs of the child and the care arrangements that they will return to. Return arrangements should also be subject to independent evaluation afterwards to determine their suitability. We recommend that the Government issue clear guidance setting out these standards, including in cases of returns to third countries under the Dublin II Regulation.

164. We recommend that the Government clarify the work it has undertaken with respect to returning children forcibly to Afghanistan and Iraq, particularly in relation to the European Return Platform for Unaccompanied Minors. The Government should affirm that no proposals for enforced returns will be taken forward while conflict or humanitarian concerns persist. If this cannot be guaranteed within the ERPUM, we recommend that the Government withdraw from further participation with the platform.

5 Supporting unaccompanied migrant children

GUARDIANSHIP

165. The asylum and immigration process is complex, and can be difficult for the children involved to understand.²³⁴ One idea which has been gathering momentum over recent years is that of establishing a system of guardianship to support unaccompanied migrant children, and to take better account of the roles and responsibilities of the wide range of professionals with whom they come into contact.

166. The UN Committee on the Rights of the Child called for the establishment of a system of guardianship in its General Comment No. 6.²³⁵ It says a guardian should be present in “all planning and decision-making processes”, to provide “the continuum of care required by the child”. The presence of a guardian was also a specific recommendation to the United Kingdom in the UN Committee on the Rights of the Child’s State Report in 2008, which called for an independent system to ensure that a child’s best interests was considered throughout the decision-making process.²³⁶ The UNHCR insisted that a guardian would help “best interests remain a primary consideration throughout the procedure”.²³⁷

167. Guardianship is a variable concept. It can be established on a statutory basis, as sought by the UN bodies, where the guardian takes on a legal role with respect to the child. Statutory systems in place in a number of countries, including Canada, Finland, Norway and France.

168. A guardian can also serve as an advocate without formal powers. A pilot for a Scottish Guardianship Service in that form was conducted for more than two and a half years, starting in September 2010 and concluding in March 2013. During the pilot, unaccompanied asylum seeking and trafficked children from outside the EU arriving in Scotland were provided with an advocate independent of the immigration authorities and local authority. The definition of a guardian in that respect is given at Box 3. The pilot was evaluated independently in a report produced by the specialist advisers to this inquiry, which concluded that guardians had provided clarity, coherence and continuity for the children involved and had enhanced overall service provision by creating opportunities for greater collaboration, information sharing and interagency working.²³⁸ The Service has now received funding from the Scottish Government for a further three years.

234 See Asylum Aid, COMPAS. Refugee Council

235 UN Committee on the Rights of the Child, General Comment No. 6, *Treatment of unaccompanied and separated children outside their country of origin*, *op. cit.* paragraph 21.

236 UN Committee on the Rights of the Child, 49th Session ‘Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, Concluding Observations United Kingdom of Great Britain and Northern Ireland’; paragraph 71, October 2008,

237 UNHCR

238 Heaven Crawley and Ravi KS Kohli, *‘She endures with me’: An evaluation of the Scottish Guardianship Service pilot*, 2013: www.scottishrefugeecouncil.org.uk/assets/0000/5864/Final_Report_2504_2.pdf

Box 3: Definition of a guardian in the Scottish Guardianship Service pilot²³⁹

A guardian is someone who accompanies children and young people when they claim asylum or are trafficked and are cared for by health, education and welfare services. A guardian will help a child or young person to be actively involved in decisions that affect their life and to get the help they need, when they need it. A guardian is on the child's side, can explain what is happening to them, will listen to their views and experiences and speak up for them when needed. A guardian will also help a child or young person to plan their future, whether in the UK or elsewhere.

169. During our inquiry we heard strong support for developing a model of guardianship across the United Kingdom.²⁴⁰ UNICEF UK thought that “a guardian should already have been applied a long time ago”.²⁴¹ ECPAT thought that a guardian would lead to more durable solutions, more information for children and more effective joint working – a representative “by their side and on their side”.²⁴² Barnardo's said that a guardian would enable more sustainable decision-making, gathering information through trust rather than in detailed interviewing.²⁴³ Praxis stressed the benefits in alleviating the confusion felt by children when dealing with multiple agencies.²⁴⁴ The Children's Commissioner for England considered that guardianship would greatly assist children in having their views heard in accordance with Article 12 of the UNCRC.²⁴⁵

170. Views differed on whether a system of guardianship would be better established on a statutory or non-statutory footing. Some supported a model of legal guardianship with statutory powers.²⁴⁶ The Children's Society said that a statutory basis was essential to uphold training standards and independence.²⁴⁷ ILPA stressed that formal powers were required to enable a guardian to give instructions to legal representatives; it said many legal professionals were “desperate” to see such a model developed.²⁴⁸ The Islington Law Centre, on the basis of experience in the Scottish pilot, raised concerns that a non-statutory system could lead to a perception that some guardians were “biased” owing to the lack of a formal duty.²⁴⁹

171. Others preferred a more advocacy-focused model, and the Scottish pilot was widely seen as a possible model on which to build. The Scottish Commissioner for Children and Young People was encouraged by the pilot because of its individualised support through

239 Definition agreed by the Scottish Guardianship Service Pilot Project Advisory Group. See Heaven Crawley and Ravi KS Kohli, *She endures with me: an evaluation of Scottish Guardianship Service pilot*, *op. cit.*

240 ILPA, Refugee Children's Consortium, CFAB, Children's Society, British Red Cross, Barnardo's, ECPAT, Law Centre (Northern Ireland), No Recourse to Public Funds Network, Office of the Children's Commissioner, NSPCC, BASW, Coram Children's Legal Centre, Alan Morice, RCPCH, Royal Holloway and Tavistock Centre, Praxis, Refugee Council, Refugee Action, Brighter Futures visit, Coram Children's Legal Centre visit

241 Q14. See also Q14 (Children's Society)

242 ECPAT.

243 Barnardo's

244 Praxis

245 Office of the Children's Commissioner for England

246 ECPAT, No Recourse to Public Funds Network, Refugee Children's Consortium, Refugee Council, Law Centre (Northern Ireland), NSPCC, ILPA, Children's Society

247 Children's Society

248 Q47, ILPA

249 Q47.

what was otherwise “a very complex system full of its own terminology”.²⁵⁰ Kathleen Marshall, Chair of the Project Advisory group for the Scottish Guardianship Service, highlighted the service’s “child-centred” nature, its role in developing social networks and the positive feedback from children.²⁵¹ She acknowledged there were issues of clarity, but thought that a non-statutory footing allowed for more individualised representation, and stressed that guardians had shown “fluidity” to find a space within the existing framework.²⁵² Dost noted that some voluntary sector providers in England already performed a *de facto* guardianship role in joining up services in some instances.²⁵³ Praxis identified the possibility of an advocacy system developing organically in England and Wales,²⁵⁴ and thought that the Scottish model “would be well worth pursuing as a way forward”.²⁵⁵

172. There was a clear sense that due care would have to be taken in developing a guardianship model in the English and Welsh context. ADCS, although it thought the Scottish pilot demonstrated the importance of some form of advocacy for children, said further debate was required as to “what the guardianship arrangement should look like”.²⁵⁶ Kent County Council thought that the idea had “some merit as a proposition”, but agreed that there were issues to be addressed.²⁵⁷ To this end, Kathleen Marshall stressed the need for strong working protocols, proper adaptation to the English and Welsh legal architecture, sufficient resources and legal representation to run alongside it.²⁵⁸

173. Not all witnesses were persuaded by the case for a guardianship scheme. BAAF was concerned that, despite the possible advocacy benefits, the role of guardian lacked clarity,²⁵⁹ while Richard Ross, of the Solihull Council Education and Children’s Services department, suggested that a guardian could add confusion to existing processes.²⁶⁰ The Government acknowledged the “longstanding” demand for a guardianship scheme, but said that its proponents had “struggled to explain precisely what role such an individual will fulfil that is not already the responsibility of a professional involved in the care of looked after children.” It was “not persuaded that a guardianship scheme would add value to this system”.²⁶¹ The Minister, however, noted that he was “open-minded” about possible developments, particularly were the Scottish Guardianship Service to demonstrate its ability to represent children’s views effectively.²⁶²

250 Q37

251 Q46. See also Kathleen Marshall

252 Q46

253 Q58. See also Q14 (Refugee Council), Q47 (ILPA)

254 *ibid*

255 Q63. See also BASW, Q14 (Refugee Council)

256 Q76. See also NSPCC, which wanted to ensure that young people were consulted as part of determining what the scheme should look like.

257 *ibid*

258 Kathleen Marshall

259 Q63

260 Q76

261 HM Government

262 Q100

174. We see great potential in a system of guardianship. Many people are involved in supporting unaccompanied migrant children at present, and it could be far more effective to have one individual working throughout the process to seek to uphold a child's best interests. The best form for such a scheme remains open to question. Though we will support any system that enables guardians to support children fully, we note that any system will need to be adapted carefully, and the functions of a guardian made clear. We consider that the most appropriate way forward at this stage is to build upon the work in Scotland by piloting that advocacy approach more widely. This could also point the way to the best means to guarantee compliance with the requirement in the EU Trafficking Directive to appoint a guardian for trafficked children.²⁶³

175. We welcome the findings from the Scottish Guardianship Service, which demonstrate the value that a guardian can add for unaccompanied asylum seeking and trafficked children. We recommend that the Government commission pilots in England and Wales that builds upon and adapts the model of guardianship trialled in Scotland. The guardian should provide support in relation to the asylum and immigration process, support services and future planning, help children develop wider social networks, and ensure that children's views are heard in all proceedings that affect them. The Government should evaluate the case for establishing a wider guardianship scheme throughout England and Wales once those pilot schemes are complete.

LOCAL AUTHORITY SUPPORT

Support services: duties and standards

176. Article 27 of the UNCRC requires States to ensure that all children have a standard of living adequate to support their physical, mental, spiritual and moral development. In the United Kingdom the responsibility for meeting the care, accommodation, health and educational needs of young people rests with each devolved administration, and is usually a responsibility usually discharged by local authorities.

177. A duty towards an unaccompanied child may arise by virtue of a number of provisions in the Children Act 1989:

- Section 17, which calls on local authorities to “safeguard and promote the welfare of children within their area”;
- Section 20, which imposes a duty to accommodate children where there is no adult with parental responsibility for him or her; and
- Section 31, which imposes a duty to take a child into care where he or she is suffering or is likely to suffer significant harm unless he or she is taken into care.

178. Such duties applied to 2,150 unaccompanied asylum-seeking children as of 31 March 2012.²⁶⁴ The No Recourse to Public Funds Network (NRPFN) estimated that the cost of

²⁶³ Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, *op. cit*

²⁶⁴ Supplementary submission from HM Government

support services to looked after unaccompanied migrant children was around £19m per year.²⁶⁵

179. The Government was clear as to the required level of support. It said that local authorities should “adopt the same approach to assessing the needs of those children as they use to assess other children in need in their area. A child's immigration status should not affect the quality of care, support and services that are provided as a result of the assessment.” It noted that looked after children benefited from:

- A social worker or personal adviser to assess the needs of a child and plan their care;
- Entitlement to an advocate and independent visitor;
- A care plan kept under regular review, with the process chaired by an Independent Reviewing Officer;
- Accommodation, which could include foster care, a children's home or supported accommodation, depending on the age at which a child becomes looked after and an assessment of their needs;
- Educational support on the same basis as other children in statutory education, including support to learn English if necessary;
- Other services based on an assessment of need, such as health services.²⁶⁶

180. However, a significant number of witnesses noted the variability of such provision.²⁶⁷ Salusbury World said that it had found “extraordinarily varied levels of support” in its work with children.²⁶⁸ This was also a theme of a recent report by an independent group of members of both Houses, which included members of this Committee.²⁶⁹ The Government acknowledged that there was an “issue with local authority consistency—some are very effective, and others not so”, and noted it had commissioned work to examine practical care arrangements for trafficked children.²⁷⁰

181. Accommodation was one of the primary concerns raised. Rosemary Demin, a teacher who ran a project for young asylum seekers in a South London secondary school until 2012 and who gave evidence in a personal capacity, expressed concern about the over-willingness of social workers to place children at 16 into independent accommodation or semi-independent arrangements, where staff were not always trained for the specific needs of unaccompanied children.²⁷¹ ECPAT was concerned that children were more prone to go missing in such circumstances.²⁷² The Children's Society thought that such decisions were

265 No Recourse to Public Funds Network

266 HM Government

267 See also ECPAT, OCCE, Salusbury World, Compas (Oxford University), RCC, UNICEF, Q38 (Children's Commissioner for England), Q52 (Praxis), Q53 (Jim Wade), Get Qref (BASW)

268 Salusbury World

269 http://www.childrensociety.org.uk/sites/default/files/tcs/asylum_support_inquiry_report_final.pdf

270 HMG

271 Rosemary Demin. See also Refugee Children's Consortium and Law Centre (Northern Ireland), Klevis Kola Foundation

272 ECPAT. See also Barnardo's, Unseen, Law Centre (Northern Ireland)

being “driven largely by resource considerations rather than welfare needs or children’s own views”.²⁷³

182. Jim Wade and BAAF argued that more supportive placements, such as foster care or small-group homes, would benefit educational outcomes and promote the development of strong relationships.²⁷⁴ There was strong support for such placements to be more routine until children were ready to move into independent arrangements.²⁷⁵ Barnardo’s argued that there was a particular need to provide safe accommodation for children who have been trafficked, and who may go missing as a result of pressure from traffickers or out of fear. It wanted to see a national roll-out of a safe accommodation pilot scheme that it had worked on with the Department for Education, which focused particularly on trafficked children.²⁷⁶

183. Others were concerned that broader needs were not taken into account. The Children’s Society said that there was “limited provision of specialist therapeutic support for children, and this may be affected by a young person’s immigration status or transition into adulthood”.²⁷⁷ The Office of the Children’s Commissioner for England thought that this could fail to ensure that proper rehabilitative services were provided, as required under Article 39 of the UNCRC. It drew attention in particular to the lack of mental health support services.²⁷⁸ The Children’s Society thought that funding pressures would limit support even further as specialist teams in local authorities were scaled back or withdrawn.²⁷⁹ The British Red Cross wanted to see more comprehensive support provided to meet all the needs of children.²⁸⁰

184. Witnesses called for efforts to be concentrated on improving support arrangements. The UK Children’s Commissioners, among others, called for more effective training efforts and practice development.²⁸¹ Local authority representatives drew attention to what they considered to be strong training regimes for safeguarding staff, including work by the ADCS and the London Asylum Seekers Consortium, a collection of London local authorities.²⁸² Kent County Council thought that clear statutory provision, setting out the responsibilities incumbent upon local authorities, would be the most effective means to clarify what was required and improve provision.²⁸³

185. The Children’s Commissioner for England queried whether good local authorities were transferring their expertise elsewhere.²⁸⁴ Praxis suggested that there was merit in

273 Children’s Society. See also Q53 (Jim Wade)

274 Q55. See also Q53 (Jim Wade)

275 CFAB, Children’s Society, NSPCC, Office of the Children’s Commissioner for England, Q53–54 (Jim Wade)

276 Barnardo’s. See also Unseen, ECPAT

277 Children’s Society

278 Office of the Children’s Commissioner for England. See also Unseen

279 Children’s Society. See also Barnardo’s, Office of the Children’s Commissioner for England, Salusbury World, COMPAS, NSPCC. Barnardo’s was concerned that children were not being referred to vulnerable adult teams when they left care.

280 British Red Cross. See also Barnardo’s, Refugee Action

281 Q38. See also Q7 (Refugee Council), Barnardo’s

282 Q70 (ADCS, Croydon Council)

283 Kent County Council. See also ECPAT

284 Q38. See also Q53 (Jim Wade)

resourcing some local authorities as “centres of excellence” which could disseminate good practice more widely.²⁸⁵ To that end, the Minister noted that “one of the key responsibilities that Government has is to understand where there is best practice and to take a lead in sharing that best practice in bringing the performance of all local authorities up to the standards of those that are the best in this area.”²⁸⁶

186. It is clear that the quality of support services varies widely. There is a gap in knowledge and, though we welcome the Government’s work in establishing a clearer picture of provision as regards trafficked children, we are concerned that it has not extended this work more widely. A clear map of good practice would enable the Government to highlight excellent local authorities which can disseminate their expertise widely. This could build on the Government’s work in implementing self-improvement models through the Children’s Improvement Boards,²⁸⁷ and in so doing would both benefit practitioners and bring up the standards of care for young people

187. There should be a particular focus on providing safe accommodation for children throughout their time in care. This holds particularly true for those, such as trafficked children, who face continuing risks to their safety. We therefore support further consideration of the wider rollout of the safe accommodation scheme piloted by Barnardo’s.

188. We recommend that the Government conduct or commission a mapping exercise that sets out a comprehensive picture of local authority support services for unaccompanied migrant children. This exercise should in particular seek to identify the best performing local authorities in order to develop them as centres of excellence for the benefit of unaccompanied migrant children throughout the United Kingdom. In the light of this exercise, the Government should update its guidance provided to children’s services in local authorities to address any gaps that emerge, and link it to the broader Working Together to Safeguard Children document.²⁸⁸

189. We recommend that the Government assess the cost-benefit case for rolling out the pilot safe accommodation scheme for trafficked children, operated by Barnardo’s in conjunction with the Department for Education, more widely. We support the case for doing so in principle.

Transition

190. The duty towards an unaccompanied migrant child does not end at 18. Local authorities continue to have a duty to provide support to former looked after children into adulthood where a duty was held for at least 13 weeks subsequent to a child’s 14th birthday.²⁸⁹ It is right that such duties continue to apply to vulnerable children who may continue to require support as they face fundamental decisions about their future.

285 Q52

286 Q91

287 Supplementary submission from HM Government

288 HM Government, *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*, March 2013, *op. cit.*

289 See, s23 and s24 Children Act 1989, as amended by the Children (Leaving Care) Act 2000. These are supplemented by the Department for Education, *The Children Act 1989 Guidance and Regulations Volume 3: Planning Transition*

191. The Government stressed that unaccompanied migrant children were supported “in the same way as any other child in need”, throughout and beyond the care system. It noted that this could include support up to the age of 25 for those in education or training, or 21 more generally, including where children had no leave to remain.²⁹⁰ Such support includes the provision of a personal advisor maintaining a pathway plan, and an individualised framework for managing the transition to adulthood for children over 16. Where a young person’s future is uncertain, such plans should set out options both for a child remaining in the UK and returning elsewhere.²⁹¹ ADCS described pathway plans as a guide “through to independence”.²⁹²

192. A significant number of those submitting evidence were not satisfied with the support provided. The Children’s Society said that there was a general lack of concern for transition.²⁹³ It criticised the widespread use of discretionary leave (see paragraph 108),²⁹⁴ and argued that the failure to pay proper heed to continuing support needs risked destitution for young people.²⁹⁵ The NSPCC agreed, stating that children often felt “largely on their own and isolated”.²⁹⁶ The Children’s Commissioner for England thought that local authorities too often saw the transition to adulthood as a point to tail off support arrangements.²⁹⁷ In that respect, Jim Wade noted that support funding was based upon age, rather than need, meaning transition was often a “resource-driven” process.²⁹⁸

193. Part of the issue was felt to be inconsistency in the quality and nature of pathway planning.²⁹⁹ Dost said that the pathway planning approach was often “quite a tick-box” approach.³⁰⁰ The NRPFN said that real pathway planning was “outside of the training and experience of many local authorities”, leaving children in a vulnerable position.³⁰¹ BAAF considered that one of the main reasons for such issues was that local authorities were planning for an uncertain future.³⁰²

194. The Refugee Children’s Consortium therefore called for stronger support arrangements into adulthood, to reinforce the notion of a “durable solution”.³⁰³ It called for

to Adulthood for Care Leavers, 2010:
<http://media.education.gov.uk/assets/files/pdf/v/volume%203%20planning%20transition%20adulthood%20for%20care%20leavers.pdf>

290 HM Government

291 No Recourse to Public Funds Network

292 Q77

293 Q5

294 Q11

295 Children’s Society

296 NSPCC

297 Office of the Children’s Commissioner for England. See also Q38 (Children’s Commissioner for England, Scottish Commissioner for Children and Young People), NSPCC, Children’s Society, Coram Children’s Legal Centre, Refugee Council, Praxis, ECPAT

298 Q56

299 Children’s Society, Praxis, Coram Children’s Legal Centre. Q11 (Children’s Society)

300 Q55. See also Rosemary Demin

301 No Recourse to Public Funds Network

302 Q57. See also Q62 (Jim Wade) Q77 (ADCS)

303 Refugee Children’s Consortium. See also Salusbury World, Children’s Society, No Recourse to Public Funds Network, Klevis Kola Foundation, Office of the Children’s Commissioner for England

substantial reform to plan more effectively for the needs of children.³⁰⁴ ILPA wanted to see Section 31 of the Children Act 1989 used more frequently to bring children into formal care proceedings.³⁰⁵

195. UNICEF UK pointed to policies elsewhere in the EU that sought to support children during transition by applying protective duties for young people aged from 14 to 24 years; similar provisions were being considered in Wales.³⁰⁶ It believed that this approach would ensure that “adequate protection and care is secured after they reach the age of 18, so there is no abrupt change, uncertainty and instability”.³⁰⁷ However the Scottish Commissioner for Children and Young People noted that resource constraints had to be borne in mind when developing policy in this area.³⁰⁸

196. The transition to adulthood is the point at which educational and personal ambitions are shaped, and where children prepare for independence. It is vital that services provided to those children who are looked after by the state are effective. But the evidence we have seen shows a system that leaves children with an uncertain future, and where resource constraints limit the services that can be provided. This is not in the best interests of children.

197. There needs to be reform. More certainty when making decisions about the future of unaccompanied migrant children would facilitate better transition planning, but the problem runs deeper. There is currently an insufficient focus on the needs of children during the transition to adulthood, which is borne out by support funding decreasing at that stage (see paragraph 200). This does not demonstrate a commitment to fostering the full development of unaccompanied migrant children. The Government should shift the focus in transition support onto the best interests and full development of children. In doing so, it should affirm the importance of supporting the educational, rehabilitative and personal needs of those looked after by the state.

198. Unaccompanied migrant children must be properly supported in the transition to adulthood. The Government should ensure that children receive bespoke and comprehensive plans that focus on educational goals, reintegration and rehabilitation. Such plans should give proper consideration to all possible outcomes for the child, including family reunification and reintegration whether in the home country, the UK or a third country. Care plans should take full account of the wishes of the child, and remain applicable up to the age of 21, or 25 if the young person remains in education, to enable children to realise their maximum potential.

Resources

199. Witnesses were concerned that the present financial climate was leading to the under-funding of care services for unaccompanied migrant children, and that this was

304 Refugee Children’s Consortium

305 ILPA

306 Q4. See also Q40 (Keith Towler)

307 Q12

308 Q40

undermining broader support.³⁰⁹ The NSPCC noted a £43m decrease in spending on asylum-seeking children between 2009/10 and 2011/12, with a further £12m reduction in the 2012/13 financial year. This, it noted, was “likely to have a significant impact on the availability of support and care services for separated children”.³¹⁰

200. Costs incurred in supporting unaccompanied children who are part of the asylum process can be reclaimed by local authorities from the Government. However, witnesses noted that the costs able to be reclaimed did not reflect those actually incurred, with the result that local authorities were obliged either to limit the services they could provide or take on the additional costs.³¹¹ Kent County Council highlighted the particular difficulties this already caused for local authorities with high caseloads, and said that further cuts to local authority grants would therefore be likely to affect unaccompanied children particularly intensely.³¹² The Refugee Children’s Consortium said that this risked a “two-tier and discriminatory service for migrant children”.³¹³

201. There was particular concern over the reduction in funding rates when children reached 16. Croydon Council identified a gap of about 10% in funding at this stage, which it said had a “significant” impact on accommodation arrangements.³¹⁴ Solihull Council suggested that there was “a clear underfunding issue” of around 20% for foster placements for children above 16.³¹⁵ Kent County Council agreed that these shortfalls were a “major pressure” on resources.³¹⁶

202. Funding issues were especially acute in the case of “appeal rights exhausted” (ARE) children. These are former looked after unaccompanied migrant children who have exhausted all relevant appeal processes, but who may not be able to be returned owing to inadequate reception facilities. NRPFN indicated that there were 606 such care leavers supported by local authorities in 2010, at a cost of around £4m.³¹⁷

203. However, the leaving care duties owed to such children (see paragraph 189) are amended by Schedule 3 of the Nationality, Immigration and Asylum Act 2002, which states that a local authority is not obliged to provide support to ARE children, unless a human rights assessment determines that withdrawing support would lead to a breach of the child’s human rights.³¹⁸

204. Witnesses were concerned that the applicable guidance about the interaction between the relevant statutory provisions was unclear and risked leaving children without support. Kent County Council noted that immigration authority guidance specifies that local

309 Refugee Children’s Consortium, Children’s Society, No Recourse to Public Funds Network

310 NSPCC

311 Refugee Action, Office of the Children’s Commissioner for England, Children’s Society, Q74 (Children’s Commissioner for England)

312 Kent County Council. See also Refugee Children’s Consortium, BASW

313 Refugee Children’s Consortium

314 Q73

315 *ibid*

316 *ibid*

317 No Recourse to Public Funds Network

318 Schedule 3, Nationality, Immigration and Asylum Act 2002

authorities should continue to fund ARE cases only after a human rights assessment has been conducted, and even then only for a maximum period of 12 weeks. In practice, the continuance of human rights obligations meant that support was still provided, albeit without any contribution from the Government.³¹⁹ In Kent, such provision for 100 young people costs more than £1m; in Croydon around 130 ARE young people, a fifth of the care leavers in the area, were supported without Government funding, at a cost of £1.65m.³²⁰

205. The Office of the Children’s Commissioner for England said the provision removing the obligation to support ARE children was a “stark example of how legislation, designed with the best interests of children in mind, differs in its implementation between young people who are, and those who are not, subject to immigration control”.³²¹ The Refugee Council said that its effect was “to force young people into destitution regardless of their needs and experiences”.³²²

206. Witnesses called for clear, consistent and properly funded support from local authorities, in place of the present uncertainty.³²³ The ADCS wanted to see the duties of local authorities put on a clear statutory footing.³²⁴ It reflected a wider view when it also said that funding should be administered by the Department for Education, rather than the Home Office, in a way that properly accounted for local authority costs.³²⁵ The Islington Law Centre thought that this would remove the perception of a conflict of interest.³²⁶

207. The Minister, however, did not think that there was a “systemic” problem with funding in general, or with foster placements for those aged above 16.³²⁷ He insisted that there should be no “cliff edge” for ARE children, with support based upon need.³²⁸ The Government noted that funding streams reflected case numbers, and that it was expected that spending would be prioritised on an authority’s most vulnerable children. It acknowledged that human rights needs assessments were inconsistent, and drew attention to its support for work by the Local Government Association (LGA) to improve practice.³²⁹

208. We understand the context of national and local resource constraints. However, such constraints do not explain the confused and unsatisfactory system of funding to support unaccompanied migrant children, which serves simply to shift funding burdens onto local authorities and put support services at risk.

209. This is especially the case for young people whose appeal rights are exhausted. We are gravely concerned by immigration authority guidance that in effect seeks to cut off support

319 Kent County Council.

320 Q69

321 Office of the Children’s Commissioner for England

322 Refugee Council

323 ECPAT, No Recourse to Public Funds Network, ILPA, Praxis, Kent County Council, Refugee Children’s Consortium

324 Q66. See also Q69 (Croydon Council, Kent County Council)

325 Refugee Council, Refugee Children’s Consortium, Coram Children’s Legal Centre, Praxis, Kent County Council, No Recourse to Public Funds Network, Refugee Action, Office of the Children’s Commissioner for England, Q48 (Baljeet Sandhu), Q73 (Solihull Council), Q74 (ADCS)

326 Q48

327 Q94

328 *ibid*

329 HM Government. See also Refugee Children’s Consortium, Refugee Action

regardless of need. This puts children at risk of destitution, puts local authorities at significant legal risk if support services are stopped, and means that the costs of services that are provided fall solely onto local authorities.³³⁰ Even where support services are continued, the duty to “avoid a breach” of a person’s rights under the European Convention on Human Rights encourages a minimum, rather than an effective, level of provision.³³¹ In such circumstances, it is hard to see how the non-discrimination provision in the UNCRC is being upheld.

210. Support should be based on an assessment of need. Where that need is identified, it should be provided properly regardless of immigration status. We welcome work by the LGA, the ADCS and the NRPFN which seeks to explain case law and practice in this area. However, this is not authoritative guidance, and it does not supersede guidance from the immigration authorities.

211. Furthermore, as the United Kingdom as a whole owes support duties under the UNCRC to unaccompanied migrant children, it is for the Government to ensure that these duties are met in full. It is incumbent upon the Government to provide effective and properly resourced support, and to ensure clarity for local authorities and children.

212. We recommend that the system for distributing grant funding to local authorities for the support of unaccompanied migrant children be administered by the Department for Education (see also paragraph 45). We recommend that such funding should be allocated according to the real costs that arise in safeguarding unaccompanied migrant children within each local authority area.

213. We recommend that the Government amend paragraphs 1(1)(g) – (j) of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to ensure that unaccompanied migrant children who have exhausted their appeal rights receive the full range of leaving care support to which they would otherwise be entitled, regardless of their immigration status. The Government should also issue guidance to make clear to relevant local authorities that support duties owed to children whose appeal rights are exhausted apply until such children are given leave to remain, or fail to comply with refusal directions.

EDUCATION

214. Article 28 of the UNRC articulates the right to education, stressing the importance of free primary education, the availability of secondary education, and the accessibility of higher education based upon a child’s ability to benefit from it. Article 29 of the Convention adds texture to that right, calling for the development of a child’s talents, personality and abilities. Rights under both Articles should be respected without discrimination in accordance with Article 2.

330 Kent County Council

331 No Recourse to Public Funds Network

Primary and secondary education

215. Witnesses expressed concerns about the effectiveness of education provision for unaccompanied migrant children in the United Kingdom. Researchers from the Centre on Migration Policy and Society (COMPAS) at Oxford University drew attention to inequalities in access to early years education, especially for young people whose legal status was insecure. It said that this was exacerbated by the financial destitution faced by many children, which restricted their ability to afford school materials.³³² The British Association of Social Workers (BASW) also noted that problems with documentation hindered access to educational services, with long delays before children were enrolled on courses.³³³ Indeed, one young person we met from the Brighter Futures self-advocacy group of young unaccompanied migrant children had had to decline a university place on that basis.³³⁴

216. The Office of the Children’s Commissioner for England said that educational provision was sometimes denied owing to incorrect age assessments, or left to inadequate “English for Speakers of Other Languages” courses. It wanted to see more consistent language support for children and better access to vocational courses.³³⁵ The Klevis Kola Foundation, a London community organisation, agreed and noted a lack of focus on the development of unaccompanied children as their language skills improved.³³⁶

217. Our concern at these accounts is heightened by recent reports that consideration is being given to restricting access to education for those with an irregular migration status.³³⁷ The clear vision in the UNCRC for effective, non-discriminatory education for unaccompanied migrant children should be upheld.

218. The Government should affirm its commitment to uphold Articles 29 and 30 of the UNCRC and ensure equal access to education to children regardless of immigration status. It should assess how primary and secondary education is provided to unaccompanied migrant children, with a view to ensuring that their educational needs are met. The Government must ensure that any inequality in provision is addressed urgently.

Higher education

219. There was also widespread concern over access to higher education. The Education (Student Fees, Awards and Support) (Amendment) Regulations 2011 provide that only those children with a settled refugee status or indefinite leave to remain may access higher education funding at domestic rates—that is, a maximum of £9,000 per year in tuition fees, with fee and maintenance loans made available to those eligible. This means that those

332 COMPAS. See also Office of the Children’s Commissioner for England

333 BASW. See also COMPAS, Klevis Kola Foundation

334 Brighter Futures visit

335 Office of the Children’s Commissioner for England

336 Klevis Kola Foundation

337 The Guardian, *Ministers planning immigration crackdown on ‘education tourists’*, March 2013: http://www.guardian.co.uk/politics/2013/mar/27/ministers-immigration-crackdown-education-tourists?CMP=tw_t_gu

with discretionary leave to remain are charged for higher education at international rates, at nearly three times the cost, without access to any loan facilities.

220. The Minister said that the policy was justified as, in cases where children were to be returned, higher education funding should not be provided for those who “should be leaving the country when they become an adult”. He said if domestic funding facilities were to be extended, “all we are doing is incentivising [young people] to stay when they should be leaving”.³³⁸ The Government also noted that universities could use their discretion in charging unaccompanied asylum-seeking children on a home fee basis.³³⁹

221. There was strong and widespread disagreement with this view. The Refugee Children’s Consortium argued that university education would equip migrant children with essential skills, wherever they eventually settled.³⁴⁰ The Coram Children’s Legal Centre said that the Regulations “effectively cut off” access to an important development opportunity.³⁴¹ The Children’s Society thought that this prevented young people “transitioning into adulthood successfully and improving their life chances”, leaving children in a situation of “great uncertainty and instability” as they awaited decisions on their future.³⁴² ILPA contrasted the policy with the priority given to other care leavers in accessing learning grants.³⁴³

222. We note this debate with interest. However, higher education funding arrangements are more appropriately a matter to be considered in the broader context of fair access to higher education, rather than within a Report considering the human rights of unaccompanied migrant children. We therefore do not express a view on this issue.

LEGAL ADVICE AND REPRESENTATION

223. Finally, we turn to legal advice and representation, which cut across issues of protection and support. The UNCRC requires that children are able to understand and contribute to the proceedings that they are subject to. Article 12 stresses that children must be provided with the opportunity to be heard in any judicial and administrative proceedings affecting them.³⁴⁴

224. Meeting the obligations under Article 12 requires some provision of qualified legal advice. Questions that are being adjudicated upon in the asylum and immigration system, whether relating to asylum determinations, leave or appeals against decisions, may involve complex questions of law, touching upon the interpretation of the European Convention on Human Rights and the UNCRC. This calls for specialist input, to allow children to have a “full voice” in a way that implements the rights of the UNCRC.³⁴⁵

338 Q95

339 Supplementary submission from HM Government

340 Refugee Children’s Consortium

341 Coram Children’s Legal Centre. See also ILPA, Refugee Children’s Consortium, CFAB

342 Q11. See also Children’s Society, Praxis

343 ILPA

344 *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4

345 Coram Children’s Legal Centre. See also Refugee Council

225. Despite the importance of such support witnesses expressed fundamental concerns as to how effectively needs were and would be met. The Children’s Society said that solicitors able to work in a child-friendly manner and properly explore a child’s case were “rare”.³⁴⁶ Asylum Aid illustrated the problem by citing failures to attend substantive interviews, to agree interview records with the child concerned, and to represent children in appealing decisions.³⁴⁷ ILPA said that “in all parts of the country the demand for high quality, child sensitive legal advice and representation outstrips supply.”³⁴⁸ The Refugee Council thought that the “very poor legal representation” in some settings fed into what it saw as the arbitrary use of discretionary leave (see paragraph 108).³⁴⁹ There was also comment on the variability in the quality of advice across the country.³⁵⁰ The Children’s Society noted that many young people struggled to get good quality representation, particularly outside London.³⁵¹

226. Other witnesses looked to the future with concern. Following the passage of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, legally-aided advice will be available only to those children claiming asylum. Those seeking further discretionary leave under Article 8 of the ECHR or family reunion, or who are involved in NRM cases prior to the receipt of a “reasonable grounds” decision, will no longer be eligible. Jim Wade expressed concern over the changes, calling legally aided representation “crucial” for protecting the best interests of unaccompanied migrant children.³⁵²

227. The Refugee Children’s Consortium estimated that this could take as many as 2,500 non-asylum immigration cases involving children out of scope.³⁵³ It thought that the changes could “not only place a huge burden on local authorities, but will also result in these children receiving second-rate, unregulated advice, and being forced to appear at the tribunal, and potentially in the higher courts, without representation”.³⁵⁴ The Children’s Commissioner for Wales said that the implications of the changes would be “devastating in relation to access to justice”.³⁵⁵ Solihull Council said that there was a sense that the changes had been “rather sleepwalked into”.³⁵⁶

228. ILPA also suggested that the changes made as a result of the Act could affect the wider availability of advice, as immigration work could cease to become financially viable.³⁵⁷ The Refugee Children’s Consortium noted that, because asylum work was “cross-subsidised” by immigration work, there would also be knock-on effects for legal advice in relation to

346 See also Refugee Action, Coram Children’s Legal Centre, Salusbury World, Rosemary Demin

347 Asylum Aid. See also Salusbury World, ILPA, Refugee Council, Refugee Action

348 ILPA. See also Refugee Children’s Consortium, Coram Children’s Legal Centre, NSPCC, Barnardo’s

349 Q12

350 Q42 (ILPA), see also Q59 (Dost)

351 Children’s Society. See also Coram Children’s Legal Centre

352 Q57. See also Salusbury World, ILPA, FGAB, British Red Cross, Barnardo’s, COMPAS, office of the Children’s Commissioner for England, Coram Children’s Legal Centre, CFAB, Welsh Refugee Council, Praxis. Q44 (Islington Law Centre)

353 See also Q43 (ILPA)

354 Refugee Children’s Consortium. See also Q43 (ILPA)

355 Q36

356 Q82

357 Q42. See also Coram Children’s Legal Centre supplementary submission, Barnardo’s, Q60 (Praxis)

asylum claims.³⁵⁸ Accordingly, many witnesses called for immigration cases to be brought back within the scope of legal aid, using a power under Section 9(2) of the Act.³⁵⁹

229. The Government stressed that free legal advice was available during the asylum process, and that there were other individuals involved in children's lives—personal advisors, social workers, foster parents, and Independent Reviewing Officers—who work to identify and represent the best interests of children. It said this was an “appropriate support and advice structure”.³⁶⁰ The Minister also noted the Government's commitment to examine whether further assistance would need to be provided to children negotiating the immigration process.³⁶¹

230. The picture painted of the legal landscape in this area is deeply troubling. The Government should conduct a mapping exercise of the legal advice that is available to establish a clear picture of the effectiveness of provision.

231. We recommend that the Government conduct an immediate assessment of the availability and quality of legally-aided legal representation for unaccompanied migrant children in England and Wales.

232. We are particularly concerned by the changes to legal aid provision. A fully developed case for asylum or leave can demand an understanding of relevant domestic and international obligations, including case law. It is unrealistic to expect unaccompanied migrant children to be able to navigate such processes without the support of qualified legal professionals. It is also unrealistic to expect other professionals, with specific support responsibilities towards children, to be able to take on this role. It is not their place, and nor should it be, to provide detailed legal advice.

233. Furthermore, the cost-benefit case for the changes is not clear. Where local authorities owe a duty under the Children Act 1989, a needs assessment may demand that legal advice be provided in any case.³⁶² Withdrawing legally-aided support may simply shift spending from the legal aid budget to already stretched local budgets; indeed, the LGA projected that it could cost local authorities as much as £10m annually.³⁶³ Nevertheless, we acknowledge that changes to legal aid must be reviewed in the round, given that changes in one area could lead to a reduction in provision elsewhere.

234. The Government should pay particular attention to the impact of withdrawing legal aid for non-asylum immigration cases involving unaccompanied migrant children when reviewing the changes to legal aid entitlement effected in the Legal Aid, Sentencing and Punishment of offenders Act 2012. The Government should give serious consideration in any such review to the cost-benefit case for providing legal aid to all unaccompanied migrant children involved in immigration proceedings.

358 Refugee Children's Consortium

359 Refugee Children's Consortium. See also ILPA, Q43 (ILPA), British Red Cross, Barnardo's, Salusbury World, Office of the Children's Commissioner for England, Coram Children's Legal Centre, CFAB, Welsh Refugee Council, Praxis, Refugee Action

360 HM Government

361 Q101

362 Supplementary submission from Coram Children's Legal Centre, ILPA, Refugee Children's Consortium, Q43 (ILPA). Q83 (Solihull Council) were “apprehensive” about the prospect.

363 Refugee Children's Consortium

Conclusions and recommendations

The best interests of the children

1. We recommend that the Government's guidance to those safeguarding and making decisions about the future of unaccompanied migrant children should reassert the primary need to uphold the welfare and wellbeing of those children throughout their time in the United Kingdom, and to consider properly their best interests during the asylum and immigration process. Guidance should also call for consultation and cooperation with external experts who are able to provide assistance (Paragraph 31)
2. We recommend that the Government establish an independent advisory group, composed of experts from voluntary organisations, academia and practice, to provide guidance to Ministers about how to consider the best interests of unaccompanied migrant children most effectively. Its framework for scrutiny should be based on the UNCRC and applicable domestic duties, to ensure that the group's work is child-focused (Paragraph 32)
3. Finally, we recommend that the Government should evaluate the case for the establishment of a formal Best Interests Determination process. This evaluation should analyse the potential benefits of a new and formal process against the alternative of seeking to make improvements to the existing decision-making model. We would be content with either model, provided that the result is a system that brings the best interests of unaccompanied migrant children to the fore. (Paragraph 33)

Upholding the rights of unaccompanied migrant children

4. We recommend that the Government evaluate where responsibility for areas of policy concerning unaccompanied migrant children should best lie, to establish whether some policy areas would be more appropriately overseen by those responsible for safeguarding the welfare of unaccompanied migrant children. The Government should then transfer responsibility and funding accordingly. (Paragraph 44)
5. One area where it would be appropriate to transfer responsibility would be in the administration of grant funding to local authorities for the care of unaccompanied migrant children (see also paragraph 211). This should be wholly the responsibility of the Department of Education, to demonstrate that such funding is given in order to protect the wellbeing of children. A transfer of responsibilities would also be suitable should the Government follow our recommendation regarding the future role of the UK Human Trafficking Centre in the National Referral Mechanism (see paragraph 141). (Paragraph 45)
6. The Government should develop a strategy document for dealing with unaccompanied migrant children which outlines clear lines of responsibility and detailed service standards in relation to the protection, health and development of children, as well as long-term care planning in their best interests. The Department

for Education should be tasked with co-ordinating the development and continuing oversight of the strategy, and appointing a national lead for its implementation. (Paragraph 47)

7. We recommend that the Government work with child welfare and safeguarding experts to develop a specific training programme to improve awareness and understanding of the UNCRC and its application to unaccompanied migrant children, particularly with respect to properly considering children's best interests. Such a programme, delivered by external providers, should be rolled out first to staff in frontline immigration and asylum roles, and to those in local authorities that deal regularly with unaccompanied migrant children. The programme should then be rolled out more widely as resources allow. (Paragraph 56)
8. We welcome the Government's commitment to give greater consideration to the UNCRC in legislation and policymaking. We welcome also the provision in the Children and Families Bill which would expressly empower the Office of the Children's Commissioner for England to monitor the implementation in England of the UNCRC, and to publish a report on that monitoring. We expect the Commissioner to be resourced accordingly. (Paragraph 57)
9. We recommend that the Government define the role of the Children's Champion in the immigration authority, confirming that it is invested with a proactive duty of care to ensure that the agency meets its international and domestic obligations, and seeks expert input in exercising that duty. (Paragraph 58)
10. We also recommend that the UNCRC be used as a metric in departmental performance monitoring processes within Government for departments with policy responsibilities that relate to the safeguarding of unaccompanied migrant children. (Paragraph 59)
11. We do not express a view as to the merits of incorporating the UNCRC into domestic law at this stage. We urge the Government to keep under review the different approaches taken in recognising the UNCRC in the devolved jurisdictions, in order to evaluate the case for full incorporation. (Paragraph 65)

Protecting unaccompanied migrant children

12. The Government should ensure that there is a clear focus on welfare needs as well as immigration control when gathering information from unaccompanied migrant children relating to an asylum claim. There should be a clear and well-understood distinction between the screening process and substantive information-gathering. Screening a child should be expressly limited to gathering biographical and biometric data at the outset of a claim, while gathering information with which to assess a claim should begin only when children are settled and supported. Furthermore, children should be provided with proper access to interpreting facilities and rest periods, and should be engaged with in a way that takes proper account of their age, status and background. (Paragraph 78)

13. We recommend that the Government should record and publish statistics of all those who claim to be children whose age is disputed. This should include, but not be limited to: (Paragraph 88)
- The number of asylum applicants who claim to be children but who are treated as adults by the immigration authorities on the ground that their appearance or demeanour very strongly suggest that they are significantly over 18;
 - The number of cases where an individual claiming to be a child is placed in immigration detention, and any subsequent action in relation to those cases;
 - The number of cases in which age is assessed by local authorities, and, in such cases, how many children are determined to be adults and how many are determined to be children;
 - The number of cases that are challenged by judicial review, and the number of such challenges that are successful.
14. These statistics should be disaggregated to allow scrutiny of the gender and nationality of all cases. Local authorities should also be required to produce statistics for any cases where those requesting support and claiming to be children emerge outside of the usual asylum and immigration processes. (Paragraph 89)
15. We recommend that the Government work alongside the Association of Directors of Children's Services to develop a clear set of statutory guidelines for assessing the age of unaccompanied migrant children. This guidance should make clear that young people should be given the benefit of the doubt unless there are compelling grounds to discount their claim. It should also make clear that any person who claims to be a child whose age is disputed and who is to be assessed by local authorities or in judicial review proceedings is not to be made eligible for fast-track removal from the United Kingdom. Guidance should also ensure that examinations are never forced, nor culturally inappropriate, and always pursue the least invasive option for assessment. (Paragraph 103)
16. As part of developing age assessment guidance, the Government should evaluate how to incorporate a greater range of expert input into the process. In particular, the Government should commission the Royal College of Paediatric and Child Health to develop guidelines for a stronger contribution from paediatric consultants in assessing age. (Paragraph 104)
17. We see no reason to depart from our predecessor Committee's view that x-rays should not be used in assessing age. (Paragraph 105)
18. Asylum claims must be properly determined in all cases regardless of age under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The determination must be sensitive to the needs and experiences of children seeking asylum. Children should be provided with funded specialist legal advice and representation during this process. Where a child is granted refugee status he or she should have the possibility of being reunited with family members, as is the case for adults in the same situation (Paragraph 119)

19. We recommend that the Government amend the eligibility requirements under section 83 of the Nationality, Immigration and Asylum Act 2002 to ensure that appeal rights are available for all those subject to a negative decision in relation to an asylum or leave claim, regardless of the remaining period. (Paragraph 120)
20. Where children are granted discretionary leave, we recommend that the leave period should run until the age of 18, in accordance with the definition of a child in Article 1 of the UNCRC. (Paragraph 122)
21. During a period of discretionary leave, decision-making should be encouraged as soon as there is sufficient evidence against which to evaluate a claim. Where it is in the best interests of the child to remain in the United Kingdom, indefinite leave to remain should be granted as early as that judgment can be made, to enable children to access higher education and enter the labour market. Where return is considered to be appropriate, a care plan should be constructed to inform and prepare a child for return in adulthood. In either case, support should persist until the objectives of a properly considered care plan are met. (Paragraph 123)
22. We recommend the establishment of a pilot tribunal with adapted procedures, drawing on expertise from both the child and family and immigration courts, to take on responsibility for the decision-making, welfare and support arrangements of unaccompanied asylum-seeking children in a small number of cases. Its work should be independently reviewed, in order to identify possible adaptations to the decision-making framework more generally that may emerge. (Paragraph 125)
23. We recommend that the Government commission an independent review of the operation of the National Referral Mechanism, which should in particular consider whether a statutory framework for the mechanism is necessary. (Paragraph 140)
24. We recommend that the Government integrate NRM training into pre- and post-qualifying training for the safeguarding workforce (see paragraph 56). (Paragraph 141)
25. We recommend that the UK Human Trafficking Centre be given sole responsibility as the “competent authority” under the NRM. The Government should ensure that the UKHTC is properly resourced to engage other agencies in its work and to foster trust and support for the system at a local level. (Paragraph 142)
26. We recommend that disaggregated data on human trafficking be collected, monitored and analysed systematically. We recommend that an independent anti-trafficking coordinator be empowered to oversee the dissemination and analysis of such data, to report at least annually. (Paragraph 146)
27. We welcome the production of CPS and police guidance which makes clear that authorities should seek not to prosecute or convict child victims of trafficking unnecessarily. We recommend that the Government develop targeted materials to raise awareness of this guidance and of the NRM among police and CPS staff. (Paragraph 152)

28. We recommend that suitably trained prison and youth offending institution staff be vested with “first responder” status under the NRM, to give them the power to refer possible victims of trafficking into the mechanism. (Paragraph 153)
29. All decisions on returning children to their country of origin should be made only after a full assessment of whether return is in the best interests of the child. Such a decision should be made in the light of a full country-of-origin report framed according to the UNCRC, and after a full assessment of the needs of the child and the care arrangements that they will return to. Return arrangements should also be subject to independent evaluation afterwards to determine their suitability. We recommend that the Government issue clear guidance setting out these standards, including in cases of returns to third countries under the Dublin II Regulation (Paragraph 163)
30. We recommend that the Government clarify the work it has undertaken with respect to returning children forcibly to Afghanistan and Iraq, particularly in relation to the European Return Platform for Unaccompanied Minors. The Government should affirm that no proposals for enforced returns will be taken forward while conflict or humanitarian concerns persist. If this cannot be guaranteed within the ERPUM, we recommend that the Government withdraw from further participation with the platform. (Paragraph 164)

Supporting unaccompanied migrant children

31. We welcome the findings from the Scottish Guardianship Service, which demonstrate the value that a guardian can add for unaccompanied asylum seeking and trafficked children. We recommend that the Government commission pilots in England and Wales that builds upon and adapts the model of guardianship trialled in Scotland. The guardian should provide support in relation to the asylum and immigration process, support services and future planning, help children develop wider social networks, and ensure that children’s views are heard in all proceedings that affect them. The Government should evaluate the case for establishing a wider guardianship scheme throughout England and Wales once those pilot schemes are complete. (Paragraph 175)
32. We recommend that the Government conduct or commission a mapping exercise that sets out a comprehensive picture of local authority support services for unaccompanied migrant children. This exercise should in particular seek to identify the best performing local authorities in order to develop them as centres of excellence for the benefit of unaccompanied migrant children throughout the United Kingdom. In the light of this exercise, the Government should update its guidance provided to children’s services in local authorities to address any gaps that emerge, and link it to the broader Working Together to Safeguard Children document. (Paragraph 188)
33. We recommend that the Government assess the cost-benefit case for rolling out the pilot safe accommodation scheme for trafficked children, operated by Barnardo’s in conjunction with the Department for Education, more widely. We support the case for doing so in principle. (Paragraph 189)

34. Unaccompanied migrant children must be properly supported in the transition to adulthood. The Government should ensure that children receive bespoke and comprehensive plans that focus on educational goals, reintegration and rehabilitation. Such plans should give proper consideration to all possible outcomes for the child, including family reunification and reintegration whether in the home country, the UK or a third country. Care plans should take full account of the wishes of the child, and remain applicable up to the age of 21, or 25 if the young person remains in education, to enable children to realise their maximum potential. (Paragraph 198)
35. We recommend that the system for distributing grant funding to local authorities for the support of unaccompanied migrant children be administered by the Department for Education (see also paragraph 45). We recommend that such funding should be allocated according to the real costs that arise in safeguarding unaccompanied migrant children within each local authority area. (Paragraph 212)
36. We recommend that the Government amend paragraphs 1(1)(g) – (j) of Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to ensure that unaccompanied migrant children who have exhausted their appeal rights receive the full range of leaving care support to which they would otherwise be entitled, regardless of their immigration status. The Government should also issue guidance to make clear to relevant local authorities that support duties owed to children whose appeal rights are exhausted apply until such children are given leave to remain, or fail to comply with refusal directions. (Paragraph 213)
37. The Government should affirm its commitment to uphold Articles 29 and 30 of the UNCRC and ensure equal access to education to children regardless of immigration status. It should assess how primary and secondary education is provided to unaccompanied migrant children, with a view to ensuring that their educational needs are met. The Government must ensure that any inequality in provision is addressed urgently. (Paragraph 218)
38. We recommend that the Government conduct an immediate assessment of the availability and quality of legally-aided legal representation for unaccompanied migrant children in England and Wales. (Paragraph 231)
39. The Government should pay particular attention to the impact of withdrawing legal aid for non-asylum immigration cases involving unaccompanied migrant children when reviewing the changes to legal aid entitlement effected in the Legal Aid, Sentencing and Punishment of offenders Act 2012. The Government should give serious consideration in any such review to the cost-benefit case for providing legal aid to all unaccompanied migrant children involved in immigration proceedings. (Paragraph 234)

Formal Minutes

Tuesday 21 May 2013

Members present:

Dr Hywel Francis, in the Chair

Mr Robert Buckland
Mr Virendra Sharma

Baroness Berridge
Lord Faulks
Lord Lester of Herne Hill
Baroness Lister of Burtersett
Baroness O'Loan

Draft Report (Human Rights of unaccompanied migrant children and young people in the UK), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 234 read and agreed to.

A paper was appended to the Report.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 4 June at 2.00 pm]

Declaration of Lords' Interests

No members present declared interests relevant to this Report

A full list of members' interests can be found in the Register of Lords' Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg/rego1.htm>

Witnesses

Tuesday 17 November 2012

Dragan Nastic, Unicef UK, **Sarah-Jane Savage**, UNHCR UK, **Ilona Pinter**, The Children's Society and **Helen Johnson**, Refugee Council

Tuesday 11 December 2012

Dr Maggie Atkinson, Children's Commissioner for England, **Tam Baillie**, Scotland's Commissioner for Children and Young People, and **Patricia Lewsley-Mooney**, Northern Ireland's Commissioner for Children and Young People

Alison Harvey, Immigration Law Practitioner's Association, **Kathleen Marshall**, Project Advisory Group for the Scottish Guardianship Pilot, and **Baljeet Sandhu**, Migrant and Refugee Children's Unit, Islington Law Centre

Tuesday 22 January 2013

Jim Wade, University of York, **Vaughan Jones**, Praxis Community Projects, **Yesim Deveci**, Dost Centre for Refugees and Migrants, and **John Simmonds**, British Association for Adoption and Fostering

Philip Ishola, Association of Directors of Children's Services, **Andrew Ireland**, Kent County Council, **Janet Patrick**, Croydon Council, and **Richard Ross**, Solihull Metropolitan Borough Council

Tuesday 26 February 2013

Mr Mark Harper MP, Minister of State for Immigration, Home Office

List of written evidence published on the Internet

1	Rosemary Denim	UMC 001
2	Asylum Aid	UMC 002
3	Children and Families Across Borders	UMC 003
4	Human Rights Watch	UMC 004
5	HM Inspectorate of Prisons	UMC 005
6	Cheryl Jones	UMC 007
7	Kent County Council	UMC 008 and 008A
8	Alan Morrice	UMC 009
9	ECPAT UK	UMC 010
10	Children's Society	UMC 011

11	Dr Helen Connolly, University of Bedfordshire	UMC 012
12	Barnardo's	UMC 013
13	Migrant Legal Project	UMC 014
14	Office of the Children's Commissioner for England	UMC 015
15	No Recourse to Public Funds Network	UMC 016
16	Royal College of Paediatrics and Child Health	UMC 017
17	Charlotte Nuboer-Cope	UMC 018
18	Dr Christine Mounge	UMC 019
19	The United Nations High Commissioner for Refugees	UMC 020, 020A and 049
20	Royal Holloway, University of London and Tavistock Centre	UMC 021
21	Unseen	UMC 022
22	Welsh Refugee Council	UMC 023
23	Coram Children's Legal Centre	UMC 024 and 024A
24	Compas	UMC 025
25	British Red Cross	UMC 026
26	Klevis Kola Foundation	UMC 027
27	British Association of Social Workers (BASW)	UMC 028
28	NSPCC	UMC 029
29	Immigration Law Practitioners' Association	UMC 030 and 030A
30	Refugee Children's Consortium	UMC 031
31	Refugee Council	UMC 039
32	Salisbury World	UMC 040
33	Refugee Action	UMC 041
34	The Law Centre	UMC 042
35	Scottish Refugee Council	UMC 043
36	UNICEF	UMC 048
37	Mark Harper MP, Minister for Immigration, Home Office	UMC 051
38	Home Office, UK Border Agency, Border Force and Department for Education	UMC 052
39	Kathleen Marshall	UMC 054
40	UK Children's Commissioners	UMC 057
41	Praxis Community Projects	UMC 061
42	Richard Ross, Solihull Metropolitan Borough Council	UMC 062

List of Reports from the Committee during the current Parliament

Session 2013–14

First Report	Human Rights of unaccompanied migrant children and young people in the UK	HL Paper 9/HC 196
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Session 2012–13

First Report	Draft Sexual Offences Act 2003 (Remedial) Order 2012: second Report	HL Paper 8/HC 166
Second Report	Implementation of the Right of Disabled People to Independent Living: Government Response to the Committee's Twenty-third Report of Session 2010–12	HL Paper 23/HC 429
Third Report	Appointment of the Chair of the Equality and Human Rights Commission	HL Paper 48/HC 634
Fourth Report	Legislative Scrutiny: Justice and Security Bill	HL Paper 59/HC 370
Fifth Report	Legislative Scrutiny: Crime and Courts Bill	HL Paper 67/HC 771
Sixth Report	Reform of the Office of the Children's Commissioner: draft legislation	HL Paper 83/HC 811
Seventh Report	Legislative Scrutiny: Defamation Bill	HL Paper 84/HC 810
Eighth Report	Legislative Scrutiny: Justice and Security Bill (second Report)	HL Paper 128/HC 1014
Ninth Report	Legislative Scrutiny Update	HL Paper 157/HC 1077

Session 2010–12

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859

Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684
Eleventh Report	Legislative Scrutiny: Police Reform and Social Responsibility Bill	HL Paper 138/HC 1020
Twelfth Report	Legislative Scrutiny: Armed Forces Bill	HL Paper 145/HC 1037
Thirteenth Report	Legislative Scrutiny: Education Bill	HL Paper 154/HC 1140
Fourteenth Report	Terrorism Act 2000 (Remedial) Order 2011	HL Paper 155/HC 1141
Fifteenth Report	The Human Rights Implications of UK Extradition Policy	HL Paper 156/HC 767
Sixteenth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill	HL Paper 180/HC 1432
Seventeenth Report	The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)	HL Paper 192/HC 1483
Eighteenth Report	Legislative Scrutiny: Protection of Freedoms Bill	HL Paper 195/HC 1490
Nineteenth Report	Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011	HL Paper 200/HC 1549
Twentieth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill (Second Report)	HL Paper 204/HC 1571
Twenty-first Report	Legislative Scrutiny: Welfare Reform Bill	HL Paper 233/HC 1704
Twenty-second Report	Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill	HL Paper 237/HC 1717
Twenty-third Report	Implementation of the Right of Disabled People to Independent Living	HL Paper 257/HC 1074
Twenty-fourth Report	The Justice and Security Green Paper	HL Paper 286/HC 1777