

NSPCC's Response to *Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children*

NSPCC
Weston House
42 Curtain Road
London
EC2A 3NH
Tel: 020 7825 2742/ 1329
Fax: 020 7825 2964
www.nspcc.org.uk/publicaffairs

23/05/2007

The NSPCC's response to *Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children*

Introduction

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end cruelty to children by seeking to influence legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying, campaigning and public education.

The NSPCC believes that, given the will, all cruelty can be prevented. In order to achieve this, it is vital that all children, whatever their needs, have a range of services that are flexible and offer them support and protection. The NSPCC has more than 180 services in the UK and the Channel Islands. These services aim to:

- Prevent children being abused by working with parents and carers in vulnerable families to improve their knowledge and skills in safeguarding, and giving children and young people someone to turn to through the provision of our Listening Services.
- Protect vulnerable children and young people from abuse by providing direct services in a number of settings, including schools and young people's centres. We also protect them by providing Listening Services for adults to ensure they have someone to turn to with their concerns; by ensuring that abused children and young people are identified and effective action is taken to protect them, and by working with young people and adults who pose a risk to children and young people to reduce the risk of abuse.
- Help children and young people who have been abused overcome the effects of abuse and achieve their potential.

NSPCC's direct services for separated children

Note on terminology

In our response we use the term 'Separated children' rather than 'Unaccompanied Asylum Seeking Children' (UASC) because this term includes those who are accompanied by an adult who is not their parent, guardian or primary carer. This difference is particularly important when discussing the circumstances of children trafficked for commercial sexual exploitation or other exploitative purposes. Some children may appear to be accompanied but are actually not accompanied by parent, guardian or customary care giver.

The NSPCC's comments on this consultation are based on our expertise in safeguarding children and promoting their welfare and rights. In particular, we have drawn on our practice experience of work with separated children, with whom we work in many of our young people's centres, our advocacy projects and our therapeutic projects. We have a therapeutic service in Croydon which

has a substantial proportion of separated children as clients, as well as other services in Cardiff, Swansea and Sheffield which see a significant number of separated children.¹ Also we have worked closely with the Borders and Immigration Agency (BIA) to develop child protection policies and procedures in immigration removal centres. In addition, our Independent Enquiry and Assessment Service also works on issues related to child trafficking and has supported the police and other agencies in this area, most notably on Operation Paladin Child with the Metropolitan Police Service in 2003.^{2 3}

We know from our services that there is demand for children for sexual exploitation, and labour exploitation. The recent European Commission report⁴ confirms that children are therefore particularly vulnerable to traffickers, especially organised gangs. It reports that demand for children for the purposes of sexual exploitation is increasing in EU member states and while police and judicial authorities are trying to combat this particularly abhorrent form of abuse, trafficking and working in organised criminal gangs is becoming even more profitable.

The NSPCC has substantial experience of cases of trafficking for the purposes of sexual exploitation, and has a project working with trafficked children in London. More details are in appendix 1. Some of the children involved were exploited both in their country of origin, and again here in the UK. Several have received Social Services support with housing, but little else, and all have looked to the NSPCC for emotional and practical support. This group have very high levels of need and should automatically receive therapeutic interventions from social services or the child and adolescent mental health services.

Asylum seeking children and the UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child (UNCRC) is particularly relevant to this consultation, as separated children are some of the most vulnerable people in society. The relevant article is Article 22:

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human

¹ A case study is attached as an appendix at the end of this document as an example of how we have worked with a separated child from Somalia.

² Operation Paladin Child was a unique study into the migration of children through Heathrow airport between April and November 2003. The NSPCC worked closely with the Metropolitan Police Service, Hillingdon Social Services and the Immigration Service during this study

³ Also at a policy level the NSPCC is a member of End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT UK), a coalition of nine leading charities in the UK.

⁴ European Commission Report of the Experts Group on *Trafficking in Human Beings*, Brussels, 22 December 2004.

rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

The UK Government has a reservation on Article 22 of the UNCRC, which it argues is necessary in the interests of effective immigration control, but the Government also states that the reservation does not prevent the UK from having regard to the Convention in its care and treatment of children. It states that, in practice, "the interests of asylum seeking children and young people are fully respected"⁵ in particular under the Human Rights Act 1998 and that, "notwithstanding the Reservation, there are sufficient social and legal mechanisms in place to ensure that children receive a generous level of protection and care whilst they are in the UK"⁶. The reservation is justified by the Government as necessary to prevent the Convention affecting immigration status. However, the Joint Committee on Human Rights in a recent report⁷ states:

"Our principal concern is that the practical impact of the reservation goes far beyond the determination of immigration status, and leaves children subject to immigration control with a lower level of protection in relation to a range of rights which are unrelated to their immigration status."

The Joint Committee concludes:

"We are disappointed that the Government has failed to act on our earlier recommendation that it should withdraw the immigration and nationality reservation to the CRC. In our view, the maintenance of this reservation, which withdraws the protection of the Convention from a particularly vulnerable group of children, undermines the otherwise strong record of the Government in the advancement of children's rights, and calls into question the UK's commitment to a Convention central to international human rights protection. We reiterate our previous recommendation that the Government should withdraw this reservation."

⁵ Joint Committee on Human Rights, *Seventeenth Report of Session 2005 – 06*. Stationery Office

⁶ JCHR, *ibid.*

⁷ JCHR, *ibid.*

In addition the Committee stated in their Report on Human Trafficking:

“..Evidence submitted to us emphasised the potential conflict between UK immigration and asylum policy and child protection principles, which dictate that the primary consideration is the best interests of the child...The previous JCHR pressed the Government to remove this reservation and in our view the need for this to be done is further strengthened by its potential effect on child trafficking victims if their best interests are not to be compromised.”⁸

General Comments on the Consultation

Summary of key points and recommendations

- The UK Government should remove its reservation to Article 22 of the UN Convention on the Rights of the Child.
- Separated children must be covered by the Children Act 2004 (in England and Wales) to ensure that the agencies that they come into contact with have a duty to make arrangements to safeguard and promote their welfare. This is the only way of ensuring that this very needy and vulnerable group of children receive the same care, services and support that any other child in the UK would receive.
- The presumption that separated children are less likely to receive refugee status is undermining the services they are entitled to, and should be overturned. Separated children need specialist services to enable them to overcome the effects of trauma they may have experienced which caused them to flee their country of origin.
- The automatic presumption that a separated child will only stay in the UK for a temporary period must be challenged for all agencies supporting these children.
- Dispersal of separated children to other parts of the UK should only take place if it is considered to be in the best interests of the child; any assessment of the child's best interests must include access to appropriate services, as well as ensuring that the child's opinion is considered in the decision.
- Appropriate accommodation must be provided for separated children, particularly those who would benefit from semi-independent accommodation arrangements, which do not put the child at risk of exploitation or abuse. Housing separated children with adults should only happen when those adults are well known to the child or are part of the extended family.

Separated children must be safeguarded and have their welfare promoted

Separated children must be seen as part of our society from the day they arrive in this country. It is necessary and appropriate for the UK Government to offer them precisely the same care, services and support that we would provide for our own children. In particular, children who have had experiences of torture, political violence and other forms of persecution, have specific developmental and mental health needs that must be fully catered for in all aspects of the

⁸ Joint Committee on Human Rights, *Twenty-sixth Report of Session 2005 – 06*. Stationary Office

asylum process and support arrangements. The effects of witnessing or being tortured, of seeing family or friends being hurt or killed, or of being persecuted have many similarities to the effects of maltreatment, as defined in *Working Together*⁹ so separated children who have experienced such events need appropriate assessment and therapeutic interventions to enable them to begin the process of recovery.

We welcome the statement in paragraph 6 of the consultation, that separated children, “matter every bit as much as other young people in the context of meeting ... the five outcomes of the Every Child Matters framework”¹⁰. However, paragraph 7 of the report states that most separated children will be staying temporarily in the UK. The only way that these two paragraphs can both make sense is if it is clear that the five outcomes framework can be met by returning the child to their country of origin, which is not in any way ascertainable for individual children, as it is so unclear what circumstances children will be returning to, not least whether their well-being will be improved as specified in the five outcomes framework.

Assessing and meeting need and providing adequate care

Based on our project experience, most separated children do not receive a full assessment of need and the majority are not cared for under Section 20 of the Children Act 1989, but receive the lesser support provided under Section 17, despite the Hillingdon Judgement¹¹. Moreover, even where their needs have been assessed, they are not being met.

We are also very concerned that the UK Government refuses to consider the possibility of extending the remit of the Children Act 2004 (arrangements to safeguard and promote welfare of children) to immigration services, which means that child protection processes can be bypassed (or at least de-prioritised), as it is not the role of the BIA or port authorities to make arrangements safeguard and promote welfare. As stated by Lin Homer, the then chief executive of the Immigration and Nationalities Directorate, the immigration service has the primary function of enforcement¹². We support the call of the Refugee Children’s Consortium and the four UK Children’s Commissioners to remove this anomaly.

Studies have shown that less attention is paid to the health needs of young refugees and asylum seekers than to their needs for education and social care¹³:

⁹ *Working Together to Safeguard Children*. A guide to inter-agency working to safeguard and promote the welfare of children. HM Government 2006.

¹⁰ The Every Child Matters Agenda applies to England, and a different approach is taken in Wales, Northern Ireland and Scotland. In Wales for instance, there are also the seven core aims, which are closely linked to the UN Convention on the Rights of the Child.

¹¹ The Hillingdon Judgement (*Berhe v London Borough of Hillingdon* [2003] EWHC 2075) found that services provided to unaccompanied children seeking asylum would largely be delivered through Section 20 of the Children Act 1989 (such as taking them into public care), thus increasing the responsibilities of local authorities to this group.

¹² Lin Homer, director of the Immigration and Nationalities Directorate, stated this at the Westminster launch of *Child First, Migrant Second, Ensuring that Every Child Matters*, on the 10th May 2006.

¹³ Madge N (2001) *Understanding difference: the meaning of ethnicity for young lives*. NCB.

- Placing children in sub-standard or dangerous accommodation can impact on both mental and physical health, and can make them vulnerable to abuse. A Shelter survey found that 16- and 17-year-olds asylum seekers were regularly being placed in private hostels accommodating mainly transient, single, older men¹⁴.
- The lack of serious consideration of the emotional needs of unaccompanied children is compounded, for example, by the social work practice of placing siblings apart¹⁵.
- This approach fundamentally undermines other initiatives of the UK Government to promote inclusion and integration, and is incompatible with its broader social exclusion agenda.

A presumption of a temporary stay

We are aware that in some instances the return of the child to their country of origin may be the best solution for the child, as long as the return is managed appropriately and all measures are taken to ensure the child's best interests and needs are met, and that these needs and best interests are independently assessed.

However when separated children come to the UK they are likely to have had some very bad experiences in their country of origin, as well as during their journey to the UK, yet the presumption is that separated children are expected to return to their country of origin where they may have no contacts, and they are often not even sure if their family is still there. This may not be in the best interests of the child, and is not usually appropriate for separated children, particularly where they have been trafficked into the UK and are at risk of being re-trafficked on their return.

It is also unclear to us how the Borders and Immigration Agency (BIA) is able to assert that the majority will only stay in the UK temporarily as it is not possible to state with any certainty what proportion of separated children who arrive in the UK in future will have genuine claims for asylum. Despite this, the assumption permeates the consultation document, and does not give the NSPCC any confidence that the five outcomes framework will be met, or that the Government will have regard to the UN Convention on the Rights of the Child in its care and treatment of children who are seeking asylum, as suggested above.

The experience of the children and young women in the 'From There 2 Here' Group (see appendix) makes it clear that time-limited leave causes further distress to separated children, as they seek to settle and become socialised into society while being uncertain about what will happen once they turn 18. Their links with their home countries naturally lessen as they do not have the resources or knowledge to maintain contact and are more unable to do so as they have lost immediate families and are preoccupied with setting up lives here. Some of these individuals may have children themselves while in the UK

¹⁴ Garvie D (2001) *Far from home: the housing of asylum seekers in privately rented accommodation*. Shelter.

¹⁵ Garvie D (2001) *op. cit.*

and it is necessary to provide all the relevant support for them at this time, to ensure they are able to provide adequate support and care for their children.

Does dispersal benefit children?

The NSPCC is very concerned that the policy of dispersal is not considered in this document, yet there is an underlying assumption that it will be taking place. There is no consideration of whether dispersal policies are in the best interests of the child, and whether it might be more appropriate to continue developing services where separated children currently live and are in local authority care. There will be a much greater chance that these services will be able to cope with the complex needs of separated children, as they are currently set up to provide a multi-agency multi-disciplinary service which can respond to a variety of needs and have particular expertise in these areas. This is particularly the case for separated children who have experienced severe trauma, torture, persecution, organised violence, trafficking or maltreatment.

If communities and services already exist in the South East for separated children, we do not agree it is necessary to disperse them to other parts of the UK. We are also aware that it is essential to provide additional resources for those specialist services that are already set up to respond to separated children to enable them to continue providing a reasonable level of service.

There is also an expectation that if a child is dispersed to a community with individuals of similar nationality or culture that this will ensure a degree of integration takes place. However such assumptions are not necessarily correct; our practitioners have discussed instances of separated children being placed in a community with individuals from similar national or political backgrounds, but they are in fact from a different ethnic group or class, from rural areas rather than urban, and this has had an immediate effect on their health, safety and well-being.

The proposals for dispersing separated children to different areas of the UK may well increase the risks to these children, and will not necessarily ensure there is any degree of integration. Children from asylum-seeking families in contact with our projects report the following issues after being dispersed across the UK:

- Exposure to racial harassment and violence, fuelled by hostile local press coverage.
- Dispersal to areas where there is no language support and where no-one speaks their language. Access to health services are also impeded by lack of language support.
- Dispersal to areas where there are no legal representatives specialising in asylum. In all dispersal areas there is an enormous gap between supply and demand for legal representation, and such capacity will take a few years to develop.

Our understanding of adult dispersal programmes is that the process frequently does not work well; in particular interpreting services are not good, and job centres and other service providers do not have interpreting services. Colleagues from NSPCC projects state that interpreting services are continually

being cut on cost-saving grounds. This is particularly important for a child who cannot be expected to have or acquire English quickly.

We are also concerned that if a group of asylum-seeking families arrive in a town which is not used to ethnic diversity, there is a risk of racism and violence developing against them, and the same may happen to separated children. A great deal of work with communities needs to be undertaken in order to ensure that new groups integrate successfully, and children are especially vulnerable and need considerable support. Without full community participation in such programmes there is a high likelihood that the welfare of separated children will be put at risk.

So the first issue to determine is what is in the best interest of the child, which includes consultation with the child according to the age and maturity of the child (Article 12 CRC). Secondly if a separated child is being dispersed there must be sufficient front-line social workers in place to meet their needs. And thirdly if it is the case that there are insufficient services to meet the needs of a separated child outside of the south east of England, then that child should not be dispersed.

Inappropriate accommodation

A recent report produced by the Middlesex University Research Centre for Transcultural Studies in Health and the Ethiopian Community Centre in the UK¹⁶ highlighted that many separated children – especially 16-17 year olds – are housed in adult bed and breakfast accommodation, without support, often in areas hundreds of miles from the authority that has responsibility for providing them with social workers and other support.

There are child protection implications in placing unaccompanied refugee children in accommodation together with adults, particularly since it is unlikely that there would be any records of previous criminality (including sex offences) or mental ill health of adults in the same accommodation. There are also risks in placing separated children in accommodation with minimal supervision. Some recommendations of the report regarding accommodation are:

- Male separated children not to be housed with or near young female separated children and disallow unsupervised male visitors to female accommodation.
- Provide separated children with appropriate accommodation – such as single sex and foster care for 16-17 year olds
- Re-house victims/ perpetrators to prevent re-victimisation

The report also made the following recommendations for improving services for unaccompanied asylum-seeking minors:

Improve access to services

¹⁶ Lay M, Papadopoulos R, Gebrehiwot A (2007) *SAFER UK: Preventing sexual maltreatment of unaccompanied asylum-seeking minors and improving services for them*. Middlesex University, London. NSPCC was on the advisory committee for this report

- Increase service users' and workers' awareness of available services and develop user-friendly, non-authoritarian support (e.g. 'buddies' to act as advocates/ mentors).

Improve cultural competence

- Cultural awareness, knowledge and sensitivity e.g. language, inclusivity, participation, appropriate and not ethnocentric; more black and minority ethnic staff.

Improve effectiveness

- Joint roles, training and systems; interagency protocols; shared resources/expertise; retention of suitably experienced staff.

Conclusion

BIA statistics indicate that a much smaller proportion of separated children succeed in their asylum claims than children in asylum-seeking families¹⁷, which indicates to us that they are not getting a fair hearing, or the legal support they need to argue their case effectively.

Our experience indicates that specialist services must be developed to cope with the additional needs of separated children, to ensure that all needs are responded to, in particular those needs specific to separated children. Dedicated teams are beneficial in ensuring that social workers have centralised information support, more training in responding to the needs of separated children, take a more consistent approach and understand the legislative requirements in this area. Separated children need better access to culturally sensitive counselling services as part of a specialist support system for children who have witnessed trauma and dislocation. While separated children from, say, Eritrea and Albania, may have had similar experiences, they will have quite different cultural backgrounds and this diversity must be taken into account when planning counselling provision and other therapeutic interventions.

In conclusion, this reform programme appears to be about reducing the services that separated children receive, and about reducing the likelihood that they will stay in the UK for any substantial period of time, an approach which is not in their best interests.

We are disappointed that the consultation does not give any indication of how the proposed changes are to be funded, nor how extra training and professional development can take place. We are also very concerned about changes to the legal aid budget coming into force over the next year, which will impact directly on separated children. As solicitors will be receiving a fixed or graduated fee per case rather than per hour, the likelihood is that separated children will receive more limited representation, particularly where they have multiple and complex

¹⁷ Recent figures indicate that 7% of initial decisions in 2005 granted refugee status, with a further 17 per cent being given refugee status on appeal, although not all those refused seek appeal. (*Asylum statistics United Kingdom 2005*, Home Office). Also latest statistics from BIA show that in 2005 five per cent were granted asylum on initial decision, and seven per cent in 2006 (*Asylum Statistics: UASCs Quarter 1 2007*, Home Office). It is unclear how many are granted asylum on appeal as most will go onto discretionary leave until they are 17½; some will then apply for asylum, and be granted status, but these figures are not known.

needs, require additional services such as translation, or in cases which are especially challenging.¹⁸

We acknowledge that this new system, combined with the introduction of the New Asylum Model for UASC, will make it much easier to track separated children. However, we are very concerned that this process could force separated children who are not allowed to stay to go “underground” and off the record, where the risks to them becoming involved in drugs, alcohol, crime and prostitution are even greater, particularly if they end up living on the streets. This is based on testimony of our practitioners, who are seeing young people who are homeless and semi-destitute. We owe these children a duty of care, and we must design a process for accommodating them and responding to their safeguarding and welfare needs which ensures that their best interests are met.

Responses to questions for consultation

1. How might a system of placing young people with a limited number of authorities help to ensure consistency of service provision and aid specialist services?

As stated above, the NSPCC is not clear of the benefits of dispersing separated children to local authorities across the UK, so is keen to hear how such an approach will be in the best interests of these children.

Our practice demonstrates clearly that separated children need to be placed where services exist, and we are very aware that it takes years for appropriate specialist services to be developed. It is also necessary to give these children an opportunity to live in a community with links to their original country and culture. This cannot happen overnight – it must be planned, and has to be developed with the local community; it is not just a decision of the local authority, the community itself must be involved for it to be realised. This must involve asking children what they think. If this incurs additional costs, appropriate funding must be available.

The most difficult time for separated children is when they first arrive in the UK, or when they first come to the attention of the authorities as separated children, so services need to be in place at the beginning of the welfare assessment process. This view is supported by the Separated Children In Europe Programme, which recommends that care authorities should conduct a careful assessment of needs and changes of care arrangements should be kept to a minimum and regularly reviewed.¹⁹

¹⁸ On 1st May 2007, Anna Reisenberger, acting chief executive of the Refugee Council, said: “We have serious concerns that these [legal aid] changes will lead to people no longer being able to work on asylum cases. Good quality legal advice is vital for people seeking asylum, and really could mean the difference between life and death. Without proper representation, asylum seekers will find it extremely difficult to present their case, and this carries the real risk that someone who deserves safety here will be sent back to face torture and even death.”

¹⁹ *Separated Children in Europe Programme Statement of Good Practice, Third Edition* (2004). Save the Children, UNHCR.

Fleeing one's country of origin is a traumatic experience and the likelihood is that a separated child will not know anything about the UK when they arrive, so are more likely to be vulnerable to abuse and exploitation, and will also have fewer internal resources to deal with their new life in the UK. Hence the need for any care setting to be staffed with suitably qualified professionals who understand the separated child's religious, cultural and linguistic needs and are able to provide them with an environment that safeguards and promotes their welfare.

Our practitioners working with separated children say that separated children are very keen to learn English, and are very concerned to be accepted in the UK; they tell us that they just want to get on with their life.

2. What other factors need to be put in place to achieve improved delivery of services for unaccompanied asylum-seeking children?

When considering the welfare needs of separated children, the NSPCC would suggest the following ways of supporting the needs of separated children:

- A statutory body should be established with a remit to advise the BIA on the best interests of an individual child or young person, write reports for consideration by the BIA and safeguard the welfare of any separated child involved in the asylum process.
- A named guardian should be appointed to a child by this body within a strict time period from the date that the child made their asylum application. This is in line with Article 19 of the EU Reception Directive.²⁰
- A person acting as a guardian to a refugee child must be adequately experienced, trained and monitored. The system must include a complaints procedure and provision for a child to apply to change the guardian appointed to them.
- A strict limit must be set on how many children a guardian is responsible for. While it would not be envisaged that a guardian would have regular day to day contact with a child, they must be available to the child at reasonable notice, and have sufficient time to build a trusting relationship with him/ her.

3. When a local authority decides to conduct an age assessment, should this take place before or after arranging the transfer to a specialist authority?

4. What might be a valid reason for refusal to undergo a dental x-ray or other medical examination to improve age assessment?

We have very grave concerns about x-ray based age assessments, and do not agree at with them being used in the way described, so we cannot answer

²⁰ European Council Directive 2003/9/EC, January 2003, *Laying Down Minimum Standards for the Reception of Asylum Seekers*

these two questions. We are concerned that medical practitioners are being asked to undertake age assessments when this is not their role, and it could be contended that it contradicts their 'Hippocratic oath', as it could be considered as committing harm to an individual for someone else's interest.

Medically-based age assessments can re-traumatise a young person, particularly if they are invasive and potentially harmful (like x-rays). Using medical diagnostic techniques for age assessment purposes, for enforcement and removal of separated children, is clearly an inappropriate use of such technology – a position reinforced by a number of Royal Colleges.

The Royal College of Paediatrics and Child Health (RCPCH) considers that age determination is an inexact science, and that estimates of a child's physical age from x-rays of his or her dental development are capable of producing only a four-year age range for 95 per cent of the population. In addition the RCPCH states that the determination of age is a complex process where various types of physical, social and cultural factors all play their part, although none provide a wholly exact or reliable indication of age, especially for older children.

The Royal College of Radiologists has advised its members that a request from an immigration officer to have an x-ray to confirm chronological age would be unjustified both on grounds of accuracy and also because of the risks attached to using ionising radiation for non-clinical purposes.

As there is such a large margin of error with these techniques, we have particular concerns about x-ray age assessment techniques being used for determining the age of under-18s who have been trafficked for commercial sexual exploitation, or who have suffered trauma or abuse. This could have a direct impact on the services available to them to enable them to recover from the abuse they have suffered. If an age assessment is made on a child and it is determined through these methods that the child is an adult, yet it is incorrect (due to the large margin of error) the separated child is much less likely to receive appropriate services to address their needs.

Children who have experienced trauma or persecution, have been separated from their families and their community, and have then somehow made it to the UK, will often appear much older than they are just because of all they have been through. It is sensible to take an approach where someone claiming to be less than 18 should be given the 'benefit of the doubt'.

We have reports from our practitioners that 16 and 17 year old age-disputed separated children are being taken to Oakington Immigration Removal Centre, where the process of age assessment is very limited and unsophisticated, often taking just a few minutes and based on the 'hunch' of a social worker employed by Oakington. Also we are aware that some age assessments, along with various appeals, are taking a long time, which means a child will turn 18 during this process, and will have a reduced level of care during this period.

We are aware anecdotally of unqualified social workers being asked to make (non-medical) age assessments, when this is clearly not their job. We have also

heard of situations where age assessments are undertaken by a co-national who is in fact of a competing ethnic group, and thus will not always take a balanced view.

Only when a separated child challenges a decision is a more comprehensive assessment undertaken, yet a child's challenging of a decision is dependent on appropriately funded legal representation, which is often lacking, as stated above. It is our view that the current system operates within a culture of disbelief, and we suspect that there is a presumption that the majority of separated children are over 18. Such an approach is direct discrimination against children because of their age and separated? asylum-seeking status.

This consultation admits the current science of age assessment is imprecise, yet goes on to state that an unreasonable refusal to undergo an x-ray examination should strongly inform the final decision on age. This position does not make any sense at all; if a separated child is advised by their representative that due to their physical maturity and the high margin of error of x-ray examination they should consider refusing to undergo such an examination, this will inform the decision on their age. The refusal to undergo an x-ray and the actual age of the separated child are not necessarily connected, and to put these two issues together is colluding in prejudice; we are particularly concerned that age-disputed separated children will receive inappropriate legal advice if the BIA adopts such an approach.. We regard this as direct discrimination against children on the grounds of their status as asylum-seekers, and strongly recommend serious reconsideration of this proposal.

UNHCR guidelines²¹ were issued in 1997 which give an idea of how to best support children where there is some uncertainty about age. Key recommendations include:

- The child should be given the benefit of the doubt if the exact age is uncertain.
- Where possible, the legal consequences or significance of the age criteria should be reduced or downplayed. It is not desirable that too many legal advantages and disadvantages are known to flow from the criteria because this may be an incentive for misrepresentation. The guiding principle is whether an individual demonstrates an "immaturity" and vulnerability that may require more sensitive treatment.

5. When should the assessment of longer term care needs take place (either before or after transfer)?

We do not consider it appropriate to make a general statement here, as it is necessary to base such decisions on the immediate and ongoing needs of the separated child. If there is clear evidence that the child has been tortured, abused or persecuted in some way, or has suffered trauma, then it will be vital

²¹ *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum.* Office of the United Nations High Commissioner for Refugees, Geneva, February 1997.

to undertake assessments of the child initially and at regular intervals, and provide treatment where necessary. We would also argue that it would make sense for an assessment of longer term care to take place before transfer to ensure that the host area has the resources and services to meet the young person's needs. As a separated child gradually overcomes their experiences, it will be necessary to consider their longer term care needs in light of these assessments. Each case must be considered individually. Multi-agency support is crucial for separated children, as well as for their carers, and we would like to see more involvement from child and adolescent mental health services in these cases, to ensure appropriate therapeutic interventions are made available to children who need them. There must also be continuity of care if or when a child transfers to another area, to ensure that there is a possibility of recovery.

6. Should we generally encourage the move of those who have been fostered to other forms of support – in particular after they reach 16?

We agree that a successful placement is the most important factor in enabling children in care to flourish. Loving care, continuity and stability are essential factors to any child's well-being. We welcome the Westminster government's commitment to increasing placement choice, as stated in *Care Matters*²². However, as recent BIA statistics show, the majority of separated children arrive in the UK after their 16th birthday²³, and as many will have been through traumatic experiences, we would like assurances that there is an appropriate system of assessment to determine what type of accommodation and support is required.

Many separated children are living semi-independently post-sixteen, and we recognise that this is often an unsafe option and a significant proportion have been sexually abused, assaulted or raped²⁴. Such events lead to a high incidence of depression and anxiety, post-traumatic stress disorder, and in some cases psychiatric symptoms leading to being prescribed medication or being hospitalised. We are also aware that a gradual move towards independent living may be the most appropriate way of preparing a separated child for living in their country of origin if their asylum claim fails. However this is not a justification for such an approach; the underlying principle has to be that support needs must be determined for each individual child, based on their current circumstances, well-being and vulnerability. Such services need to be continually available to a separated child as they see fit.

The experiences of the Street Matters/ Bfree service over the past four years has been that even when young people who have been trafficked are accorded Social Services Support under s.20 of the Children Act 1989²⁵ this support is

²² Also in Northern Ireland, *Care Matters: A bridge to a better future*, DHSSPS 2007 Northern Ireland, Equivalent green paper forthcoming in Wales.

²³ *Asylum Statistics: UASCs Quarter 4, 2006*, Home Office. There is some indication that this is changing, as in 2004, the proportion of 'UASC' over 16 claiming asylum was 60% and in 2005 was 66%, but the most recent information about 2006 is that the proportion has fallen to 46%, with the biggest rise among under 14 year olds.

²⁴ Lay., M., Papadopoulos, I., Gebrehiwot, A., (2007) *Op. Cit.*

²⁵ Also see The Children (NI) Order 1995 for NI equivalences to Children Act 1989.

minimal. Support typically consists of low quality semi-independent accommodation where the young people have very little contact with the Social Worker. Most of the young women known to the Street Matters/Bfree service have been placed in this kind of semi-independent accommodation, as soon as they are 16. These placements have proved inadequate for these young people who have experienced trauma and abuse and who often do not have sufficient English language skills or understanding of how things work to cope in semi-independent living.

There is a clear sense from our practitioners that for trafficked children fostering would in many cases be the most appropriate solution, as they will have high level of vulnerability and need. However this is rarely an option available to trafficked children. And where it is provided our practitioners state that foster placements are not working in many cases, as foster carers are not sufficiently trained to work with and support separated children who have been through traumas associated with asylum. Also the service reports that there is insufficient expertise, care and attention from front-line social workers to children who have been the victims of trafficking. We reiterate that trafficked children should be accorded a full care order under s20 of the Children Act 1989 and the support they are given must fully meet their needs.

7. In what other ways can care planning be better aligned to immigration considerations?

It is necessary to ensure that social care practitioners maintain independence from the asylum system, as their responsibility is to respond to the safeguarding and welfare needs of children. It is not about alignment of social care planning, but about providing an appropriate service that is based on the needs and best interests of the separated child. Social workers are not in the business of enforcing immigration decisions; their role is to provide social care. This distinction must be very clear in practice and in policy, and if it is not followed rigorously there will be a denial of service and a failure of care to separated children as they will not engage with social care practitioners due to a lack of trust and a lack of understanding of their role. This could result in separated children being drawn into exploitation, drugs and crime, as well as being more vulnerable to abuse and violence from other young people and adults.

To ensure that care planning is effective, separated children need to be able to make informed choices. This includes having access to appropriate independent legal advice which is able to respond effectively to the needs of the young person, and is sufficiently flexible to provide adequate representation, regardless of the complexity of the case. We have observed that the legal advice offered to the young people we work with is often of poor quality, and as asylum law is constantly changing it is proving more and more difficult for solicitors to be able appropriately to brief and represent young people.

If social care practitioners and legal advocates are not given the opportunity to provide an adequate level of service to separated children, there will be a much greater likelihood that a child's asylum claim will not be genuinely considered

and they will return to their country of origin to face further persecution, or worse. The asylum-seeking process for separated children must not be about 'warehousing' them until they reach 17½, with removal starting immediately they reach this age. It must also allow for appropriate appeal processes to take place regardless of how long they have been in the UK, until they reach 17½. Once again, the underpinning principle must be about responding to their immediate and ongoing needs.

Speeding up of decision-making can be beneficial to separated children, as it clearly enables them to plan for their return or stay in the UK. However we are concerned about the idea of 'fast tracking' these claims. The process must be about properly hearing the asylum claim rather than making a judgement based on inaccurate or incomplete information. If a child has been trafficked, for example, there must be enough time and space and proper hearing of the case to allow disclosure. Hence the process should take the time required to make a proper judgement. More complex cases will take longer, and services must be available to the separated child to reflect this.

8. What further guidance is needed on managing the needs and expectations of unaccompanied asylum-seeking children whose asylum claims fail?

The care planning process needs to better manage the needs of those who fail in their asylum claim, and recognise that such individuals will have particular vulnerabilities and difficulties. This is not about social care practitioners colluding with separated children, encouraging them to abscond, or putting them up in their own homes – it is about meeting their needs effectively using formal mechanisms.

Whilst it is true that more needs to be done to promote family reunification, consideration needs to be given to establishing exactly why the child is in the UK, in particular whether they have been a victim of trafficking. If the child has been sold by their parents into trafficking then the child has child protection needs and should stay in the UK. Similarly we are aware of cases where separated children have been trafficked, and on return to their country of origin they are thrown out by their families, so family reunification is not effective. Once again, this emphasises the need for in-depth analysis of a child's needs, an understanding of the circumstances they are in, and a solution that meets their needs in both the short and the long term.

9. Should we develop new voluntary return packages for 16 and 17 year olds? If so, how could these be structured?

10. Might an enhanced, but reducing, package encourage take up of voluntary return? If so, at what points should the package be reduced?

11. What safeguards need to be put in place before children can be returned to their country of origin on an enforced basis?

12. Who is best placed to work with the young person on the plan of return?

13. Should the service be procured from specialists and, if so, who?

14. What are the challenges for integrating this voluntary return package within the care planning process for children whose asylum applications have been unsuccessful?

The Committee on the Rights of the Child has recently produced guidance on the treatment of unaccompanied and separated children outside their country of origin²⁶. This guidance outlines that any decision on the return of a child must take into account the following:

- Safety, security and conditions; this encompasses the socio-economic conditions awaiting the child upon return
- Availability of care arrangements for that particular child
- Views of the child expressed in exercise of his or her right to do so under article 12 of the UNCRC and those of the caregivers
- The child's level of integration in the host country and the durability of absence from the home country
- The child's right to preserve his or her identity, including nationality, name and family relations' under Article 8 of the UNCRC
- The desirability of continuity in a child's upbringing and their ethnic, religious, cultural and linguistic background.

We consider that separated children should be returned to their country of origin only on a voluntary basis, following a risk assessment of their circumstances. We do not agree with forced returns of separated children under any circumstances. It is important to recognise the significant risks on return for trafficked children both of being persecuted for being victims of trafficking and of being re-trafficked. Hence the need for careful assessment of the potential risks that a child may face on return, an assessment of the family situation in the country of origin, and the ability of the family to provide appropriate care. Such a service must be provided by an independent international social worker, or where such services exist by the relevant social services departments in the child's country of origin. However it is necessary to recognise that returning a child is quite possibly not in their best interests. Our practitioners report to us that *all* of the children that we have seen in our Street matters/ Bfree project (who have been trafficked to the UK and end up in commercial sexual exploitation) have been orphaned, either through conflict or disease, and it is usually the extended family that arranges for them to be trafficked to the UK.

When considering the needs of separated children facing return to their country of origin, the best interests of the child must be the key consideration.

If young people are voluntarily returned after the age of 18 to their country of origin there should be an obligation to help them to prepare for independent

²⁶ UNCRC (2005) Guidance on the treatment of unaccompanied and separated children outside their country of origin.

living in the society and culture to which they are returning , with recognition that they are vulnerable and must be appropriately consulted on the how best to ensure that they are effectively reintegrated.

15. Are these the right factors that need to be addressed in identifying specialist authorities and are there any others?

Bearing in mind our comments above regarding dispersal, we suggest that the BIA needs to consider whether the resources required to move separated children around the UK would be better spent providing adequate accommodation and services in the local authorities where separated children currently reside and where these services currently exist. London and the South East have particular expertise in responding to the traumatic experiences of asylum-seekers, so it makes little sense to move separated children away from this kind of treatment service, and the communities of other separated children that have developed, if it is not necessary to do so. There is no indication of whether this dispersal policy will include additional resources for the most traumatised children. To ensure that this happens, the UK Government should work with devolved administrations in Scotland, Wales and Northern Ireland to meet its commitment to ensure separated children are covered by the five outcomes framework of the Every Child Matters agenda and equivalent children's strategy in NI, *Children and Young People – Our Pledge*²⁷, and in Wales, *Children and Young People: Rights to Action*. Such services must be provided regardless of where the child is in the UK. Without this commitment there is a direct discrimination against separated children based on their asylum status.

We would reiterate that it is necessary for the child's opinion to be considered in all such decisions, with these views being given due weight in accordance with their age and maturity, and this choice and decision-making process are meaningful. Services need to be designed around this principle of participation, with sufficient training of staff to ensure they are able to provide participation opportunities for separated children in any decision about dispersal.

We are aware that the uncertain nature of some separated children's status and length of stay is leading to a reduction in service from social care practitioners, as well as other service providers, including education, health and housing. We are also aware that social workers do not have very clear guidance on what their role is regarding separated children. We are seeing a similar phenomenon in relation to senior managers in local authorities, in their role as corporate parents.

We would like reassurances that the specialist authorities would not reduce their level of provision because an individual is a separated child, with the expectation that their stay is short-term. Our practice experience indicates that this denial of service is leading to separated children being unable to achieve

²⁷ OFMDFM 2006

their educational and other developmental potential in life, because of emotional and psychological problems which are not being addressed.

The provision of therapeutic services for maltreated children generally is already patchy, and child and adolescent mental health services are much in demand; it is also the case that such services are very limited for separated children. We are also aware that the kind of service response provided by local authorities varies in quality. We would like to see an additional factor that goes beyond the stated 'safe and secure arrangements' and states very clearly that the specialist authority must be able to provide therapeutic services that go some way towards enabling the separated child to come to terms with their traumatic experiences. Such a service would need to be informed by a comprehensive needs assessment. We would like such services included in Children and Young People's plans and provided by the children's trust arrangements. The Local Safeguarding Children Boards (LSCB) in England and Wales and the four Area Child Protection Committees (ACPCs) in Northern Ireland should ensure that all agencies who have a duty to provide a service to these children are carefully monitored. We would also like to see LSCBs/ ACPCs develop multi-agency protocols together with training programmes for these services. Also LSCBs and ACPCs must ensure that all agencies who come into contact with separated children from the moment they arrive in the UK are brought together to develop prevention, identification and support systems for victims of child trafficking.

It is not reasonable to depend on the voluntary sector to provide all direct therapeutic services to separated children, which goes well beyond advice and assistance, unless additional resources are made available specifically for such services.

Additional factors that need to be included are as follows:

- Accommodation that is stable, appropriate and safe.
- Legal representation on all aspects of the asylum process, including age dispute and accommodation, not just legal advice on immigration issues, that is appropriately funded to deal with complex cases.
- A process of establishing that the host community is a willing participant in the program.

16. Is 50 – 60 the right number of specialist authorities to begin with? Does this strike the right balance? If not, please state why.

We are aware that this number has only recently been arrived at as a result of stakeholder discussions with colleagues in the BIA and that initially the proposal was that there should be many fewer than this. We are not clear how this number was arrived at and whether it is appropriate to consider dispersal to such a large number of local authorities. We are also keen to establish whether there are other issues to consider, such as whether most separated children will be living in urban areas, whether it will therefore be mainly urban local authorities which provide these services, and if not how the authority would ensure that separated children are able to receive adequate services if they are in an area with very geographically dispersed institutions.

17. Should the Home Office facilitate the procurement of services in partnership with Local Authorities?

18. Should the Home Office leave the procurement of services to Local Authorities but provide a model service specification and benchmark costs at a regional level?

19. Would Local Government Associations have any role to play in the procurement of services?

We would like to see the Home Office facilitating the procurement of services in partnership with local authorities. These services require additional resources, as highlighted above, if they are to be able fully to respond to the safeguarding and welfare needs of separated children, and must be sufficiently flexible to allow for all their needs to be met. We agree that a model service specification would be a good approach and are keen to see such a service specification providing a framework for commissioning the voluntary and community sector (VCS) to deliver such services, as they are often best equipped to deliver these services. We are keen to see the VCS being involved in the development and shaping of the commissioning framework as well, as we will often have an understanding of the gaps that exist in statutory services, although we do not see it as our role to provide these services on a permanent basis.

For further information on any of the issues discussed in this document please contact the following:

On general asylum issues:

David Coulter
Policy Adviser, asylum, youth justice and social exclusion
Tel: 020 7825 2742
Email: dcoulter@nspcc.org.uk

On trafficking issues:

Zoë Hilton
Policy Adviser, child protection
Tel: 020 7825 1329
Email: zhilton@nspcc.org.uk

22/05/2007

Appendix 1 : NSPCC 's work on trafficking

The NSPCC's Child Trafficking Information and Advice Line

Over recent years voluntary sector organisations have expressed their concerns to the Government about the need to provide greater protection for child victims of trafficking in the UK. The need for extra advice and guidance to help practitioners caring for children suspected of being trafficked was recognised as necessary for protecting trafficked children.

Working in partnership with NSPCC, ECPAT, CEOP (Child Exploitation Online Protection Centre) and the NSPCC will set up a trafficking advice and information line for professionals to be funded by Comic Relief and the Home Office. The service is due to be launched in the summer and will be a central reference point for practitioners to access advice and guidance on how best to protect

The objectives of the NSPCC Child Trafficking Information and Advice Line are:

- To provide a central, easily accessible and reliable source of information and advice on child trafficking for concerned professionals.
- Child trafficking and exploitation cases will be more quickly and reliably identified resulting in appropriate advice and support, ensuring effective assessment and initiating intervention where necessary.
- Professionals across the UK will be more accurately and consistently informed about child trafficking, its nature and impact, their options for dealing with it and learning from good practice.
- Partnership networks will be reinforced as a result of appropriate sharing of good practice.
- The service will significantly contribute to a clearer understanding of child trafficking and exploitation in the UK.

Developing an understanding of the process of trafficking for professionals in the social care professions as well as the Borders and Immigration Agency will increase the likelihood that these children will receive the services they need to enable them to overcome their experiences of trafficking.

Street Matters/ BFree

The Street Matters/ BFree service was started in 1999 and has a team of six workers offering a variety of support to young women under the age of 18 who are sexually exploited or at risk of being sexually exploited. The service also offers training and consultation to professionals around sexual exploitation.

Street Matters/ BFree operates on a needs-led basis and in recent years has seen a significant shift in the nature of its referrals. It started to accept referrals of very vulnerable girls (below the age of 18) who had arrived in the UK from Africa and were susceptible to sexual exploitation because of their previous experiences and/or level of isolation. A third of all current Street Matters/ Bfree cases are orphaned migrant children from Africa, brought to the UK, then abandoned by their adult traffickers on arrival. They were all fleeing poverty and/ or war, and were ignorant of their sexual exploitation or trafficking status until made aware of it by our project.

Due to the very urgent and immediate needs of the girls referred to the project, a group called 'From There 2 Here' was set up three years ago to offer help, support and advice. All of the girls referred to the group are from Angola, Kenya, Burundi, Rwanda, Guinea, Uganda, Eritrea, and other African states. The group continues to accept new members. The girls involved in the group are aged 15-17 at referral, the majority being about 15.

CASE STUDY: A YOUNG PEOPLE'S CENTRE PROVIDING SERVICES TO A SEPARATED CHILD

Juma's Story

The Sheffield Young People's Centre (YPC) provides a safe space for children and young people to use on a daily basis. It is a warm, attractive and inviting building which young people enjoy using. The concept of YPCs is that in order to protect and safeguard it is important that young people trust the adults that they are talking to. Trust, for all of us, but particularly for those who have experienced abuse takes time to establish. Young people using the building get to know the adults who work here and eventually trust them enough to tell their story to.

One such young person, Juma Kanyi began to come to the Young People's Centre every afternoon. He had been told about the facilities by a friend. Juma was extremely quiet; he would spend time on the computer, using the Internet and watch the television with the other young people using the building. After several months of coming to the YPC, Juma requested some assistance on the computer, he was trying to find some information about web sites that were using his first language. Juma asked Sheila, a Children's Rights and Advocacy Worker to help him. Sheila spent time with Juma and the following afternoon Juma asked Sheila if he could make her a drink of tea.

Sheila began to talk to Juma about food and drink from his birth country and Juma seemed to enjoy telling Sheila about his home. Sheila explained to Juma that The YPC offers a confidential service. She told him that he could talk to her if he wished and she would not have to share his story with anyone else, unless he was being harmed by somebody.

Gradually, Juma began to tell Sheila his story. Juma, along with his brother and two younger sisters had witnessed the murder of his mother by rebel forces in Somalia. The family had fled in terror and in the process of leaving Somalia, Juma had been separated from his father and had entered England alone.

At this time Juma had been allocated a social worker who was helping him with his application to remain in the UK. She was also helping him to locate his family. Juma was living with a foster family, who he said were kind to him. However Juma felt very isolated and homesick, Juma also told Sheila that he was being bullied at school. He had not told his social worker or foster carers because he was frightened of the bullies and did not want to make the situation worse.

Sheila talked to Juma every afternoon and Juma built a trusting relationship with her. Sheila suggested that they talk to Juma's social worker to explain that Juma was being bullied and see if, together they could make things better for him at school. Juma agreed and, along with his foster carers, social worker and teachers everybody met together. Juma was scared to talk in the meeting in front of lots of adults so he agreed that Sheila could advocate on his behalf. Together everybody made a plan that meant Juma felt safe at school. He knew he could talk to his teachers and was looked after at lunch time and after school when the bullying took place.

Juma's life story was extremely distressing and Juma continued to seem sad. Sheila suggested that Juma talk to one of the counsellors at the YPC. At first Juma did not want to talk to anyone else, but he agreed that Sheila could introduce him to Janet. Juma liked Janet and felt he could trust her as she was also a worker at the YPC. Juma began to receive counselling; over time this began to help Juma feel more positive.

Sheila noticed a change in Juma, he began to smile more and chatted to other workers and young people. There are lots young people who come to the YPC who are also seeking asylum and have experienced trauma in their lives. Juma formed friendships with some of these young people. That also helped Juma to feel less isolated and lonely.

Juma continues to come regularly to the YPC along with many other children and young people, who all have their stories to tell. Fortunately the workers at the Young People's Centre have the time and space to listen and this has helped change children's lives.