

Unaccompanied asylum-seeker children: flawed processes and protection gaps in the UK

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My experience of working as an immigration lawyer on unaccompanied asylum-seeker children's cases has highlighted a number of serious flaws in the processes which determine their futures.

Every year an unknown number of unaccompanied migrant children enter the United Kingdom.¹ In some cases, these children have been trafficked for labour or sexual exploitation. In other cases, they have left their countries at their own instigation or at the wishes of their parents or guardians for safety from persecution or for economic reasons. Some are victims of domestic violence or even accusations of witchcraft.

The UK, like other European countries, treats 'unaccompanied asylum seeker children' (UASC)² more favourably than other asylum seekers, both in terms of reception services and asylum procedures.

Reception services: UASC are the responsibility of the social services department of the local authority in whose area they are for the time being. Social services carry out an assessment and immediately provide assistance. UASC under the age of 16 are normally placed with a foster parent or in residential care. Those of the older age group might be placed in more independent living arrangements, for example in shared flats or supervised accommodation. Once a child is accommodated, the local authority has further ongoing duties to safeguard and promote the child's welfare, provide an appropriate package of support and conduct reviews on a regular basis to ensure that the child's needs are being met. Overall, UASC should not be treated differently from British children who have been taken into care.

Asylum procedures: UASC are subject to an asylum determination procedure which is designed to be more appropriate for a child than the normal procedure. They also have the

right to receive legal aid to prepare their cases, to be accompanied to interviews and to be represented at asylum appeals, and to have their claims assessed by a specialist children's unit. Furthermore, they should not be subject to immigration detention. The consequences of an adverse decision (refusal of their claim for asylum) are also less extreme in the short term for a child than for an adult because children are normally granted discretionary leave to stay until they are aged 17 and a half if there are no adequate reception arrangements in their country.³ This means that they will be entitled to live, study and work in the UK until that age.

Problems with current practice

One of the issues often arising with respect to UASC is whether they are indeed children. Where the age is disputed, UASC may be treated as adults. Many of these disputes remain unresolved. The Home Office suggests that the main problem is that of adults pretending to be children in order to access services and support to which they are not entitled. However, it is often in the economic and practical interests of the local authorities not to accept young asylum seekers for long-term care. It is the local authorities that carry out age assessments, which are then forwarded to and relied upon by the Home Office in the context of asylum determinations.

The local authorities' competence to carry out age assessments raises serious conflicts of interests. The procedure is notoriously subjective, and is known to be fallible for a number of reasons: age documentation is often regarded with suspicion; it is difficult to obtain consistent testimonies from children who have to speak through

interpreters, have a different calendar system from ours, and have little or no education; some social workers do not have sufficient skills and expertise to make reliable assessments, relying too heavily on physical appearance or socially constructed ideas of appropriate behaviour to determine age; sometimes children are scared, do not trust adults and only repeat what smugglers or family members have told them to say.

There are also flaws in an asylum decision-making process that does not take into sufficient account that child asylum seekers are children, particularly when it comes to believing a child's story. In its sixth Quality Initiative report, UNHCR UK reports that: "Some Case Owners are particularly adept at creating an optimal interviewing environment for a child and questioning a child in an appropriately sensitive way so as to facilitate expression and disclosure of evidence. However, UNHCR's assessment of 21 interviews found some erroneous practices that go against the child's best interests, deny the child the opportunity to freely express their reasons for claiming asylum, or fail to ensure that any vulnerabilities or special needs of the child are taken into consideration."⁴

Until recent litigation, it was common practice for immigration lawyers to obtain paediatric (i.e. medical) reports on age. However, it is now accepted that as medical reports have a margin of error of two years either way, they cannot be conclusive evidence of age, and should only be taken into consideration with all the evidence presented.

Age assessment results may have serious consequences for a large number of UASC as it can determine how long they are entitled to support and remain in the UK. In 2008, 8% of UASC were granted asylum and 53% were granted

discretionary leave to remain in initial decisions.⁵ Furthermore, if asylum is refused and discretionary leave granted for less than one year, such a child has no right of appeal. If children are determined to be adults and treated as such, they can be detained, more easily transferred to another EU country under the Dublin II Regulation⁶ or, if their asylum is refused, returned to their country of origin or left destitute and vulnerable in the UK.

The difficulties that many UASC face in relation to being aware of their rights and accessing appropriate care and support are exacerbated by the fact that these children, including those who have been granted discretionary leave, are not provided with a legal guardian (i.e. a court-appointed individual to represent the child's best interests), unlike in other European countries.⁷

Upon reaching the age of seventeen and a half, UASC can apply for further leave to remain. This application is usually refused by the Home Office unless it can be shown that removal from the UK would be in breach of the European Convention on Human Rights, typically their right to private and family life under Article 8. The common reasons for refusal are that the applicant is now an adult and no longer needs care, has not established private or family life (because only a short period of their life has been spent in this country), and has no family members living here. At this point, the Home Office orders their removal, and warns that overstaying is an offence. The Home Office also provides information on voluntary returns, arranged with the International Organization for Migration. Many, if not most,

former UASC whose applications for further leave to remain are refused remain unlawfully in the UK with no support, unable to continue their education, and usually out of contact with the local authority or their lawyers.

Recommendations

Children and young people subject to immigration control are especially vulnerable as their welfare and development are strictly linked to obtaining and maintaining lawful status. However, despite the special provisions applicable to UASC, the approach is still to treat them as migrants first and children second. In order to establish an effective protection regime for UASC and young adults, the following steps should be taken:

- Review age assessment procedures. For instance, the assessment could be conducted over a period of several days to allow observation of the child's/young person's behaviour and relationships. Social workers involved in age assessment should receive appropriate guidance, training and support. The process of age assessment should allow for input from all who play a role in the child's life – health professionals, psychologists, teachers, youth workers, etc – and should include all the information that might be relevant to the decision, including paediatric and medical evidence where this is available. An independent age assessment panel could help the regional assessment centres to deliver a consistent and credible service which is less likely to be challenged by others.
- Provide local authorities with sufficient funds to deliver an

appropriate package of support and care.

- Foster cooperation between immigration officers and solicitors representing UASC.
- Address the legislative gap on how best to protect young people when they have exhausted all their rights to appeal and no longer have any legal status.
- Grant permanent protection to UASC who are victims of trafficking.
- Establish a formal system of guardianship for UASC. The guardian would have a statutory role and should be appointed by a statutory body to safeguard the best interests of the child and provide a link between all those providing services and support. The guardian should be expected to intervene if public bodies act in contravention of their legal duties towards a child.

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1. Statistics are only available for those who make an asylum application (5,685 in 2008). Of these, 1,400 (24.6%) had their age disputed and were treated as adults.

2. Children under the age of 18 who arrive in the UK, claim asylum, and are without close adult family members either accompanying them or already present in the UK whom they can join.

3. Heaven Crawley, *When is a child not a child? Asylum, age disputes and the process of age assessment*, Immigration Law Practitioners' Association 2007, p152. <http://tinyurl.com/ILPA-Crawley2007>

4. UNHCR Quality Initiative project. *Key observations and recommendations April 2008 – March 2009* <http://tinyurl.com/UNHCRQI6>

5. The Children Legal Centre, Fact Sheet, <http://tinyurl.com/CLCFactSheet>

6. Dublin II Regulation determines which EU Member State is responsible to examine an asylum application. <http://tinyurl.com/DublinIIRegulation>

7. *European Migration Network Synthesis Report: Policies on the Reception, Return, and Integration Arrangements for, and Numbers of, Unaccompanied Minors: An EU Comparative Study*. May 2010. p53 <http://tinyurl.com/EMNMay2010>

Young and out of place: FMR 39 call for articles

Being displaced involves not just a change of physical location but a dislocation of many aspects of normal life. Families are divided, social relations are broken, education is disrupted, and access to familiar meeting places is no longer possible. But life goes on and someone who is forcibly displaced has to try to find ways to re-create what is lost or to find substitutes for it.

Young people can be susceptible in particular ways to the stresses of being physically and socially dislocated at a time when they face important changes, rites of passage and formation of adult relationships. The society from which these young people come and on which they depend may no longer exist

for them in a meaningful way. Local, or 'host', communities are often ill-equipped to support them. Camps or collective centres create opportunities for damaging or exploitative behaviours and are poor substitutes for a normal social environment. And outsiders' responses to the needs, and rights, of displaced people rarely cater for the social needs of young people.

The FMR editors are looking for practice-oriented articles (focusing on situations of forced displacement) addressing this theme.

See <http://www.fmreview.org/young-and-out-of-place/> for full details. Deadline for submissions: 17 October 2011. Due out February 2012.