

## **The Children's Society submission to the Department for Education's draft regulations and statutory guidance on the care of unaccompanied and trafficked children**

### **Introduction**

1. The Children's Society works with the most disadvantaged children and young people through 59 projects delivering 173 services across England including advocacy, advice and support. We work directly with the most disadvantaged children, many of whom have nowhere else to turn. With them we fight childhood poverty, harm and neglect. Our network of programmes includes drop-in services for runaways, children's centres, specialist support and advocacy for refugee, migrant and trafficked children, and children in care. We work directly with unaccompanied children fleeing persecution and war, children who have been abandoned in this country and are subject to immigration control, as well as children of all nationalities who have been trafficked into or around the country for the purposes of exploitation and abuse.
2. Our response is based on our experience working directly with approximately 1,500 migrant, refugee and trafficked children in eight specialist projects across the country. We also run 13 specialist projects working with children who run away or go missing and/or are at risk or victims of sexual exploitation. For more information, please contact Lucy Gregg ([lucy.gregg@childrenssociety.org.uk](mailto:lucy.gregg@childrenssociety.org.uk)).
3. We welcome this important statutory guidance and believe that the requirements and provisions it contains will help better protect this very vulnerable group of children and young people. However, we believe that there are some significant gaps that, in our view, require further clarifications or additional information to strengthen this guidance and ensure better protection for unaccompanied children.

### **Key messages**

4. The guidance should widen its scope to ensure that all unaccompanied children, not just those seeking asylum or those who have been recognised as trafficked, are included as part of this guidance. This is to acknowledge that claiming asylum and/or having been trafficked are not the only instances when a child will be unaccompanied and in need of protection from a local authority.
5. This guidance must primarily emphasise to local authorities that no unaccompanied or trafficked child should be treated less favourably because of their immigration status, documentation, nationality, language or ethnic background but must receive the same levels of commitment and support as all other children in care.

6. It must be stressed to local authorities that unaccompanied and trafficked children from abroad have additional vulnerabilities on the basis that they are outside their country of origin, have no-one with parental responsibility looking out for them, no family present in this country and will have limited support networks to rely on. Although many of their needs will be the same as any other vulnerable child in the care system, they may have different needs arising from their experiences of bereavement, endemic violence, torture and persecution. They may have also witnessed loved ones being killed, experienced abandonment, exploitation and abuse. They may not know what a social worker is, feel unable to trust authorities or have had no formal education. A local authority must therefore be flexible in their response to the needs of an unaccompanied child basing their actions on a case by case assessment of the child's welfare.
7. There are significant gaps in the guidance with respect to local authorities' legal obligations to children whose age is disputed, considerations around access to legal representation in the absence of legal aid and the obligations of local authorities to support care leavers who came to the UK as unaccompanied or trafficked children.
8. We recommend more emphasis should be placed on local authority responses to missing children and the wording with regard to this issue should be strengthened.
9. We welcome that the guidance applies to children trafficked within the UK for the purposes of sexual exploitation. However, the guidance should provide more detail on what support these children should receive. The guidance should also make it clear that children who are trafficked within the UK for the purposes of sexual exploitation should receive help and protection whether they are looked after or not. We know from our practice that many children who experience sexual exploitation and have been trafficked within the UK for the purpose of sexual exploitation are not in the care system.

**Question 1:** Will the proposed regulations help identify in care planning arrangements, unaccompanied and trafficked children and help ensure they receive appropriate care?

**AND**

**Question 2:** Will the proposed guidance help local authorities plan for and deliver appropriate care for unaccompanied and trafficked children?

10. We have answered questions 1 and 2 together. We support the proposed suggestions made by the Immigration Law Practitioners' Association to the regulations. In addition, if the proposed changes as outlined in our response are taken on board with respect to the new guidance, we believe that these instruments will be very useful in helping to provide better care arrangements for unaccompanied and trafficked children as well as helping local authorities to plan for children's care more effectively.

11. Nonetheless, given the constraints imposed by the immigration system on children who are subject to immigration control as well as local authorities responsible for their care, this guidance is unlikely to be able to improve outcomes for children on its own. Home Office policies have a significant impact not only children's well-being as they interact with its systems and processes, but their future outcomes which are dependent on the leave they are granted and on the funding provided to local authorities for their care. Local authorities will continue to be unable to fully respond to the needs and safety of these children while the Home Office remains responsible for unaccompanied children's policy and while it provides inadequate funding to local authorities. These issues were highlighted by evidence to the recent inquiry into the rights of unaccompanied migrant children and young people including victims of trafficking by the Joint Committee on Human Rights (JCHR). The recommendations outlined by the Committee relating to these issues (for example recommendations 4, 5, 35 and 36)<sup>1</sup> have not been accepted by government, and we believe this will continue to be to the detriment of unaccompanied and trafficked children and young people. One clear example of this is the different approach taken towards care leavers who are subject to immigration control, which is inconsistent with government policy towards care leavers more widely.
12. We also believe that the weaknesses in the current legal framework – namely the lack of an independent legal guardian to ensure their best interests are central to decisions made about them – mean that unaccompanied children often fall through the gaps in provision and do not get the protection, the durable solution and support they need to ensure their immediate safety as well as their future life chances are properly promoted. The tensions between immigration, criminal and welfare legislation which they are subject to and the associated systems mean that these children have a particular need for an independent legal guardian – one person in their life to oversee and coordinate the agencies, services and processes which the child needs to navigate, allowing other professionals such as social workers, immigration case workers and legal representatives to fulfil their roles more effectively and to instruct legal representatives on the child's behalf. Although the government does not see the need to introduce another function to the range of professionals who already have responsibility for looked after children,<sup>2</sup> it is important to note that social workers, independent reviewing officers and independent advocates do not play a role or have powers to act in all of the jurisdictions in which an unaccompanied or trafficked child may be involved, including immigration and criminal proceedings. For example, neither an independent advocate nor an IRO would normally become involved in a child's immigration case even though her international protection claim may be central to her welfare and long term best interests. Conversely a guardian would have legal responsibility for an unaccompanied child's life across all areas of their life. He or she would ensure that the child would be provided with all the statutory services to which he or she was entitled and supported to understand and engage with the relevant

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<sup>1</sup> Joint Committee on Human Rights (2013) 'First Report - The human rights of unaccompanied migrant children in the United Kingdom': <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/902.htm>

<sup>2</sup> Letter to ECPAT UK from the Rt.Hon. Prime Minister, David Cameron MP, 5 July 2011 – see extract pg 6: [http://www.ecpat.org.uk/sites/default/files/watch\\_over\\_me.pdf](http://www.ecpat.org.uk/sites/default/files/watch_over_me.pdf)

processes. This would include services provided by local authorities as well as those for which the Home Office was involved in.

**Question 3:** Are there any additional steps local authorities could be taking within existing care arrangements that could be included in the proposed guidance?

**AND**

**Question 4:** Is anything included in the proposed guidance that should be removed?

13. We believe there are a number of key areas or instructions which should be included and excluded in the guidance to local authorities, which we have set out below in relation to how they appear under the existing section headings.

### **Scope of guidance and local authority responsibilities (pages 3-5)**

14. The scope of the guidance is somewhat confusing because whilst the main title refers to 'unaccompanied children and trafficked children', the sub-title and content give the impression that only unaccompanied children who are seeking asylum or those who have been as trafficked are entitled to care from local authorities rather than other children subject to immigration control who might find themselves unaccompanied for other reasons. For example, children may be unaccompanied if they have been abandoned in the UK by their carers or their carers have died. The guidance should therefore make it clear that while many unaccompanied children will be fleeing war, violence and persecution, and will have grounds for an international protection claim, this is not the only instance in which a child can be unaccompanied and need to be looked after by the local authority. The vulnerability of all unaccompanied children stems from the fact they are separated from the parents or carers and that they are outside their country of origin, not whether they have claimed asylum or how they got to the UK. The inclusion of other unaccompanied children should be made explicit in the introduction and definitions section under paragraph 7 to ensure that the guidance accurately reflects local authorities existing legal duties to all unaccompanied children in their area, regardless of their origins or international protection needs.

15. Below is an example of an unaccompanied child who did not have an asylum claim but was still in need of support and protection. The guidance needs to be clear that this young person would also fall within its scope:

#### **Case study G**

G came from Pakistan to the UK, with his mother, when he was 12 in 2007. His mother abandoned him, and for a year he was homeless and was forced into child labour. He eventually came into contact with social services and later The Children's Society. The Children's Society referred him to a solicitor who found he had no grounds for asylum and lodged a human rights application for leave to remain. Within a year, he was granted indefinite leave to remain. G's circumstances meant that it was in his best interest to apply for naturalisation and remain in the UK.

We recommend that the following paragraph is added:

***“There are a variety of circumstances in which children find themselves on their own in the UK without anyone looking out for them, without a settled immigration status and/or in need of protection. Some may have arrived on their own on a visa, have come here with their parents or legal guardians but have been abandoned or their carers have passed away. Some may be living in private fostering arrangements and have experienced abuse and neglect or have experienced family breakdown. Whatever their reasons for being in the UK, if a child or young person is not a British or European Economic Area (EEA) Citizen, they will be subject to immigration control and will require permission from the Home Office to stay in this country – i.e. ‘leave to remain’. As with unaccompanied asylum-seeking children and child victims of trafficking, other unaccompanied children are likely to have significant language and cultural barriers to accessing protection and support, and may be at risk of being removed from the UK to somewhere where they may be unsafe and where they have no lasting connections or support network if their immigration status is not resolved”.***

16. The guidance is also unclear as to whether it only applies to trafficked children if they have been referred to the National Referral Mechanism (NRM) as a suspected victim or if they have been confirmed as a victim of trafficking. We know from our practice that many suspected victims of trafficking are not referred to the NRM for a number of reasons. This includes a lack of awareness of the NRM among frontline professionals and concerns about a conflict of interest in the Home Office role as the competent authority. Nevertheless, regardless of whether a child has been referred or not, the local authority has a duty of care to them if they are a ‘child in need’ or in need of protection. If the guidance omits this group of children, vulnerable child victims of trafficking will fail to be protected.

We recommend that the guidance explicitly states that it applies to ***“all unaccompanied children and potential victims of trafficking regardless of whether they have been referred to the National Referral Mechanism (NRM)”***.

17. Furthermore, the guidance states that it applies equally to children who are trafficked within the UK for child sexual exploitation including British children. However, the guidance also states that it only applies to unaccompanied and trafficked who are looked after. British children who have been trafficked for sexual exploitation are not always looked after and may live with their families because they are deemed to be able to support them appropriately. Others are not looked after because they may not have had a full assessment of their needs done or it may not have been done effectively. For example in Rochdale, the perpetrators of a large sexual exploitation ring were convicted of trafficking offences but several of the children were not given looked after status and were returned to their parents without their experiences of trafficking for sexual exploitation considered in an assessment of their needs, despite being at risk of significant harm.<sup>3</sup> The guidance should therefore make clear that it applies to all

<sup>3</sup> Rochdale Borough Safeguarding Children Board (2013) *The Overview Report of the Serious Case Review in respect of*

suspected victims of trafficking not only those who are looked after so that these children do not fall through the gaps.

18. The support young people receive when they reach the age of 16 depends to a great extent on how they were supported by social services prior to turning 16. Therefore, we believe it is of paramount importance that this guidance explains how young people trafficked within the UK for sexual exploitation who are not in the looked after system should have their needs assessed and met when they are under 16 and what support they are entitled to when they are 16 + in their transition to adulthood.
19. This guidance should make clear reference in Annex A to the guidance on safeguarding children and young people from child sexual exploitation<sup>4</sup> and the steps that local authorities should take to identify children who have been sexually exploited and trafficked for the purposes of sexual exploitation.
20. Our practitioners report that in cases of children trafficked within the UK for sexual exploitation there is often a mistaken belief that to be considered a victim of trafficking within the UK for purposes of sexual exploitation, children have to be trafficked from town to town or across local authority boundaries. This is despite the definition of trafficking under the Palermo Protocol which clearly states that trafficking constitutes acts of movement, harbouring, recruitment etc. and the distance the person has been trafficked is irrelevant. We believe that this guidance needs to clearly explain that this definition of trafficking should be applied to children trafficked within the UK for the purposes of sexual exploitation and that the distance travelled should not be a factor in deciding whether someone is considered as a trafficking victim.

### **Local authority responsibilities (page 5)**

21. **Paragraph 10** refers to the roles of the local authority and the police when a young person goes missing. Our services find that statutory agencies involved are often unclear on how to proceed when an unaccompanied child goes missing therefore we would recommend that this paragraph needs further detail. In 2012, The Children's Society supported an inquiry into the safeguarding of children who run away or go missing from care, including trafficked children<sup>5</sup> which found that many police were unaware of their duties to search for trafficked and unaccompanied children when they went missing and treated them as low risk. The NSPCC Child Trafficking Information Line cited several examples where trafficked children were not circulated on the Police National Database and of one not being classed as 'missing' at all "*The referrer was told it was UKBA's responsibility and that the child could not be missing as he had no status in the UK.*" Evidence from the inquiry highlighted that many local authorities fail to keep key data on unaccompanied children, which could provide indicators as to their vulnerability, such as their nationality, immigration status and whether a child is a potential victim of trafficking.

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Young People 1,2,3,4,5 & 6 Rochdale Borough Safeguarding Children Board

<sup>4</sup> Department for Children, Schools and Families (2009) *Safeguarding children and young people from child sexual exploitation: Supplementary guidance to Working Together to Safeguard Children* HM Government

<sup>5</sup> APPG inquiry into children who go missing or runaway from care <http://www.childrensociety.org.uk/what-we-do/policy-and-lobbying/parliamentary-work/appg-inquiry-children-who-go-missing-or-run-away>

Although it largely depends on the patterns of operation of trafficking networks, we know that certain nationalities of trafficked children are more likely to go missing – this is currently a pattern with Vietnamese children. Collecting data on nationality, immigration status and whether a child is suspected of being trafficked could allow agencies to act immediately and prevent these children from going missing. Additionally, our recent review of the care arrangements for trafficked children<sup>6</sup> found that stakeholders recommended quick action be taken as soon as a child goes missing from care to minimise risk.

#### **Case study: Missing trafficked child**

We came into contact with K through our trafficking project. The child was not registered at school or with a GP, and there were other minors living at the same address with unrelated adults. At first the local authority did not believe that the child had been trafficked and claimed that he was here with his family, however, these adults said they didn't know the child. There were indicators that the child had been a domestic servant. The child was subsequently moved on by his traffickers to a different location and went missing. The local authority was reluctant to liaise directly with the police and it took intensive advocacy and support from voluntary agencies until they even reported the case to the police. The police did not treat K as a trafficking case, but allocated him to the missing persons' team who went to visit his last residence where the traffickers told him they had never heard of the young person, so the police tried to close the case. The child eventually contacted our service and was placed in emergency foster care. Our service co-wrote an NRM referral with the local authority and the young person got a positive reasonable grounds decision.

22. Any delays in taking a child into care can result in a child going missing. A delay might be caused because of an age assessment or because different local authorities dispute whose responsibility the child is. For example, our practitioners recently worked with a young person who went missing after the initial safeguarding referral because it took almost a fortnight for the local authority to accept the young person was their responsibility and in urgent need of protection.

We recommend that paragraph 10 is made more specific by adding the following words after the first sentence:

***"...from risk from their traffickers...Local authorities should work with the police to ensure they understand that it is their responsibility to plan, search and add trafficked and unaccompanied children to the Police National Database."***

And the following words at the end:

***"...responding if a child goes missing. As soon as a child is recorded as being missing, quick action must be taken by the local authority, police and care providers. This might include developing a multi-agency safety plan, securing***

<sup>6</sup> Franklin, A. and Doyle, L. (2013) *Still at Risk – A review of support for trafficked children*  
[http://www.childrenssociety.org.uk/sites/default/files/tcs/still\\_at\\_risk\\_-\\_full\\_report\\_-\\_refugee\\_council\\_the\\_childrens\\_society.pdf](http://www.childrenssociety.org.uk/sites/default/files/tcs/still_at_risk_-_full_report_-_refugee_council_the_childrens_society.pdf)

***safe accommodation, working with specialist, trained and supported foster carers, ensuring intensive one-to-one support and the forming of a trusting relationship with an independent adult is available if the child is found. The child must also be offered a return interview as specified in the statutory guidance on missing<sup>7</sup> because it is a useful tool for understanding the reasons behind the missing incident, as well as for identifying and dealing with any harm or exploitation a child may have experienced, and to prevent further harm”.***

We recommend that advice is issued on reducing delays in a child going into care and we recommend that the following wording be added:

***“An unaccompanied or potentially trafficked child should be assessed immediately and placed in suitable accommodation based on their welfare needs with no delay. This is important for the welfare and protection of a child as well as to prevent that child going missing”.***

### **Age assessments (new section)**

23. The guidance does not refer to the age assessment process and the potential difficulties faced by children whose age is disputed. This is a significant problem experienced by many unaccompanied and trafficked children and is fundamental in determining the support and protection they will receive. It determines whether they are placed in adult detention or dispersed to a different part of the UK and placed in unsupervised Home Office accommodation with adults. Or whether they are supported by children’s services. It also determines how they are supported, the type of accommodation placement they get, their access to education, to specialist mental health services, to an independent advocate and other services for looked-after children. An individual’s age also determines how their asylum or immigration application is processed and determined by the Home Office and forms a key part of how their credibility is perceived in this context. For example, we have seen cases where a child’s credibility has been negatively assessed by Home Office decision-makers relying on an incorrect age assessment conducted by a local authority.

24. Despite numerous successful legal challenges finding that a child’s age was wrongly disputed by the authorities, there still exists an entrenched belief<sup>8</sup> among some officials and statutory agencies that the majority of age-disputed young people are adults posing as children. From our direct practice with children and recent research<sup>9</sup> we see examples of age-disputed children including trafficking victims spending protracted periods in adult accommodation because local authorities wrongly treat them as adults. This is compounded by the fact there is currently no guidance to local authorities on

<sup>7</sup> Statutory Guidance on children who run away or go missing from home or care (2014):

<https://www.gov.uk/government/publications/children-who-run-away-or-go-missing-from-home-or-care>

<sup>8</sup> See, for example, The Children’s Society (2012), *Into the unknown Children’s journeys through the asylum process*, at <http://www.childrensociety.org.uk/sites/default/files/tcs/into-the-unknown--childrens-journeys-through-the-asylum-process--the-childrens-society.pdf>

<sup>9</sup> Franklin, A. and Doyle, L. (2013) *Still at Risk – A review of support for trafficked children* [http://www.childrensociety.org.uk/sites/default/files/tcs/still\\_at\\_risk\\_-\\_full\\_report\\_-\\_refugee\\_council\\_the\\_childrens\\_society.pdf](http://www.childrensociety.org.uk/sites/default/files/tcs/still_at_risk_-_full_report_-_refugee_council_the_childrens_society.pdf)

how to deal with children whose age is disputed<sup>10</sup>. In addition, the process of age assessment causes great distress to the child, particularly where they are involved in legal proceedings. Even when age is finally established, valuable time is lost forever to that child and cannot be recovered.

25. Importantly not all children whose age is disputed are thought to be adults – in many cases local authorities dispute the child’s age even when they accept them to be under 18. However they dispute their age by several months or years – for example by assessing a 15 year old as being 16 without specific reasoning - which we believe is at least in part to do with current funding arrangements and entitlements to leaving care provision. In our experience local authorities generally place 16 and 17 year old unaccompanied males in independent or semi-independent accommodation without 24-hour supervision rather than in more costly foster care, even where the child’s welfare would dictate that they should be in a supervised placement with specialist support.

#### **Case study of T**

T arrived in the UK at the beginning of 2013, having fled Albania and claimed to be 15. The local authority assessed him to be over 18 and sent him to the Home Office. His biometric passport with his stated age had been accepted by both the Home Office and his solicitor. But the local authority refused to accept the passport as satisfactory proof of his stated age and returned him to the Home Office in London. The boy is challenging his age assessment and in the meantime he is being housed in adult accommodation. He reports being scared and unhappy, and is worried about being robbed and staying safe. Our practitioners are concerned about his safety and well-being because he does not have full-time care and supervision or any other services that looked after children are normally eligible for, including education.

26. We strongly believe that age assessments should not be a routine part of a local authority’s assessment of an unaccompanied or trafficked child and this should be made clear in the guidance. However, if a local authority has chosen to dispute a child’s age, it is important that the child be given the benefit of the doubt and treated according to their stated age and provided with the full range of looked after children’s services until a lawful assessment can be undertaken. We are often contacted by social workers who aren’t aware that they should give children the benefit of the doubt and therefore the Section 20 duty is often interpreted loosely in relation to these children. As result these children miss out on a range of looked after and leaving care services including access to safe and adequate accommodation, education, mental health services, access to IROs and independent advocates.

27. Age determination is an inexact science; there is no single reliable method for making precise estimates and the margin of error with respect to medical assessments can sometimes be as much as five years either side, especially around the time of puberty<sup>11</sup>. We believe that the most appropriate approach is

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<sup>10</sup> Coram Children’s Legal Centre (2013) *Happy Birthday? Disputing the age of children in the immigration system* [http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday\\_Final.pdf](http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday_Final.pdf)

<sup>11</sup> Aynsley-Green, A. et al. (2012) ‘Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control’: <http://www.aynsley->

to use a holistic evaluation, incorporating narrative accounts, physical assessment of puberty and growth, and cognitive, behavioural and emotional assessments. This should consist of input from multiple agencies who have had contact with the young person and expertise in children's development including education, health and social care professionals, as well as advocates and voluntary sector support workers who are likely to have worked with a young person over a longer period of time.

28. The government is already working alongside the ADCS and others in order to develop a multi-disciplinary approach to age assessment which builds on and improves the current process, which we welcome. The government does not believe that this is likely to result in a need for statutory guidelines. Therefore, we believe that it is important to include references to key principles and established case law<sup>12</sup> into this statutory guidance to ensure better awareness among local authorities of their legal obligations to children and to ensure effective safeguards for unaccompanied and trafficked children.

We recommend the following wording be added to the guidance:

***"Many unaccompanied and trafficked children arrive in the UK without documentation or with fake documents. Where the age of a child is in doubt, the Home Office or local authority may dispute their age. A child's age is fundamental in determining the support and protection they will receive from the authorities. Given the potential distress and harm caused to a child, age assessments should not be a routine part of a local authority's assessment involving an unaccompanied child. However, if an age assessment is undertaken, local authorities must adhere to standards established within case law. This requires that the young person receives an holistic assessment which takes into account more than just appearance, that the claimant receives the benefit of the doubt giving them access to the full range of care services, that an appropriate adult is present during the assessment and that the assessment is undertaken by an experienced social worker. For further information see the Seeking Support guide: Coram Children's Legal Centre<sup>13</sup>".***

Important principles to include in the guidance are<sup>14</sup>:

- ***"The starting point should be that a child be given the benefit of the doubt.***
- ***If an age assessment is needed, it should be a lawful age assessment based on established case law.***
- ***An assessment cannot be made solely on the basis of appearance, and should be holistic, taking account of the young person's appearance, demeanour, background and credibility.***

[green.com/documents/2013/04/medical-statistical-ethical-and-human-rights-considerations-in-the-assessment-of-age-in-children-and-young-people-subject-to-immigration-control.pdf](http://green.com/documents/2013/04/medical-statistical-ethical-and-human-rights-considerations-in-the-assessment-of-age-in-children-and-young-people-subject-to-immigration-control.pdf)

<sup>12</sup> Key case law includes: *R (B) v Merton* [2003] 4 All ER 280;

<sup>13</sup> [http://www.seekingsupport.co.uk/files/seeking\\_support031113.pdf](http://www.seekingsupport.co.uk/files/seeking_support031113.pdf)

<sup>14</sup> Some of these are taken from the 'Seeking Support' guidance developed by Coram Children's Legal Centre and some relate to established case law – see pages 57 and 58:

[http://www.seekingsupport.co.uk/files/seeking\\_support031113.pdf](http://www.seekingsupport.co.uk/files/seeking_support031113.pdf)

- ***Any assessment should take into account relevant factors from the child's medical, family and social history, and the decision maker should seek to elicit the general background of the applicant, including his family circumstances and history, his educational background and his activities during the previous few years. Ethnic and cultural information may also be important.***
- ***The child should be informed of the purpose of the assessment and the consequences of the assessment decision.***
- ***There is a duty on the decision makers to give reasons for a decision that an applicant is not a child.***
- ***The young person should be given an opportunity during the assessment to answer any adverse points the decision maker is minded to hold against him.***
- ***A young person has a right to be accompanied during the assessment by an appropriate adult. This should be someone who is independent from the assessment, and preferably should be an adult of the child's own choosing.***
- ***The assessment should be conducted by two qualified, properly trained and experienced social workers.***
- ***The assessors must take a child-friendly and sensitive approach, including checking that questions have been understood, and offering breaks. The assessors should check thoroughly that the interpreter speaks the correct dialect/language and that the young person and interpreter understand one another properly.***
- ***The decision must be based on firm grounds which are explained to the child. The decision should be issued in writing to the individual and should contain information relating to their right to challenge the decision."***

### **When is a child a victim of human trafficking? (page 6)**

29. Safeguarding unaccompanied and trafficked children is an area of work which presents complex challenges for practitioners<sup>15</sup>. This is made more difficult by the often extensive cultural and language barriers between children and those charged with helping them and safeguarding their welfare. It is important to take into account children's cultural experiences and how these impact on notions of victimhood, exploitation, rehabilitation and support, and how they affect all aspects of interactions between children and professionals<sup>16</sup>.

30. **Paragraph 18:** We welcome that the guidance specifies that it should be equally applicable to children trafficked within the UK, including British children who are sexually exploited, however it is unclear how it should be used in relation to this group as we explained in paragraphs 16 to 19 above. We believe that further details should be provided in the guidance to explain how it will

<sup>15</sup> Separated and Trafficked Children: The Challenges for Child Protection Professionals *Child Abuse Review* Vol. 20: 324-340 (2011)

<sup>16</sup> Safeguarding Refugee and Asylum-seeking Children *Child Abuse Review* Vol. 20: 307-310 (2011)

apply to this group of children. This should include clear references to the guidance on safeguarding children and young people from child sexual exploitation as referenced in Annex A.<sup>17</sup>

31. **Paragraph 19** fails to highlight that local authorities are first responders who can complete a referral to the NRM and therefore are key agencies in identifying potential victims of human trafficking. Our recent research highlighted that local authorities<sup>18</sup> are failing to identify cases of child trafficking and that training is not always reaching those frontline professionals who are best placed to identify trafficking<sup>19</sup>. This means social workers and other professionals are often not familiar with the indicators of child trafficking and the appropriate responses to safeguard these children<sup>20</sup>.
32. Professionals are also often unaware that children within the UK can be trafficked for the purposes of exploitation – including British children who are more commonly sexually exploited - and that trafficking does not need to take place over long distances or across borders to be considered child trafficking under the Palermo protocol and can relate to recruitment, harbouring or receipt. The lack of understanding of the full definition of child trafficking and how it applies to children of all nationalities means that children including British and settled children are frequently not referred to the NRM.
33. Where referrals to the NRM are made by social workers, our practitioners regularly see referral forms that are very poor in detail and quality. Such forms tend to lead to negative reasonable grounds decisions, meaning the child has lost out on the opportunity to be formally identified as a victim and thus receive appropriate protection and care. We would therefore recommend that all social workers need mandatory training to gain a basic awareness of the indicators of child trafficking. We also believe that before any decision to refer a child to the NRM is taken, that a child should have specialist legal advice from an immigration solicitor to ensure that any representations on his behalf made to the Home Office, which is also responsible for determining a child's immigration claim, is considered in a holistic way and to safeguard against any adverse consequences for the child's credibility which may be raised if there is inconsistent evidence presented by the local authority.

We recommend paragraph 19 is amended as follows:

***“...sending the child NRM referral form to UKHTC. Local authorities are a first responder and can complete a referral to the NRM. Social workers and other frontline staff must be made aware of this fact and must receive training in understanding the indicators of child trafficking and what to do if they believe a child should be referred. Each child should also have the benefit of***

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<sup>18</sup> Franklin, A. and Doyle, L. (2013) *Still at Risk – A review of support for trafficked children*  
[http://www.childrensociety.org.uk/sites/default/files/tcs/still\\_at\\_risk\\_-\\_full\\_report\\_-\\_refugee\\_council\\_the\\_childrens\\_society.pdf](http://www.childrensociety.org.uk/sites/default/files/tcs/still_at_risk_-_full_report_-_refugee_council_the_childrens_society.pdf)

<sup>19</sup> The Anti-trafficking Monitoring Group (2012) *All Change: Preventing trafficking in the UK*  
[http://www.ecpat.org.uk/sites/default/files/atmg\\_all\\_change\\_2012.pdf](http://www.ecpat.org.uk/sites/default/files/atmg_all_change_2012.pdf)

<sup>20</sup> The Anti-trafficking Monitoring Group (2013) *Hidden in Plain Sight*  
[http://www.antislavery.org/includes/documents/cm\\_docs/2013/h/hidden\\_in\\_plain\\_sight.pdf](http://www.antislavery.org/includes/documents/cm_docs/2013/h/hidden_in_plain_sight.pdf)

***specialist legal advice from an immigration solicitor before a referral is made to ensure that representations to the Home Office are consistent and comprehensive, and do not have any adverse effects on a child's credibility".***

### **Assessment (page 7)**

34. In order for social workers to better understand the complex needs of all types of other unaccompanied children including those who have not been trafficked, we recommend that they have a basic understanding of the asylum and immigration system through training. Social workers should also receive an introduction to the international child protection issues at play in many of the countries where unaccompanied children come from, including experiences of endemic violence, war, torture and persecution. Social workers should understand that many of these children come from countries where no child protection system exists and therefore the agencies and processes involved in their care in the UK will likely seem very unfamiliar to them. In addition they may be reluctant to trust public authorities based on previous experiences of persecution and abuse. Social workers should also understand the cultural, literacy and language barriers that unaccompanied and trafficked children face. This could include for example differing attitudes surrounding gender, older people and authority figures.

We recommend the section in the guidance on assessment should include the following additional paragraph:

***"Social workers should receive mandatory basic training on the immigration and asylum system, on child protection issues in the international context and on the cultural and language barriers faced by unaccompanied and trafficked children".***

35. **Paragraph 24** refers to the importance of continuity of care and building a trusted relationship with their social worker. We believe that in order to achieve this, vulnerable high-risk cases should not be allocated to newly qualified social workers with little experience which is a problem our services frequently experience. Cases need to be allocated to staff with experience of high-risk and extremely vulnerable cases, particularly with some basic knowledge of the asylum and immigration system.

We recommend that paragraph 24 be amended as follows:

***"...Local authorities should prioritise trafficked children to provide the best likelihood that they will receive continuity of care and be able to build a sustained relationship with their social worker. This continuity should begin, where possible, from the core assessment - which must be undertaken by staff with experience of high-risk and vulnerable cases - and be promoted throughout their time in care".***

### **Review advocacy and wider support (page 11)**

36. **Paragraph 48** refers to the need for specialist knowledge on immigration matters for many unaccompanied children. It is important for social workers to

be aware in this guidance that they can refer a young person to a solicitor to help resolve these matters. Our practitioners conversely find that many social workers interpret this issue as being outside of their remit. In addition, there could be reference to organisations (who should also be highlighted in Annex A) who have experience of working with unaccompanied and trafficked children and can offer training and give advice to professionals who have questions. Referring only to the OISC could seem quite daunting for a social worker and it is therefore important that additional resources and points of contact are highlighted for them.

We recommend the following changes be made:

*"Unaccompanied and trafficked children may require support in dealing with immigration questions and proceedings. Specialist knowledge is required to provide advice and support on these issues. **This is an area in which social workers can play a key role in contacting and referring children to qualified independent solicitors.** Where immigration advice is required, the person providing that advice (whether an independent advocate or another person) must be a regulated to provide immigration advice to the relevant level. For example, to advise on issues such as asylum applications, out-of-time applications for leave to remain or applications for citizenship, the advisor would need to be competent to provide advice to OISC level 2. **Advice on where to refer a child can also be sought from organisations specialising in these issues including The Children's Society, Refugee Council, Coram Children's Legal Centre and the Immigration Law Practitioners' Association."***

### **Legal aid (new section)**

37. Unaccompanied and trafficked children who are subject to immigration control may have unresolved immigration issues which need to be dealt with immediately and effectively to ensure that the child's welfare and long term best interests are protected. Previously a child in this situation could rely on centrally funded legal aid. However from 1 April 2013 the cuts to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) have meant that immigration cases, including applications for leave to remain in the UK on the basis of Article 8 of the European Convention on Human Rights (right to respect for private and family life), are no longer within scope for legal aid<sup>21</sup>. This affects unaccompanied and trafficked children who do not have an asylum claim or whose claim is wholly or partly based on non-asylum issues. For example on their right to family or private life (Article 8) and their welfare considerations under Section 55 of the Borders, Citizenship and Immigration Act 2009.

38. In their role as corporate parents and their obligations to children's welfare and best interests, local authorities will need to ensure that children have access to good quality specialist legal advice to resolve their immigration issues, which are fundamental to their welfare and long-term best interests. In the absence of legal aid, other provisions will need to be put in place. There is no explicit

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<sup>21</sup> Legal Aid 13 – Update <http://www.ilpa.org.uk/data/resources/16615/12.12.19-legal-aid-13-update.pdf>

provision stating that local authorities will need to step in and underwrite the cost of a child's legal fees if they cannot access mainstream legal aid, but local authorities will need to consider whether this will be the best way to meet a child's identified needs and whether not doing so would be lawful<sup>22</sup>. It is also important to remember that it is a criminal offence for an unregulated individual or organisation to give immigration advice or provide immigration services including making representations to the Home Office.

39. We recommend that this issue is highlighted in the guidance stating that regularising a child's immigration status will invariably be a significant consideration in determining a child's best interests and have a major impact on a child's present and future well-being, stability and prospects. As such the local authority will need to take active steps to support the child in resolving their immigration case even in the absence of legal aid. This may include helping a child find appropriate independent legal assistance and underwriting its cost, in a similar way that this service would be arranged if the child were being cared for by their own parent. The guidance could refer to the note developed jointly by the No Recourse to Public Funds Network and Coram Children's Legal Centre<sup>23</sup>.

#### **References to returns (pages 8, 12 and 14)**

40. **Paragraphs 29 and 30** relate to duties to return a child to their family. The Children's Society agree that it is important for children to be able to exercise their right to a family life through re-unification, however these considerations should only be undertaken as part of a holistic best interests determination process. This should govern policymaking and case-based decision-making. There is currently no formal best interests assessment system in place in the UK and this needs to be put in place before children are encouraged to return. The Children's Society does not believe that unaccompanied and trafficked children are currently accessing a fair asylum and immigration determination process and until this is addressed we are opposed to returning children when there are clear and legitimate protection needs. For example, research carried into unaccompanied children's asylum cases found that in 24 of 34 cases analysed, the Home Office failed to carry out any determination of the child best interests at all.<sup>24</sup> The Joint Committee on Human Rights<sup>25</sup> has highlighted similar concerns. We believe that the current asylum and immigration system requires fundamental changes, including better access for children to good quality legal advice throughout the determination process, better case and contact management by the Home Office to ensure trust and fair decision-making, the communication of all the options open to children including truly voluntary return where appropriate.

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<sup>22</sup> There are likely to be some cases where the welfare issues are so significant (for example in many cases where a care leaver faces detention and removal or deportation) that the local authority would not be acting lawfully if they refused to underwrite the cost of legal fees.

<sup>23</sup> NRP Network and Coram Children's Legal Centre (2013) *Local authorities supporting children after the cuts to legal aid* <http://www.nrpfnetwork.org.uk/SiteCollectionDocuments/Guidance%20Note%20local%20authorities%20post%20LASPO.pdf>

<sup>24</sup> Greater Manchester Immigration Unit: Children's Best Interests: A primary Consideration? (2013)

<sup>25</sup> The Joint Committee on Human Rights has noted that without further clarity *'there is a danger that front-line immigration officials...will be unclear about the relationship between the children duty in section 55 and the new tests...which use different and unfamiliar language*. Joint Committee on Human Rights (2013): Immigration Bill – Legislative Scrutiny <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/102/102.pdf>

41. The political and socio-economic conditions in the country of return are also vital components of a best interest's assessment and decisions to return should ensure a sustainable outcome, which ensures the legal, physical and material safety of the child. This should include an outline of the risks in all cases, not just for trafficked children. For example, family tracing could have implications for a child as well as their family's safety on contact or return if the authorities know they have claimed asylum. A child may also be at risk from their own family. For example, our practitioners see cases where mothers have sent children to the UK because they know they are at risk of Female Genital Mutilation (FGM) or early marriage from the child's father or community. Furthermore, where family reunion is deemed to be in the child's best interests, it should be considered whether the re-unification of family members could be done in the UK.
42. Any best interests determination process should involve multiple agencies including local authorities, the child's legal representative(s), health, education and advocates and voluntary sector support workers. If a legal guardian were in place, they would be a key individual to be involved in this process.
43. Whilst paragraph 30 mentions that child protection considerations are paramount, there is no mention of seeking consent from children or of children's best interests which should be explicitly stated.

We recommend paragraph 30 is amended as follows:

*"Establishing whether it is appropriate to initiate contact with an unaccompanied child's family is a responsibility of the Home Office. The local authority will need to liaise with the Home Office case worker for the child. **Return should only be considered after a full assessment of the child's best interests is undertaken. A decision to return should consider the legal, physical and material safety of the child as well as the impacts of return on a child's family.** Child protection considerations will be paramount **and informed consent must be obtained from the child before any contact with their family is made. The child or their family may be at risk from the authorities in their home country if the child is known to have sought protection elsewhere.** Family involvement in trafficking or any other form of exploitation involving the child will be a major factor in any decision **to return the child.** Having assessed these factors, attempts should be made to contact the child's parents to seek their views. Support may be provided for this from Home Office or independent family tracing services could be commissioned. **The child's social worker, advocates, legal representatives and other professionals involved in the child's life must also be involved in this process.**"*

44. **Paragraph 50 and 60** relate to "Planning for return". Our practitioners sometimes see social workers misleading young people and pushing them to sign up to "voluntary return". It is important to note that where an individual has no leave to remain, the option to return is not "voluntary" but mandatory.

Whilst it is right that discussion around return should take place with young people as part of their care planning, young people should not be pushed to sign up to return as this would not be “voluntary”. Furthermore, as contact details about assisted return are included in this guidance we feel it is therefore even more imperative that the details of of organisations who can offer advice and support around immigration in general is also included.

We recommend paragraph 50 is amended as follows:

*"In addition, unaccompanied children should be informed of the availability of the Assisted Voluntary Return (AVR) scheme run by Refugee Action: Choices on behalf of the Home Office. Most unaccompanied asylum seeking children will be eligible to apply for the Assisted Voluntary Returns Families and Children (AVRFC) programme. **However, when talking about this option, it must not be forced upon a young person and in order to enable the young person to make an informed decision about assisted return, all options available to them must be explored including whether the young person requires further immigration advice.** Further information on all the schemes is available on the Choices website: <http://www.choices-avr.org.uk/choices> of via their free phone number: 0808 800 0007*

45. **Paragraph 62** relates to “the voluntary returns” programme. The way the returns programme is described makes it look like a very viable option for young people. In reality our practitioners find that young people very rarely sign up to this service because it is very difficult to access and this varies from country to country. For example, our practitioners report that young people from Afghanistan cannot access the £2000 as they have to first spend the money (that they often do not have), then send an invoice to the Home Office in England, next they have to have a particular credit card which is unavailable in Afghanistan and then they would be reimbursed for the money through that credit card. It is crucial that information on the returns programme is realistic, and enables young people to make informed decisions and does not give young people false expectations. There are also potential risks for young people returning to their country of origin with significant amounts of funds or perceived wealth – i.e. risks of kidnapping and being targeted for theft and ransom. **We therefore suggest that paragraph 62 is removed from the guidance.**

### **Protection and placement planning (page 10)**

46. It is our experience that children under the age of 16 are normally placed in foster care while it is assumed that older children can live in semi-independent accommodation with limited support even when their welfare needs are significant<sup>26</sup>. Unaccompanied migrant children, especially 16 and 17 year olds, seeking care from local authorities find it difficult to get adequate accommodation and support, or are turned away altogether, often on the basis that they are from abroad, do not have documentation or because their age is

<sup>26</sup> Department for Education (2011) 'Children Looked After by Local Authorities in England (including adoption and care leavers) - year ending 31 March 2011': [www.education.gov.uk/rsgateway/DB/Sfr/s001026/index.shtml](http://www.education.gov.uk/rsgateway/DB/Sfr/s001026/index.shtml)

disputed by the local authority. Research highlights<sup>27</sup> that there is an ongoing misunderstanding of young migrants' entitlements to support, for example, where social workers assume that any foreign young person will have no recourse to public funds

47. **Paragraph 42** highlights the need to protect trafficked children from the continued risk of traffickers. We believe this needs to be strengthened.

We recommend this paragraph is strengthened to read:

*"Placement decisions should take particular account of protecting the child from any continued risk from traffickers, and from a heightened risk of going missing. An out of area placement might be appropriate to put distance between the child and where the traffickers expect them to be. Specialist accommodation could be considered, for example, in settings which specialise in dealing with victims of trafficking. **It is recommended that either foster care or accommodation with 24hr supervision are the most suitable accommodation for unaccompanied and trafficked children. It is not appropriate to have an unaccompanied or trafficked child in semi-independent units with no staff on site. The local authority should look into finding specialist foster carers or children's home where staff has experience of working with unaccompanied or trafficked children from abroad**".*

48. **Paragraph 45** relates to the use of B'n'B accommodation. Although government guidance specifically states that "*bed and breakfast accommodation is not considered suitable for 16 and 17 year olds even on an emergency accommodation basis*"<sup>28</sup>, we continue to come across vulnerable young people who end up in this kind of accommodation. A recent Newsnight investigation revealed that 15,728 children aged 16 and 17 years old asked for help with homelessness from local authorities. Of the local authorities that responded to the FOI request, 148 had unlawfully housed children in bed and breakfast accommodation in 2012<sup>29</sup> despite statutory guidance stating that this type of accommodation is not suitable for children<sup>30</sup>. Research analysing local authority's protocols on housing 16 and 17 year olds revealed that 52% of all local authority protocols make no reference to the fact that the guidance prohibits the use of B&Bs and 61% of protocols do not apply section 20 correctly<sup>31</sup>.

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<sup>27</sup> Dorling, K. and Hurrell, A. (2012) '*Navigating the System: Advice provision for young refugees and migrants*'. London: Coram Children's Legal Centre: [http://www.seekingsupport.co.uk/images/navigating\\_the\\_system\\_final.pdf](http://www.seekingsupport.co.uk/images/navigating_the_system_final.pdf)

<sup>28</sup> Guidance to children's services authorities and local housing authorities about their duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to secure or provide accommodation for homeless 16 and 17 year old young people. April 2010:

<https://www.education.gov.uk/publications/eOrderingDownload/Provision%20of%20accommodation.pdf>

<sup>29</sup> BBC Newsnight FOI requests – broadcast on 26 September 2013 - 'Councils housing homeless teenagers in B&Bs' by Jim Reed - [http://www.bbc.co.uk/iplayer/episode/b03brt5d/Newsnight\\_26\\_09\\_2013/](http://www.bbc.co.uk/iplayer/episode/b03brt5d/Newsnight_26_09_2013/)

<sup>30</sup> Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/8260/Provision\\_20of\\_20accommodation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8260/Provision_20of_20accommodation.pdf)

<sup>31</sup> Supporting homeless 16 and 17 year olds The Law Centres Network (2013)

<http://www.insidehousing.co.uk/care/councils-flouting-law-on-housing-young-people/6526007.article>

### Case study – Child S

A recent Serious Case Review in Manchester highlighted how in extreme cases this can lead to disastrous outcomes for children. Child S was abandoned by his father without any means of support and was not provided with adequate support from the council. He was eventually and supported in bed and breakfast accommodation where he was found hanged. It is believed that Child S took his own life. The review found that children's services did not respond lawfully according to his needs<sup>32</sup> including taking into account his needs for education and mental health services given his abandonment by his carer.

49. A number of authorities are experiencing significant shortfalls because of current grant arrangements with the Home Office for unaccompanied children. Local authority witnesses to the JCHR have highlighted that the grant provided by the Home Office to local authorities for 16 and 17 year olds is "a considerable reduction from the ones for younger children" which represents a drop by around 20% in funding when a child reaches 16 and does not cover the full costs of supporting separated children<sup>33</sup>. It has been suggested that current funding arrangements act as a 'driver' for moving young people from foster placements into semi-independent or independent accommodation<sup>34</sup>. We find this is a particular problem for male unaccompanied children who are entering care at age 16 and 17 and are generally placed into unsupported accommodation, sometimes despite significant needs.

We recommend paragraph 45 is strengthened as follows:

*"It is important that suitable emergency accommodation can be accessed directly at any time of the day or night. **Statutory guidance states that Bed and breakfast (B&B) accommodation is not considered suitable for any child under the age of 18 even on an emergency accommodation basis. Such accommodation could leave children particularly vulnerable to further risk from traffickers and does not cater for their protection and welfare needs**".*

We recommend an additional paragraph 46 should be added which reads:

***"If a child requires a foster placement, they should be offered this regardless of their age, gender or immigration status – including if they are 16 or 17 years old. The decision to provide foster care instead of independent accommodation should not be made on the basis of how the local authority is reimbursed for this cost or housing stock availability, but on the welfare and protection needs of the child"***.

<sup>32</sup> Serious Case Review, Children and Legal Aid

<http://www.nrpfnetwork.org.uk/SiteCollectionDocuments/Appendix%20%20Child%20S%20serious%20case%20review%20from%20Childrens%20Society.pdf>

<sup>33</sup> See oral evidence from Philip Ishola (Association of Directors of Children's Services), Andrew Ireland (Kent County Council), Janet Patrick (Croydon Council) and Richard Ross (Solihull Council) - 22 January 2013, Q 50–82:

[http://www.parliament.uk/documents/joint-committees/human-rights/Unaccompanied\\_migrant\\_children\\_corrected\\_oral\\_evidence.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Unaccompanied_migrant_children_corrected_oral_evidence.pdf)

<sup>34</sup> See oral evidence from Jim Wade - 22 January 2013, Q 50–82: [http://www.parliament.uk/documents/joint-committees/human-rights/Unaccompanied\\_migrant\\_children\\_corrected\\_oral\\_evidence.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Unaccompanied_migrant_children_corrected_oral_evidence.pdf)

50. **Paragraph 37** refers to looked after children being given priority in school admissions. Our practitioners experience a lot of avoidable delays getting unaccompanied young people into school. Whilst the school admissions code is referenced in this guidance, we also recommend that all local authorities should have a school admissions protocol in place specifically for unaccompanied and trafficked children. For example, the Oxfordshire County Council protocol states that unaccompanied asylum seeking children need to be in education within 20 days of coming into care<sup>35</sup>. This also highlights particular good practice which has been in place when children have been admitted in less than 20 days.

51. Also, each child's education placement needs to take into account their particular circumstances and be mindful of their rights under the UNCRC to promote their own language and cultural identity. For example, some children may have had no formal education and may be illiterate as well as being unable to communicate in English. However, they may speak a number of languages from their home country and it would be in their interest to continue to learn these. Alternatively, some children may have been educated and may have developed knowledge and skills in a variety of subjects. Their lack of English does not mean that they shouldn't be supported to progress in other subjects like science and maths or other languages and they should be given the right educational support to help them achieve this. We have seen some good practice in local authorities where children are able to take part on GCSEs while taking English as a second language course. This approach requires a tailored approach for each child on a case-by-case basis.

We recommend that paragraph 37 is amended as follows:

*"Looked after children must be given priority in school admissions, as set out in the School Admissions Code. **All local authorities should in addition, have a separate school admissions protocol for unaccompanied and trafficked children.** Social workers and carers should understand local arrangements for priority admissions **and should apply for a place for a child within a few days of them coming into care** to ensure the child gains a place at the most appropriate school for them. **The child should also have their language needs assessed on admission with the help of an interpreter where necessary, and this assessment should be shared with the school**".*

### **Immigration status and transition planning (page 13)**

52. **Paragraph 57** refers young people's understanding the asylum process. External research as well as evidence from our services shows that these young people experience significant difficulties in navigating the immigration system and having their claims fairly considered.<sup>36</sup> A recent

<sup>35</sup> [http://oxfordshirechildcare.proceduresonline.com/chapters/pr\\_sc\\_admiss\\_uasc.html](http://oxfordshirechildcare.proceduresonline.com/chapters/pr_sc_admiss_uasc.html)

<sup>36</sup> The Children's Society (2007) *Going It Alone: children in the asylum process*: [http://www.childrensociety.org.uk/sites/default/files/tcs/research\\_docs/Going%20it%20alone%20-%20Children%20in%20the%20asylum%20process\\_0.pdf](http://www.childrensociety.org.uk/sites/default/files/tcs/research_docs/Going%20it%20alone%20-%20Children%20in%20the%20asylum%20process_0.pdf); Refugee Council (2011) *Lives in the Balance: The quality of immigration legal advice given to separated children seeking asylum*: <http://www.refugeecouncil.org.uk/policy/position/2011/livesinthebalance>; Dorling, K. and Hurrell, A. (2012) *Navigating the System: Advice provision for young refugees and migrants*, Coram Children's Legal Centre: [http://www.seekingsupport.co.uk/images/navigating\\_the\\_system\\_final.pdf](http://www.seekingsupport.co.uk/images/navigating_the_system_final.pdf);

consultation with young refugees from our services<sup>37</sup> revealed that children seeking safety in the UK are subjected to a 'culture of disbelief' and suspicion, which leaves them feeling frightened and confused. Our findings suggest that young people are not getting the information they need about the asylum process in a format that is accessible to them. This leaves them feeling powerless and insecure about vital decisions that affect their lives and their futures. They find it difficult to complain about the treatment they receive because there are no clear channels through which they can do this and they are anxious that any complaints they make will have a negative impact on their asylum claim. Our findings suggest that the current asylum process does not take sufficient account of children's rights, their evolving capacities and unique protection needs.

53. Young people don't just need to understand the process, they need support in going through it. There needs to be an awareness among local authority professionals that the asylum process itself can be very traumatic for young people and the thought of being forced to go home can cause a lot of fear. Many young people try to avoid thinking and talking about the subject as it is so painful but at the same time they are deeply affected by the process and their distress can show itself in other ways. For example, children may start attending school badly or behaving badly if they have had a negative asylum decision.

We recommend that **paragraph 57** be amended as follows:

*"Claiming asylum can be a complex process **which can be confusing, uncertain and distressing for children and young people, with significant implications for their mental health. Despite being refused asylum or leave from the Home Office it is important to recognise that many children will continue to have a very real fear of returning home.** Social workers and personal advisors should work with the care leaver's legal representative and the dedicated decision-maker at the Home Office to ensure that the young person understands the process of claiming asylum and the possible outcomes through, and to provide them with necessary support".*

54. Our experience and external evidence highlights that there is a lack of adequate pathway planning for separated children to ensure that they receive the appropriate support and assistance as they approach 18 and in the transition to adulthood<sup>38</sup>.

55. **Paragraph 58, point 3** refers to 'UASC leave'. The majority of unaccompanied children claiming asylum do not receive a durable status to remain in the UK

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UNHCR (2009) *Quality Initiative Project: Key Observations and Recommendations on unaccompanied children*: [http://www.unhcr.org.uk/fileadmin/user\\_upload/pdf/6\\_QI\\_Key\\_Observations\\_Recommendations6.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/6_QI_Key_Observations_Recommendations6.pdf)

<sup>37</sup> The Children's Society (2012) *Into the Unknown: Children's journeys through the asylum process*: <http://www.childrensociety.org.uk/sites/default/files/tcs/into-the-unknown--childrens-journeys-through-the-asylum-process--the-childrens-society.pdf>

<sup>38</sup> Dorling, K. and Hurrell, A. (2012) *Navigating the System: Advice provision for young refugees and migrants*. London: Coram Children's Legal Centre: [http://www.seekingsupport.co.uk/images/navigating\\_the\\_system\\_final.pdf](http://www.seekingsupport.co.uk/images/navigating_the_system_final.pdf)

when they apply for protection.<sup>39</sup> Instead the majority are refused asylum but granted discretionary leave to remain or 'UASC leave' for 30 months or until they are 17½, on the grounds that there are no 'adequate reception arrangements' in their country of origin. Although the immigration status of a separated or unaccompanied child does not affect their entitlements while they are in care and as care leavers under the Children Act 1989, a young person's entitlements after 18 will depend on their immigration status. We have long been concerned about the forced destitution of former separated asylum-seeking children when they turn 18 and we have found a sharp rise in the number of young people who are experiencing destitution<sup>40</sup>.

56. Some of these young people experience destitution because they are discharged from children's services after they turn 18, refused asylum and exhausted their rights to appeal, often despite significant barriers to their return<sup>41</sup> or continuing protection needs. These young people experience destitution because they are discharged from children's services after turning 18, having been refused asylum and having exhausted their rights to appeal or receive lower levels of support and access to services. Many young people find themselves in limbo: unable to leave the UK but left with little or no support unable to continue with their education or access vital services like health care. For example, one young person we recently supported has incurred significant debt as a result of having to pay for hospital bills due to her status and because the local authority has refused to provide assistance. Other young people that we have worked with were told that they were not allowed to study because of their immigration status. These young people were not supported by the leaving care team to access education, financially or by advice and guidance. A number of young people that we work with have been threatened with homelessness and destitution by the Home Office or the local authority.

57. It is important to highlight to social workers that young people must start pathway planning well before they turn 17.5 when their leave may run out. This will ensure they can fill in an application in time to extend their leave or appeal any decisions already made so they can plan and prepare with sufficient time. **Paragraph 58, point 4** currently gives the impression that when a young person is refused they will need to be removed from the country immediately. These needs to be reworded to make practitioners aware that many young people should seek further legal advice at this point because they may have the option to appeal a refusal or they may have grounds for a fresh asylum claim. Alternatively, they may have a claim on human rights grounds under Article 8.

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<sup>39</sup> Home Office immigration statistics: <https://www.gov.uk/government/publications/tables-for-immigration-statistics-october-to-december-2013>

<sup>40</sup> The Children's Society (2012) 'I don't feel human: Experiences of destitution among young refugees and migrants' [http://www.childrenssociety.org.uk/sites/default/files/tcs/research\\_docs/thechildrenssociety\\_idontfeelhuman\\_final.pdf](http://www.childrenssociety.org.uk/sites/default/files/tcs/research_docs/thechildrenssociety_idontfeelhuman_final.pdf)

<sup>41</sup> It can be extremely difficult to forcibly remove people to countries where there are uncooperative governments, difficulties in obtaining travel documents, and/or logistical and practical transportation difficulties. For example, in March 2012, Damian Green stated that "as there is no Iranian diplomatic mission in the United Kingdom, there are limits to what support [UKBA] can provide where they do not hold a valid passport to return", HC Deb, 12 March 2012, c9W. See also Oxfam, *Coping with Destitution, Survival and livelihood strategies of refused asylum seekers living in the UK*, 2011 for details on barriers to return

We recommend that paragraph 58 points 3 and 4 should be amended to read:

**Point 3:** *Refused asylum but granted Unaccompanied Asylum Seeking Children (UASC) Leave. This is normally for 30 months or until the age of 17½, whichever is the shorter period. Once the child reaches 17½ years of age their case will be reviewed. UASC Leave is granted if at the time of the decision adequate care and reception arrangements are not in place in the country of origin (i.e., a return cannot be effected safely). **Prior to these children reaching 17.5, when their leave will end, social workers must start pathway planning well in advance. This will ensure the child has sufficient time and support to fill in an application in time to extend their leave or appeal any decisions already made so they can plan and prepare adequately for their future.***

**Point 4:** *Refused asylum with no grant of leave. **At this point, young people should seek further legal advice because they may have the option to appeal a refusal or they may have grounds for a fresh claim. In other cases the unaccompanied child may want to return to their country of origin.***

### **Access to public funds, welfare benefits and other public funds**

58. **Paragraph 65** refers to pathway plans and how immigration status may impact on current and future entitlements. Case law has made it exceedingly clear that a young person who is found to be 'unlawfully in the UK' should not be moved onto support provided by the Home Office<sup>42</sup> but continue to be supported by the local authority<sup>43</sup>. Support should not be withdrawn if this would breach an individual's human rights. However, practice amongst local authorities varies widely due to confusion around entitlements and budgetary pressures<sup>44</sup> leaving some care leavers entirely without or with very limited support.

### **Case study**

James (20) receives £35 per week to live on. His financial situation severely impedes his efforts to remain in education. He needs to pay £18 for his travel costs to get to and from college, leaving him with £17 – just over £2 per day - to cover all other expenses. He has no funds to pay for other college expenses. His landlord also told him he would have to pay for utilities as he lives with young people who are not subject to immigration control, and utilities are paid via a meter in the house.

59. It's important that the established case law – specifically the *SO v Barking and Dagenham* judgement – is accurately reflected within the guidance to avoid confusion which can lead to young people becoming destitute.

We would recommend including the following to paragraph 65:

***“Local authorities have a general duty to provide a former relevant child with accommodation to the extent that his or her welfare requires it. Furthermore,***

<sup>42</sup> Under Section 4 of the *Immigration and Asylum Act 1999*,

<sup>43</sup> *R (SO) v London Borough of Barking & Dagenham* [2010] EWCA Civ 1101

<sup>44</sup> Coram Children's Legal Centre: *Navigating the system: Access to advice for young refugees and migrants*, 2012

***in considering whether a former relevant child's welfare requires the provision of accommodation, the local authority is not permitted to take account of whether or not that former relevant child might be eligible for accommodation and support from the Home Office pursuant to its asylum support functions. A young person's support should not be withdrawn if it would breach their human rights. In practice forcing a young person into homelessness, withdrawing financial support and other leaving care services is likely to have significant implications for that care leaver's health and well-being including their physical safety and mental health. In their role as corporate parents local authorities should seriously consider whether withdrawing support and services for the purposes of immigration control would be in that care leaver's best interests and consistent with these duties."***

**Question 5:** Do you have any suggestions for further links or resources that could be included at Annex A of the guidance?

60. We would suggest the following links and resources be added to the Annex:

**Refugee Council – children's panel:**

[http://www.refugeecouncil.org.uk/what\\_we\\_do/childrens\\_services](http://www.refugeecouncil.org.uk/what_we_do/childrens_services)

Telephone: 0808 808 0500 (free to call from landlines and most mobile networks) or 0207 346 1134.

By email: [children@refugeecouncil.org.uk](mailto:children@refugeecouncil.org.uk) (although Judith might have other suggestions)

**The Children's Society**

Specialist services supporting refugee and migrant children and young people in London, Leeds, Birmingham, Coventry, Blackburn, Newcastle, Oxford and Manchester. Please call 020 7841 4400, email:

[supportercare@childrenssociety.org.uk](mailto:supportercare@childrenssociety.org.uk) or look online for more information:

<http://www.childrenssociety.org.uk/in-your-area>

The Children's Society has recently produced a resource pack on young runaways which contains information for local safeguarding agencies, parents and young people: <http://www.childrenssociety.org.uk/what-we-do/resources/protecting-young-runaways>

**Migrant Children's Project, Coram Children's Legal Centre**

Various resources:

'Seeking Support' – rights and entitlements resource for separated children available as free hardcopy and PDF: <http://www.seekingsupport.co.uk/>

Legal advice line for young people and practitioners: 0207 636 8505 Mon-Fri, 10am – 6pm

Online FAQs and factsheets:

[http://www.childrenslegalcentre.com/index.php?page=faqs\\_and\\_resources](http://www.childrenslegalcentre.com/index.php?page=faqs_and_resources)

Directory of services for young refugees and migrants:

[http://www.childrenslegalcentre.com/userfiles/file/Directory\\_of\\_services\\_for\\_young\\_refugees\\_and\\_migrants.pdf](http://www.childrenslegalcentre.com/userfiles/file/Directory_of_services_for_young_refugees_and_migrants.pdf)

**Coram Voice:** <http://www.voiceyp.org/>

**Refugee Support Network:** <http://refugeesupportnetwork.org/>

**Refugee Children's Consortium:**

<http://www.refugeechildrensconsortium.org.uk/> or email:  
[refugeechildren@childrenssociety.org.uk](mailto:refugeechildren@childrenssociety.org.uk)

**Immigration Law Practitioners' Association:**

<http://www.ilpa.org.uk/pages/publications.html>

**"Working with children and young people subject to immigration control - Guidelines for best practice" 2012:**

[http://www.ilpa.org.uk/data/resources/14627/12.04.25-ilpa\\_child\\_guidelines\\_2nd\\_ed.pdf](http://www.ilpa.org.uk/data/resources/14627/12.04.25-ilpa_child_guidelines_2nd_ed.pdf)

**"Working with Migrant Children: Community Care Law for Immigration Lawyers" 2012** [http://www.ilpa.org.uk/data/resources/16693/13.01.07-](http://www.ilpa.org.uk/data/resources/16693/13.01.07-Community-care-final-PDF-for-the-web.pdf)

[Community-care-final-PDF-for-the-web.pdf](http://www.ilpa.org.uk/data/resources/16693/13.01.07-Community-care-final-PDF-for-the-web.pdf)