



# Separated Children in the UK

An overview of the current situation

Wendy Ayotte and Louise Williamson



**Save the Children**

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# 1. Comment from the British Refugee Council and Save the Children

The attached report by Wendy Ayotte and Louise Williamson presents an analysis of the situation in the UK against a European-wide framework of good practice. Their analysis looks in depth at the experiences of separated children with a view to highlighting ways in which the situation could be improved. Within their text are a number of detailed recommendations for improving practice.

Most separated children are based in England, with growing numbers in Wales and Scotland, but there are still very few separated children in Northern Ireland. Whilst Home Office policy applies across the UK, there are differences between care and education arrangements in the 4 countries. In this report the emphasis regarding care and education policies is on England where most separated children live.

From our own experience and research Save the Children and the British Refugee Council are pleased to highlight a number of areas where practice in the UK is strong in comparison with many other countries, for example:

- separated children arriving in the UK are given access to asylum procedures
- children's claims are assessed by a specialist team in the Home Office
- the system of the independent Panel of Advisers for Unaccompanied Children is an excellent model which should be strengthened in the UK and developed in other countries
- children receive independent legal representation for which legal aid is available
- some immigration officers are specially trained in interviewing children
- many children report how much they appreciate the education and care they receive in the UK

However, the document by Wendy Ayotte and Louise Williamson brings out a number of particular difficulties which separated children coming to the UK may encounter.

- high levels of racism in the UK
- the detention of young people under the age of 18 when their ages are disputed by immigration authorities or local authorities
- uncertainties associated with the limited form of immigration status which most of the children are awarded (Exceptional Leave to Remain)
- the inadequate care provided by many social services departments to young people, especially those aged around 15 and above, and the anomalies in Government funding to local authorities for separated children
- the severe dangers experienced by separated children trying to reach the UK who end up in the hands of smugglers and traffickers

Responding to the report by Wendy Ayotte and Louise Williamson, from the perspective of our research and face to face experience with separated children, the Refugee

Council and Save the Children highlight the following areas where action could be taken by the UK Government:

### **General comments**

The UK currently lacks a strategic approach to the reception and care of separated children. The numbers of children who arrive may be unpredictable, as flows are so closely related to the outbreak of conflict in other countries, but the overall planning and co-ordination of arrangements is nonetheless very inadequate. Above all, closer co-ordination is needed between the Home Office, the Department of Health and the Department for Education and Skills to ensure comprehensive and high quality care and service delivery.

Wendy Ayotte's recent report "Separated Children Coming to Western Europe" (Save the Children, 2000) has demonstrated the compelling reasons why many children travel to and across Europe on their own. Children who make the journey have often done so by means of courage and resourcefulness.

Children arriving in the UK should be viewed as a potential asset to our society, as well as a responsibility under international law. It is highly regrettable that separated young people so often report experiences of racism and a wish not to be designated as refugees or asylum-seekers because of the negative connotations of these terms in the UK today. In our experience separated children also enthusiastically acknowledge opportunities when these are made available to them. It is the joint responsibility of all those working with separated children to promote positive images and understanding of their situation and it is incumbent on all those engaged in public debate on policy matters to discourage intolerance.

### **Asylum procedures**

Relatively few separated children applying for asylum are awarded refugee status, but instead they are awarded Exceptional Leave to Remain in the UK - usually up to the age of 18. As no statistics on the outcomes of children's claims are separately published (the figures are merged with those of adults), it is impossible to give precise figures, but all our experience points to this trend.

Internationally, there is an awareness of the difficulties of assessing children's asylum claims - this is not unique to the UK - and it is essential that all possible steps are taken to ensure that children are treated equitably and that their entitlement to asylum under the 1951 Refugee Convention is met. Child - centred processes are needed for the reception of separated children and just assessment of their asylum claims. There should be open discussions between the Home Office, NGOs and UNHCR in order to ensure that the best practice is applied.

Whilst Exceptional Leave to Remain provides temporary protection, it leaves the child facing major uncertainties about his/her future which can be emotionally demanding as well as having significant consequences on matters such as education.

We recommend steps the UK Government should take to improve the assessment of children's claims for asylum, building on the positive steps it has already taken by setting up a specialist children's unit :

- The Home Office should maintain in-depth awareness of the forms of persecution which specifically affect children, and up to date knowledge of the situation affecting children in countries of origin.
- The Home Office should publish separate statistics on the determination of children's asylum claims.
- Legal representation for children should always be provided by specialist solicitors experienced in working with children, who are accredited and regulated.

### **Exceptional leave to remain in the UK**

Children who are granted this status can be required to leave the UK once they have turned 18 years of age. Indeed the Home Office is currently considering how to develop moves to have the young people returned to their country of origin provided it is deemed safe to do so.

The key issue is that of safety, which must never be compromised, and clarity from the Home Office is required as to the way in which that will be assessed.

However, even if it can be deemed safe for a young person to return to the country of origin, a successful return could only ever be achieved following considerable preparation which should be built up over a number of years as part of a comprehensive approach alongside local authority "leaving care" plans.

The "bi-culturalism" of young people who have grown up in the UK after beginning their lives in very different countries of origin, the daunting possibility of returning to the conditions from which they have fled, the fact that individual young people may not have family members with whom she/he can be reunited, and the enormous social adjustments required, all need to be taken into account.

Re-establishing links with the community of origin may be far from straightforward. As the report brings out, the dangers of social workers and others "blundering in" to make enquiries about the child's origin may compromise the safety of the child or the child's family.

We recommend that:

- The principles underpinning decisions about return of young people should be clarified and safeguards assured
- The best interests of the young person should be paramount in any such decisions
- Whether a young person remains indefinitely in the UK or not, efforts should be made to prepare the young person for contact with the community of origin but only if it is safe to do so.

## **Smuggled children**

A growing international concern is the smuggling of children across borders. In many cases this involves abuse and the exploitation of children en route or in the country of destination, a practice known as trafficking. The reasons why children end up in the hands of smugglers and traffickers is complex and demands broad-ranging preventative strategies especially in the countries of origin.

But in addition, the UK and other European states need to look more closely at their own practices which may contribute to the problem. One issue the UK could address is that of carrier liability legislation, whereby carriers are penalised for transporting people without the required documentation such as identity papers and visas. The result is that people without the correct documentation - which is the case for many people fleeing persecution - cannot get legal transportation. Undoubtedly this is contributing to the incidence of smuggling.

When carrier liability legislation was introduced in the early 1990s we argued unsuccessfully that separated children should be excluded from its provisions. Since then the smuggling of children has been acknowledged as a growing problem and we believe the arrangements for separated children should be reviewed.

Smuggling and trafficking require international responses, and we are aware that the UK Government is involved in seeking these. The present emphasis of European measures is on policing and criminal justice, but we urge the Government to press also for improved measures for the child victims of trafficking. There should be no punishment or criminalisation of the trafficked child for offences related to immigration, sex work and so on because children (and this includes all young people up to 18) are the victims of these crimes. What is more, the present European commitment to address the needs of victims for support and rehabilitation seems to be severely inadequate.

We also stress that the issues relating to care and "safe returns" for such children are highly complex, for they may involve matters such as the complicity of the child's family or community, and the dangers that a child who has escaped from traffickers may face. Asylum procedures should be available to all smuggled and trafficked children.

We recommend that:

- Preventative strategies should be paramount, and the UK should help promote these in Europe and internationally
- Children who are smuggled or trafficked should be treated as victims and afforded support and rehabilitative measures; they should not be criminalised
- Such children should have access to asylum procedures and any returns should be managed with great care

## **Guardianship and care**

At present the UK has a system for appointing an adviser for each separated child coming to the attention of the authorities. The adviser has a comprehensive role in

supporting the child in relation to any aspect of his/her situation as a separated child, including immigration and welfare matters. The adviser does not provide specialist services such as legal representation, but ensures that they are provided.

Unfortunately this system, which was initiated in 1994, is now under severe pressure because the numbers of children have increased and the funding for the service is inadequate. Advisers are able to provide support to the child only when he/she first comes to the UK and cannot follow-through to ensure the child's continuing welfare. Indeed, some children are not even allocated an adviser but instead they are invited to attend a drop-in service. The adviser system is thus being compromised by this pressure.

The service of the Panel of Advisers for Unaccompanied Children and its funding need to be reviewed in order to strengthen the service and ensure that full and comprehensive support to each child is provided. We believe that if this were to be improved, many of the specific shortcomings in the care of separated children mentioned in the attached report would be resolved by the action of the advisers who could seek redress on behalf of individual children.

At the same time, particular aspects of practice need to be addressed at a policy level. Ayotte and Williamson's report brings out the widespread shortcomings in the level of support provided by many English local authorities to separated children from abroad - often less support than they might provide for other young people. This is clearly contrary to the Children Act which emphasises the principle of the best interests of the child. One of the most worrying practices is that of placing young people, some as young as 15, in unsupported bed and breakfast accommodation. No doubt this is in part related to anomalies in the funding local authorities receive from central Government for the care of separated children. For separated children the level of support they receive from the local authority can be a lottery, compounded by differences in financial and educational entitlements related to their immigration status.

A different but related point is a widespread attitude to young people aged 15,16,17 by which they are viewed as "almost adults" toward whom the duty of care is limited. Bed and breakfast accommodation is one illustration, but a more flagrant example is that of the detention of young people by the Home Office in circumstances involving a dispute about their age. This is completely at odds with the principles of the Children Act in England and Wales, the Children (Scotland) Act and the Northern Ireland Children Order, not to mention the UN Convention on the Rights of the Child.

We recommend that:

- The Home Office should build on the success of the system of the Panel of Advisers for Unaccompanied Children which should be strengthened following a review of its role, achievements and funding
- Local authorities should provide a consistently high standard of care for separated children under the Children Act provisions and that financial support from central Government should be improved.

- Detention should never be used in age disputes, or in any immigration-related matter.

Finally we commend the attached report by Wendy Ayotte and Louise Williamson and support detailed consideration of the recommendations it contains.

July 2001

## 2. Introduction

### **Separated Children in Europe Programme**

The Separated Children in Europe Programme (SCEP) is a European wide initiative to improve the situation facing separated children who have come to European countries seeking refuge from armed conflicts, persecution, deprivation and abuse or who in some instances have been smuggled for exploitation within Europe's borders. It was initiated in 1997 and is a joint initiative and partnership between four European members of the International Save the Children Alliance and the UN High Commissioner for Refugees (UNHCR)<sup>1</sup>. The overall objective is to realise the rights of separated (formerly designated as "unaccompanied") children in Europe. The Programme has established a network of national NGO partners in some 28 European countries in Western, Central and Eastern Europe and the Baltic states.

### **Statement of Good Practice**

All members of the Separated Children in Europe Programme support the Programme's *Statement of Good Practice* (1999) a document which has been translated into most European languages and is becoming widely used as a guide for meeting the needs and implementing the rights of separated children. The Statement draws on the UN Convention on the Rights of the Child (CRC), UNHCR Guidelines (1997) and the *Position on Refugee Children* (1996) from the European Council on Refugees and Exiles. It contains 12 sections covering the period from a child's arrival in a country of reception through to the establishment of a long-term or durable solution which is in a child's best interests. The Statement is underpinned by eleven principles that should guide the implementation of good practice such as best-interests, non-discrimination, timeliness and confidentiality. It also contains extensive references to international and regional instruments that underpin the entitlements of separated children.

### **About this report**

Save the Children UK (SCUK) and the British Refugee Council have commissioned this report, "*Separated Children in the UK*" in order to assess the current issues facing separated children who arrive in the UK.

The Statement of Good Practice is used in this report as a framework against which to analyse the situation in the UK.<sup>2</sup> However the report does not present a comprehensive analysis of all aspects of life for separated children in the UK as detailed in the Statement. It focuses on the main issues and problems facing separated children

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<sup>1</sup> Based on the complementary mandates and areas of expertise of the two organisations: UNHCR's responsibility is to ensure protection of refugee children and those seeking asylum while the ICA is concerned to see the full realisation of the rights of all children.

<sup>2</sup> An initial unpublished assessment was prepared for Save the Children in 1999 by Sade Alade.

currently in the UK and attempts to highlight both the obstacles to and opportunities for change. It will be complemented by the results of a comprehensive consultation with separated children which Save the Children will publish in the autumn of 2001.

**YOUNG SEPARATED REFUGEES PROJECT**

The project has carried out interviews with 126 young people as well as with professionals. The research is taking place in the South East of England, Yorkshire and Humberside, the West Midlands, North East and North West England.

**Information Gathering**

Information has been gathered for this report by way of face-to-face interviews, telephone interviews and through reports and documents. The information gathering period occurred during July-August 2000. Interviews were conducted with representatives of government departments, NGOs, and local authorities. (A list of agencies consulted for this report are found in annex. Texts and documents consulted can be found in the reference section at the end of this report).

This report was written early in 2001, and the material was brought up to date by the editors for publication in July 2001, although the report still includes interview material and case studies collected in 2000.

### 3. The current legislative context in the UK and Europe

#### Asylum and Immigration Law and Policy

This report is being written at a time of considerable change in asylum and immigration policy in the UK and within the European Union. The UK Immigration and Asylum Act 1999 is the third piece of legislation in this area since 1993. *“It is a substantial Act; 182 pages long with 170 separate sections and 16 schedules, touching on almost every aspect of immigration and asylum.”*<sup>3</sup>. There are different implementation dates for sections of the Act from late 1999 to the spring of 2001. Of note for the purposes of this report are changes to immigration controls and the introduction of a new criminal offence relating to entry or stay in the UK using deception, a new system of support for asylum seekers, changes to the way asylum seekers are detained, a new appeals process and the regulation of immigration advisers. While some changes are positive, there are also some concerns about the impact of this legislation on asylum seekers and refugees, including separated children and children with parents in the UK. These concerns will be examined in the main body of the report.

The 1997 Treaty of Amsterdam adopted by EU Member States brought asylum policy within the remit of the European community legislation. As a result there is now a substantial legislative agenda aimed at harmonisation of asylum policies amongst member states. Legislation will be binding on Member States and all of the proposed areas of legislation will have an impact on separated children. They include for example: a directive on family reunification (draft published in December 1999); minimum standards on procedures for granting or withdrawing refugee status (draft published Autumn 2000); minimum standards on the reception of asylum-seekers; minimum standards with respect to the qualification of nationals of third countries as refugees (interpretation of the refugee definition contained in the 1951 UN Refugee Convention). Partly in order to engage with these proposed changes Save the Children and UNHCR published *“Separated Children Seeking Asylum in Europe: A Programme for Action (Ruxton 2000)”*(see p.13 of this report).

The EU has previously addressed the issue of separated children. The 1997 “Resolution on Unaccompanied Minors who are Nationals of Third Countries” set out minimum standards for this group of children. It was significant since it was the first time that Member States indicated that separated children had specific needs and rights requiring particular attention. As a Resolution it is non-binding, but it will have bearing on the ways in which separated children are dealt with in the current harmonisation process. The Resolution represents a compromise amongst Member States who have quite divergent policies towards separated children. From a children’s rights and protection perspective, some aspects of the Resolution are progressive and others are quite unsatisfactory. For example, while the Resolution makes clear that the CRC applies to separated children, it also allows for the refusal of admission and detention of separated children.

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<sup>3</sup> *Briefing the Immigration and Asylum Act 1999*, Refugee Council, January 2000.

The present harmonisation proposals present the opportunity to improve on this - by recognising the specific needs of separated children and at the same time ensuring they enjoy the general rights and entitlements of all asylum-seekers. Although again a compromise and open to improvement, the draft directives include positive steps forward for recognition of separated children.

### **Human Rights Law**

In 1999 the UK Government submitted its second report<sup>4</sup> to the UN Committee on the Rights of the Child (UN Committee), the body which oversees implementation of the UN Convention on the Rights of the Child. The report asserts that the UK immigration and asylum policies are in the main consistent with the CRC, a position which this report shows to be untenable. There are no moves to incorporate the CRC into domestic law which would mean the rights contained therein could be enforceable in UK courts. The current government maintains the reservation to the CRC concerning immigration and nationality which the previous government had included upon ratification in 1991. See below at 3.1 for a discussion of the implications of this reservation.

The UK Human Rights Act 1998 is a highly significant piece of legislation. It incorporates the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR) into UK law. Previously challenges to UK law under the ECHR had to be brought to the European Court of Justice, but with incorporation the provisions of the Convention are now enforceable within the UK jurisdiction. While the ECHR was not drafted with children in mind, most of its articles are relevant to children and breaches can now be brought before the courts in the UK. Some articles are of potential benefit to separated children, for example: Article 2 on the right to life and Article 3 on torture and inhuman, degrading treatment (which could relate to *refoulement* - unsafe returns to a country of origin or a third country where one's life or liberty may be threatened); Article 5 on deprivation of liberty (children in immigration detention) and Article 8 on respect for family life (family tracing, contact and reunification).

### **Children's Law and Policy**

The care of separated children is primarily regulated by children's law. Separated children fall within the definition of "children in need" under the Children Act 1989 (CA)<sup>5</sup>, the Children (Scotland) Act 1995 and the Children (Northern Ireland) Order 1996 (see footnote 7)<sup>6</sup> However, the type of services they receive varies and 16 and 17 year olds are particularly disadvantaged. The government agenda to improve the quality of care for children who are not in their family setting has several aspects which could favourably

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<sup>4</sup> *Convention on the Rights of the Child: Second Report to the U.N. Committee on the Rights of the Child by the United Kingdom 1999*. The Stationary Office, London, August 1999.

<sup>5</sup> As stated in guidelines from the Department of Health: *Unaccompanied Asylum-Seeking Children; Practice Guide and Training Pack*. Social Services Inspectorate, 1995.

<sup>6</sup> Hereafter, for the sake of simplicity, all references will be to the Children Act 1989 or to "national childcare legislation". See section 4.1 for specific information from Wales, Scotland and Northern Ireland.

impact on separated children. The “Quality Protects” initiative is “a major three year programme launched in September 1998, designed to improve outcomes for children for whom local authorities are responsible. It is also directed at health, education and the local authority as a whole”<sup>7</sup>. It has recently been extended. Clearly this presents an opportunity to improve provision for separated children, as one vulnerable group in local authority care. In addition the Department of Health (DH) and the Department for Education and Skills (DfES) has produced a new “Framework for the Assessment of Children in Need and their Families” which highlights the Statement of Good Practice and will hopefully help to raise the profile of separated children at local authority level. The Children (Leaving Care) Act was introduced to improve support mechanisms for young people in the transition to adulthood. However it contains no reference to separated or unaccompanied children and it is also likely that the majority would not benefit from its provisions since they are not “looked after” children under section 20 of the Children Act. Nonetheless it will hopefully be of benefit to those separated children who are looked after: usually those who entered care under 16 years of age.

### **European Study**

The SCEP has recently published *Separated Children in Europe: A Programme for Action* (2000)<sup>8</sup>, a study based on detailed assessments carried out in 16 Western European countries. Some of the main findings of the report are:

- in most countries the principle of the child’s best interests, as set out in Article 3 of the CRC and in national childcare laws, does not inform immigration and asylum law and policy. Neither is this principle reflected to date in the harmonisation of asylum policies taking place within the European Union.
- the rights of separated children to participate in decisions (Article 12 of the CRC) are hampered in many countries by, among other things, the lack of guardians or other consistent representatives who can assist and advocate for children, inadequate interpretation and restrictions on access to education. There is also a lack of child friendly asylum procedures
- although age assessments are carried out in most countries, some states apply the benefit of the doubt, as advocated by UNHCR, when deciding whether to treat an applicant as a child while several do not.

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<sup>7</sup> Barnardos commentary.

<sup>8</sup> Sandy Ruxton (2000) Save the Children & UNHCR. Save the Children also published: *Separated Children Coming to Western Europe: Why they travel and how they arrive*. Wendy Ayotte, Save the Children UK, 2000.

- in six states children are never or extremely rarely detained for immigration reasons while in five states detention is more common.
- while the refugee recognition rate amongst separated children is lower than that of the general asylum seeking population, there is a higher rate of humanitarian (eg. ELR) status granted to children.
- in general the issue of child-specific forms of human rights violations is not considered when reaching a decision on a child's asylum claim.
- overall the training of officials and professionals on issues to do with separated children is inadequate and in many cases non-existent.
- there is a wide range of care practices in European states, including many excellent models, but in some countries separated children are receiving inadequate care and often are discriminated against relative to indigenous children.
- most countries have not developed systems to ensure that, where separated children are returned to their country of origin or a third country, their safety and welfare are protected.
- the traffic in children for exploitation in the sex industry, in restaurants and sweat shops, or to be used as beggars, pickpockets and in other sorts of petty crime, is a growing phenomenon in Europe.

Many of the issues that will be highlighted in this report are echoed in these findings. In some respects, when compared with other European states, UK policy and practice is good or better than average: for example, funding of the Refugee Council's Panel of Advisers, the immigration rules on child asylum applicants, the Children Act provisions on culturally appropriate care and children's participation and the provision of free legal aid. In other respects there are serious deficits or negative policies that are detrimental to the well being of separated children, for example, the detention of children and poor care provision for many 16 and 17 year old children.

## 4. Who are separated children?

### Definition

The Statement of Good Practice defines separated children and young people as;

*“children under 18 years of age who are outside their country of origin and separated from both parents or their legal/customary primary caregiver. Some children are totally alone while others who are also the concern of the SCE Programme may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations or due to armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation or they may have travelled to or across Europe to escape conditions of serious deprivation.”<sup>9</sup>*

It is important to note that the definition includes not only asylum seeking children but others who may not apply for asylum, such as children who have been smuggled for exploitation or who have come from conditions of serious poverty and deprivation. The SCE Programme considers that the key issue for separated children is the fact that they are separated from their parents or legal/customary care givers. The reality of this separation renders them vulnerable to a number of risks and likely to be disadvantaged in emotional, social, educational and economic terms. In the view of the SCE Programme members, separated children are children first and foremost and it is on this basis that their entitlements to international protection must be viewed. Considerations of their immigration status are secondary to considerations of their best interests.

In the UK the definition of a separated child is not uniform. The term “unaccompanied” which is most commonly used in the UK emphasises the fact that children travel or flee alone (without parents). Frequently though children are accompanied by a sibling, relative, benefactor, family friend, other young person or the agent who arranges their trip. Most often these travel companions are unwilling, unsuitable or unable to provide the child with appropriate care in their destination country. But the fact that such children may be accompanied can obscure the fundamental fact of their vulnerability arising from the separation from their carers, and result in inappropriate responses to a child’s needs. The Home Office only considers as unaccompanied those children who are completely alone, in distinction to those who have joined or travelled with an extended family member even though that family member may be an older sibling barely into adulthood. Similarly, in some local authorities such children are not treated as separated and are left in the care of older adult siblings who do not themselves have sufficient support to care for them or other persons who have not been assessed as to their suitability to care for the child.

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<sup>9</sup> *Statement of Good Practice*, para. 2.1.

## **Reasons for migration**

Separated children are coming to Europe for a wide variety of reasons which form a complex pattern. In many cases there are several factors that result in a child's migration without their parents or usual carers. According to a recent study that examined 218 case studies of separated children who had come to Western Europe these reasons include:

*“ violent death of parent(s), sometimes in front of child; detention and torture of child; armed conflicts that target child civilians; genocide; forced recruitment of children into armed forces, some under 10 years of age; trafficking of children for the purposes of prostitution under brutal conditions; persecution of child's ethnic group; denial of education due to child's ethnic identity; political activities of child or child's family members resulting in persecution; rape and sexual assault; abuse and/or abandonment by parents; poverty and complete lack of opportunity.”<sup>10</sup>*

Why do children travel without their parents? In many cases their parents are dead, missing, imprisoned or ill, or have themselves fled their country leaving the child in the care of family or friends. In many of these instances children are helped by extended family, friends, religious leaders or NGO workers to leave the country. In other cases it is a child who is particularly at risk and the parents therefore decide to send the child to safety. Most families in developing countries do not have the resources to pay for the parents travel costs as well as the child's. In some other cases children who have found themselves alone and without anyone to turn to, have succeeded in travelling through their own ingenuity and bravery, at times benefiting from the help of strangers.

## **Separated Children Arriving in the UK**

Separated children have been coming to the UK and Europe throughout the 20th century. A significant proportion of separated children throughout that period have come from other European countries. During the Spanish civil war (1936-39) some 4,000 Basque children came to the UK and between 1933 and 1939 some 10,000 Jewish and non-aryan children were evacuated out of Germany to the UK. The latter were famously known as the Kindertransport. Some six thousand young people fled during the Hungarian Revolution in 1956 and a few hundred of them came to the UK. Many separated children were found amongst the Vietnamese boat people who fled that country from 1975 to the late 1980's and some came to the UK as “quota refugees”, part of an international resettlement programme. The armed conflict in the region of the former Yugoslavia from 1991-1994 resulted in the movement of many separated children into the UK and 21 other countries. Most recently there have been significant numbers of separated children fleeing conflict and persecution in Kosovo in the Federal Republic of Yugoslavia. Throughout the 1990's children have come to the UK from over seventy countries. In 1999 the main countries of origin in order of numerical importance were: FRY (Kosovo), Afghanistan, Somalia, China, Albania, Turkey, Sierra Leone, Sri Lanka, Romania, Eritrea, Ethiopia, Iraq, Nigeria, Angola and the DR Congo.

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<sup>10</sup> Ayotte (2000), p.9.

The only statistical data on separated children refers to children who apply for asylum. The Home Office first began keeping records of the numbers of separated children who applied for asylum in 1992. Initially this only referred to children who applied at the ports of entry and by 1997 the figures also included in-country applicants. The numbers of children have steadily risen: in 1992 190 children applied, in 1995 there were 603 child applicants, in 1997 the number was 1105 and as of 1999 there were a total of 3349 applications by separated children. It is important to note that 45% of the children who applied in 1999 were from Kosovo. The Refugee Council's Panel of Advisers for Unaccompanied Refugee Children, a non-statutory service funded by the Home Office since 1994 to provide short term assistance to separated children. In the year from April 1999 to March 31 2000, 4762 separated children were referred to their service. Of these just over 11 per cent were girls and 66 percent of all the children were aged 16 and 17 years. The disparity between the number of referrals to the Panel and the Home Office asylum statistics can in part be accounted for by the fact that the Home Office - in contrast to the Panel - only considers children to be "unaccompanied" when they have no family members who can care for them. So, a child who is living with a sibling who is over 18 or aunt will not be counted as an unaccompanied child. It is also likely that some children referred to the Panel do not apply for asylum and so will never figure in Home Office figures.

There are no figures relating to separated children who do not fall within the remit of the Panel of Advisers or who do not apply for asylum. For example, there are an unknown number of children who have been trafficked into the UK for some form of exploitation. Many of these will be living clandestinely and are "undocumented" children with no immigration status. A certain number of such children do apply for asylum but then disappear when they are contacted by the traffickers who may even resort to abduction. This issue is discussed in detail at 4. 2. In addition it is known that there are some undocumented children living in private fostering situations although these have not been notified as such to the local authority and are therefore unregulated.

## 5. Principles of good practice for separated children - how does the UK measure up?

The Statement of Good Practice identifies eleven principles that should inform and underpin the care and provision for separated children. Several relate to articles of the UN Convention on the Rights of the Child. In the following section each principle is used to highlight areas in which the UK law, policy and practice is satisfactory or in need of improvement. Summaries of the relevant texts from the Statement are quoted throughout.

### 5.1 Best Interests

*“In all actions concerning children...the best interests of children and young people shall be a primary consideration.”* (SGP, para. BI)

Article 3 on children’s best interests is one of three key or core articles which inform all of the articles of the CRC. In other words, implementation of all the provisions of the Convention should be consistent with Article 3. The wording of the Children Act 1989 places an even higher test on actions concerning children, namely that a child’s welfare must be *paramount* in court decisions about her or his upbringing.

#### **UK reservation to the UNCRC**

Despite the clarity of international and national law, there exists a long-standing conflict between immigration law and children’s best interests. In many respects UK governments have sought to place immigration considerations above those of children’s best interests and this can be seen in a number of areas<sup>11</sup> (Ref. UK Agenda for Children, 1994 and recent UK submission to CRC Committee) such as nationality law, family reunification in the UK, immigration detention of children and the deportation of children’s parents. This is reflected in a reservation to the CRC entered when the UK ratified the Convention in 1991:

*“The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the UK of those who do not have the right under the law of the UK to enter and remain in the UK, and to the acquisition and possession of citizenship, as it may deem necessary from time to time.”*

This reservation has been challenged by many NGOs as in contravention to Article 51.2 of the CRC which states that *“a reservation incompatible with the object and purpose of the present Convention shall not be permitted.”* because effectively the reservation enables the UK to disregard key provisions of the CRC contained in Articles 2, 3 and 12. The Government has argued in their recent report to the CRC Committee (p. 78) that the

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<sup>11</sup> See for example: *UK Agenda for Children*, Children’s Rights Development Unit, 1994; *No Refuge for Children: the impact on children of withdrawing benefits and housing from asylum seekers*. Wendy Ayotte, Refugee Council and Save the Children, 1996 ; *Most Vulnerable of All: Unaccompanied child asylum seekers in the UK*, Simon Russell, Amnesty International, 1999.

*“UK’s immigration and nationality law is entirely consistent with the Convention” and furthermore in the Government’s view “the Convention is not intended to establish any new rights in relation to immigration.”*

In 1995 when the Committee on the Rights of the Child recorded its observations on the first report of the UK Government to the Committee, it recorded:

*"The Committee is concerned about the broad nature of the reservations made to the Convention by the State Party which raise concern as to their compatibility with the object and purpose of the Convention. In particular, the reservation relating to the application of the nationality and Immigration Act does not appear to be compatible with the principles and provision of the Convention, including articles 2,3,9 and 10."*

The UK Government has failed to deal with this concern, however. With the reservation still in place, the examination of the second UK report is expected to take place in September 2002.

### **Mid 1990s**

During the mid 1990s there were a number of policy developments which sought to ensure the best interests of separated children. For example, since 1994 the Home Office has funded the Refugee Council’s Panel of Advisers, a non-statutory service that provides assistance and advocacy for separated children. Instituted in response to lobbying by children’s organisations in 1993, it is in some respects unique in Europe.

The immigration rules<sup>12</sup> that govern how children’s asylum applications are treated were a positive development that sought to minimise the stress on children and sensitise officials to their needs. The Unaccompanied Children’s Module, a specialist unit, was created within the Immigration and Nationality Directorate to deal with children’s asylum claims. There have also been some attempts within the Immigration Appeals Authority to institute child-friendly measures for hearing children’s cases.

In 1995 the Department of Health issued guidelines and a training pack on separated children and since 1998 the scheme for funding for local authorities who care for significant numbers of separated children has been extended. The Social Services Inspectorate London Region also convenes the Children and Families from Overseas Network to address issues of good practice in relation to separated children and refugee children as a whole.

### **Recent and proposed developments**

However, with the exception of important improvements in the care system, which will benefit separated children along with other "looked after" children, many recent and proposed developments in Government and local government policies are negative and at odds with the best interests principle. While these issues are discussed in greater detail in section 6, some examples can be given.

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<sup>12</sup> Immigration Rules HC395, paragraphs 349-352.

Many separated children aged 16 and 17 are being housed in unsuitable and unsupported housing often without access to a social worker or key worker. No one acts in the place of a parent or guardian for these children who are left to make their way in a strange and sometimes hostile environment.

As the numbers of separated children have risen, the increase in funds to the Panel of Advisers has been insufficient to maintain the original services so that currently Advisers are only spending an average of 12 hours with each child they see. Because of the heavy demand on their services, not all cases are allocated to an Adviser.

Separated children continue to be detained in immigration detention centres and occasionally in prisons. Despite indications in an earlier Home Office white paper<sup>13</sup> this policy has not been reversed and indeed a hardening of official attitudes has been observed.

The Unaccompanied Children's Module was disbanded as part of the restructuring of the Asylum Directorate in 1998, with the attendant loss of many experienced officers, although it has been confirmed that a new structure has been put in place to deal exclusively with children's claims. Despite previous efforts no child-appropriate appeals procedures have been established by the appellate authority.

At the present time a number of proposals are under consideration including:

- instructions to Immigration Staff not to give the benefit of the doubt if the age of a young person is disputed
- to seek to return children who are not granted refugee status (the majority of applicants for asylum) if this can be done safely
- the removal of young people when they reach 18 who are not granted Indefinite Leave to Remain (ILR)
- dispersal away from the south east for 16 and 17 year olds

## **5.2 Non- Discrimination**

*“Separated children are entitled to the same treatment and rights as national or resident children. They must be treated as children first and foremost. All considerations of their immigration status must be secondary.”* (SGP, para. B2)

National childcare legislation contains provisions to ensure that local authorities who are caring for “looked after” children of racial and ethnic minorities will give due consideration to the child's race, religion, culture and language. In addition the 1976 Race Relations Act imposes broad duties on local authorities not to discriminate according to race or culture in the provision of services. 1995 guidelines from the DH stressed that separated children were by definition “in need” and that they were entitled to the same protection

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<sup>13</sup> *Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum.* Home Office White Paper, 1998.

and care as national or resident children. Once on British soil all children are in theory eligible for the same care and consideration.

However, as indicated above many separated children are receiving differential care, placed in unsuitable bed and breakfast or hostel accommodation without the support required to make the successful transition to adulthood in a new environment. Where 16 and 17 year olds are being provided with cash support and vouchers from Local Authorities that only amounts to 70% of income support levels which is the amount stipulated in the Immigration and Asylum Act 1999. In contrast other non-asylum seeking 16 and 17 year olds in need of support are not being provided with vouchers.

The cultural and religious needs of these children are not taken into account and they are likely to have great difficulties finding information because of language barriers. Many separated children have witnessed violence and all have experienced the loss of family, country and culture. In such environments their psychological needs are not being catered for and they may continue to suffer in silence or act out their grief and pain inappropriately.

In UK society as in some other European countries, anti-refugee and asylum-seeker rhetoric in the media and from some politicians at national and local levels has contributed towards a growth of public anti-refugee sentiment. Asylum seekers have too often been portrayed as "bogus" spongers and criminals who come to the UK only to receive welfare benefits. A recent report<sup>14</sup> examines the rising incidence of xenophobic attacks against asylum seekers who have been dispersed into areas of the UK where there was no previous experience with visible minorities or asylum seekers. They compare with the negative results of similar policies of dispersal implemented previously in other European countries such as Germany and the Netherlands. Save the Children Scotland and the Scottish Refugee Council have just published a report<sup>15</sup> that documents the "*hostility, abuse and violence*" directed at refugee children who have been dispersed with their families into areas of Glasgow and East Lothian. These attitudes have filtered down to children: in many schools "refugee" or "asylum seeker" has become a term of abuse and many children have been subjected to taunts and physical attacks. According to a recent newspaper report: "*Refugee children are being beaten up by fellow pupils and followed home so that attacks can be carried out on their families, according to teachers and asylum support groups.*"<sup>16</sup> One teacher working with refugees in east London stated that many refugee children had become so ashamed of their status that they denied their nationality. Prejudicial attitudes have also been reported amongst some social services staff reluctant to provide services to children and also amongst those providing hostel or bed and breakfast accommodation. All separated children facing racism and xenophobia are already in a vulnerable position due to the separation from

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<sup>14</sup> *The dispersal of xenophobia*, Institute of Race Relations, London, 2000.

<sup>15</sup> *I Didn't Come Here for Fun*. Save the Children Scotland and the Scottish Refugee Council, November 2000.

<sup>16</sup> *The Independent*, May 27, 2000

their parents. In addition they themselves may have been exposed to extreme violence and persecution. They should not have to suffer further attacks in their country of asylum.

Abdul sought asylum in Britain when he was nine. He is now 14. His parents were murdered during clan fighting in Somalia. His mother was beheaded during the machine gun-fire and Abdul was found clinging to her body. He and his brother were cared for by an aunt who first brought them to a refugee camp in Kenya and then to the UK. Eventually due to impoverishment and extreme stress the aunt was no longer able to care for her nephews as well as her own children and Abdul was taken into foster care along with his brother. In school Abdul has been exposed to extremely cruel verbal abuse about his mother and he feels the only reasonable response is physical aggression. He often becomes involved in fights and has been suspended from school several times.

(Medical Foundation )

A number of separated children are not getting access to education for various reasons as discussed below at section 5.9 and separated children with refugee status and Exceptional Leave to Remain face discrimination from government policies on family reunification as discussed in section 6.6.

### **5.3 Participation**

*“The views and wishes of separated children must be sought and taken into account whenever decisions affecting them are being made. Measures must be put in place to facilitate their participation in line with their age and maturity.” (SGP, para. B3)*

Separated children form a particularly vulnerable and marginalised group within society. Facilitation of their participation in decision making can greatly assist them in the process of adapting to a new culture and diminishing some of the feelings of powerlessness that are the inevitable consequence of their exile and separation. National childcare legislation provides children with opportunities to express their wishes and views about the provision of substitute care. Review procedures under the legislation enables separated children who are “looked after” to make their views known at review meetings. All children who receive a service from social services may make a complaint about those services or the lack of them. However, the views and wishes of separated children are unlikely to be taken into account where no proper assessments are carried out and they do not have access to a social worker: nor are they likely to make a complaint without assistance. The following case study illustrates the difficulties involved in making a complaint:

A tall 14 year old boy was assumed by the local authority to be over 16 years of age and first placed in a London B&B where he was very lonely and unhappy. He heard that he could find members of his community in another town and went there. Here he was again placed by the SSD in a B&B and sent to the local college where he was enrolled in English classes. He was persuaded by the SSD, through an interpreter, to sign a document stating that he was over 16 on the grounds that the college only accepts those over 16. He was unhappy with his housing situation. A friend he met at the B&B advocated on his behalf and made a verbal and written complaint to the SSD. Eventually the boy was referred to the Panel of Advisers who found that by that time the boy had been placed in a hostel for homeless adults. The Panel Adviser discovered the boy had never been referred to a legal representative or told to attend the Asylum Screening Unit and as a result he could have been refused asylum on non-compliance grounds. The Panel Adviser referred the boy to a competent lawyer who has taken up his case with the SSD as well as representing him in the asylum process. Despite the intervention of both the Panel Adviser and lawyer, the boy remains in the hostel and is the only young person there. He has also since been assaulted in this hostel.

(Panel of Advisers, Refugee Council)

In contrast to many other European countries separated children applying for asylum have access to legal aid to pay for the services of legal representatives. Good legal representation is vital in assisting the child to articulate their reasons for applying for asylum. Research published by Save the Children in 1998<sup>17</sup> showed that many separated children were being represented by individuals who did not possess the requisite skills and knowledge to work with children in the asylum field. In the same year Save the Children made submissions to the Home Office recommending that their proposals for the regulation of immigration advisers make specific provision for child clients (in the majority separated children). Unfortunately these recommendations have not been taken up by Government despite the fact that in other areas of law children do have access to specialist legal services. The 1999 Immigration and Asylum Act introduced a system of regulation of immigration advisers. This is a welcome development insofar as it has succeeded in rooting out some unscrupulous and neglectful representatives. However, according to the Refugee Council the improvements have not been considerable and they continue to encounter cases of negligent representatives. Many more separated children are now living in areas outside London and the South-East, where there are few legal representatives with experience in the asylum field and firms have not applied for a franchise enabling them to give immigration advice. As a result some children are having

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<sup>17</sup> *Supporting Unaccompanied Children in the Asylum Process: The practice of legal representatives and other professionals.* Wendy Ayotte, Save the Children UK, 1998.

difficulty finding a representative or are struggling to travel to London if they have already instructed a representative there.

The lack of a system of guardianship or its equivalent, as discussed in sections 5.1 and 6.7, undermines the ability of separated children to participate. If Panel Advisers were enabled, through an increase of funding, to devote considerably more time to each separated child referred to the Panel, they could ensure the child's wishes and views were heard by the various agencies providing services.

When published later in 2001 Save the Children's consultation with separated children and young people in England should provide valuable indicators as to how to develop and enhance participation by this group of children (Young Separated Refugees Project).

#### **5.4 Bi-Culturalism**

*"It is vital that separated children be able to maintain their mother tongue and links with their culture and religion. Provision of childcare, healthcare and education must reflect their cultural needs. Preservation of culture and language is also important should a child return to their home country."* (SGP, para. B4)

The preservation and support of a separated child's religious, cultural and linguistic identity is an important element in their successful adaptation to a new culture and environment. The majority of separated children (those aged 16-17) are provided with services under sections of the Children Act which do not require local authorities to take account of the child's race, religion, culture and language in the provision of care. It is estimated that some 30% of separated children<sup>18</sup> are "looked after" children for whom social services are required to take account of these factors. However, a recent study from the Family Rights Group<sup>19</sup> on services for "looked after" black and ethnic minority children indicates that in many local authorities, there are no comprehensive policies and structures in place to enable children of racial and ethnic minorities to receive appropriate care. While the Social Services Inspectorate had planned to include refugee children in its "Quality Protects Black and Ethnic Minority Children Project", this has now been put on hold.

Studies have shown that the acquisition of an additional language is facilitated when a child is able to conserve her or his home language. Separated children receive little encouragement to maintain their home language and the Department for Education and Skills (DfES) gives no support to refugee community schools which are normally the only source of home language schooling. However many London Local Authorities with large

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<sup>18</sup> Barnardo's: *Children first and foremost: Meeting the needs of unaccompanied asylum-seeking children*. Recent survey findings from local authorities presented at a Barnardo's seminar on July 4, 2000.

<sup>19</sup> *Overcoming the Obstacles: Looked After Children: Quality Services for Black and Minority Ethnic Children and their Families*. Alison Richards and Lynda Ince, Family Rights Group, March 2000.

refugee populations do provide financial support for home language schooling outside school hours. In addition, if children are living alone or in areas where there are no other persons of their background, they may find it difficult to preserve their first language.

#### Recommendation

- Central government should provide support for home language classes both within schools and to community organisations.

### **5.5 Interpretation**

*“Separated children must be provided with suitable interpreters who speak their preferred language whenever they are interviewed or require access to services.”* (SGP, para. B5)

Interpretation is a key resource for separated children in most circumstances: whether it be applying for asylum or requesting help and services from social services, education or health providers and NGOs. Child appropriate interpretation enables children to provide clear information in support of their asylum claim and for the purposes of social services assessments, as well as to articulate their views and wishes in any given situation. The consequences of inadequate interpretation can be far reaching if, for example, a child is refused asylum, held in detention or is unable to communicate effectively with a service provider. Some NGOs such as the Medical Foundation and Panel of Advisers and some legal representatives take care to ensure interpreters can work effectively with children. While there are many interpreters who do work well with children, there is currently no accredited source of interpreters trained to work with children. One third of local authorities in the Barnardos survey (Barnardos, 2000) reported language difficulties and a lack of suitable interpreters. This had a *“negative impact on meeting the young person’s needs”* (pg. 30). While the Home Office does not normally conduct detailed asylum interviews with separated children, when they do occur, such interviews are crucial to deciding a child’s claim. Home Office interpreters are not screened as to their suitability to work with children. There is a clear need for government services to consider ways in which child-appropriate interpretation can be ensured.

#### Recommendation

- the Department of Health (DH) should produce guidelines on screening interpreters for their suitability in working with children and distribute them to appropriate agencies..

### **5.6 Confidentiality**

*“Care must be taken not to disclose information about a separated child that could endanger the child’s family members in her or his home country. The permission of separated children must be sought in an age appropriate manner before sensitive information is disclosed to other organisations or individuals. Information must not be used inappropriately for purposes other than for that for which it was sought.”* (SGP, para. B6)

Increasingly separated children are found accommodation outside of the local authorities who are responsible for their care. It is conceivable that in these circumstances confidential information may be transmitted without appropriate safeguards. Furthermore, since many more separated children are living in areas where social services and education authorities have little or no previous experience working with separated children, there are concerns about the ways in which sensitive information affecting a child's immigration status may be used. This is illustrated in the following case study:

An Iraqi boy aged 15 arrived in northern England. The Immigration Service referred him to the SSD who had no previous experience of separated children. The SSD asked the police for advice and subsequently placed an advert in the local paper for an Arab-speaking family who could assist the boy. The advert gave the boy's name, age and nationality. In Iraq the boy's nuclear family had been killed and there only remained an uncle who could have been endangered if it were known that his nephew had applied for asylum in the UK. The boy was quickly granted ELR in recognition that a return would have placed him in danger after the publicity here.

(Panel of Advisers, Refugee Council)

There have been instances in the past where, for example, inexperienced social workers have approached foreign embassies to request information about a child's family or have passed on information to the Home Office without consultation with a child's legal representative. Given the number of professionals who may be involved with a separated child, it is important for the confidentiality of a child's asylum claim to be maintained. Professionals need to be aware that the relationship between a child and her or his legal representative is a confidential one: social services caring for a child have no right to view the child's asylum application.

It is the policy of the asylum directorate to attempt to trace the parents of separated children who apply for asylum. This is normally a paper exercise for example, tracing via the places where visas were issued. This must be done carefully to ensure a child's family is not put at risk if authorities in the child's home country become aware that a family member has sought asylum in the UK. The British Red Cross sometimes receives requests for family tracing from Social Services Departments. Since the Red Cross policy is to check a child's willingness before proceeding they have discovered that in some instances this has been done without the child's consent and that the child did not wish to undertake the tracing. Confidentiality issues also arise in any setting where interpreters are drawn from the child's same ethnic or national group. Children may be rightly afraid that information they give may not be kept confidential by the interpreter.

### Recommendation:

- the DH should produce guidelines on how information on separated children should be shared between professionals and other agencies.

## **5.7 Information**

*“Separated children must be provided with accessible information about, for example, their entitlements, services available, the asylum process, family tracing and the situation in their country of origin”. (SGP, para. B7)*

Newly arrived separated children are faced with a foreign and bewildering culture which they must negotiate without the help of their parents. While accessible information is crucial to this process, there is a limited amount of such information available to separated children. Leaflets about the Panel of Advisers are available in more than a dozen refugee languages and given to most children who apply for asylum. The Home Office provides funds to the Refugee Council to produce leaflets on a wide range of subjects covering the asylum system and entitlements to health, education etc. However these are aimed at an adult readership. Croydon Social Services have produced information leaflets for separated children on how to apply for asylum and getting services from the SSD.

As part of its 1998 research<sup>20</sup> Save the Children produced two leaflets whose aim was to help ensure that separated children get proper legal representation. One leaflet was aimed at adults accompanying children to a legal representative. The other was written for children and translated into 15 languages and is distributed to separated children referred to the Panel of Advisers; it provides information about the asylum process and good legal representation. One of the mandates of the Panel Advisers is to provide separated children with information about services and life in the UK. The Refugee Council has opened a drop-in service for separated children which is staffed by Panel Advisers. This is located in London and operates on a part-time basis for separated children who were not allocated a Panel Adviser: it is hoped that by April of 2001 it will be running full time. Under the new NASS provisions, one-stop service centres for asylum seekers are functioning in different parts of the country to which asylum seekers have been dispersed. These services can also provide information to separated children.

## **5.8 Inter- organisational Co-operation**

*“Organisations, government departments and professionals involved in providing services to separated children must co-operate to ensure that the welfare and rights of separated children are enhanced and protected.” (SGP, B8)*

Clearly inter-agency co-operation is vital for separated children. No single government department has overall responsibility for separated children who are currently the concern

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<sup>20</sup> Ayotte (1998)

of the Home Office, the Department of Health and the Department for Education and Skills. Three new pieces of asylum and immigration legislation have been introduced between 1993 to 1999<sup>21</sup>. The impact of this legislation on asylum seekers, separated children and local authorities has been profound and yet it has largely been introduced without adequate consultation. The Asylum and Immigration Appeals Act 1993 radically changed the entitlement of asylum seekers to local authority accommodation, while the Asylum and Immigration Act 1996 withdrew the entitlement to welfare benefits from a large number of asylum seekers who consequently became dependent on local authorities. The Immigration and Asylum Act 1999 has resulted in the dispersal of large numbers of asylum seekers to local authorities which have no previous experience of working with refugees and migrants. Furthermore, the European Union has an extensive programme of legislation on asylum harmonisation (see section 3) which is likely to result in further changes over the next five years. There is a need for better inter-governmental consultation and co-operation on the care and reception of asylum seekers, in particular children and separated children. An encouraging example of joint working is that currently the DH, Home Office and Local Government Association are working on improving the monitoring of separated children and planning services to meet needs.

Similarly, at a local level, co-operation amongst local authority service providers and NGOs working in the field is vital to the provision of comprehensive care. Local authorities (LAs) are required to prepare Children's Services Plans and Quality Protects Management Action Plans (MAPS), both of which require a multi-agency approach. The Barnardos survey (Barnardos, 2000) revealed that only 38% of LA's who responded had included separated children into their MAPs and that there is a *"lack of good inter-departmental working between Social Services, Education and Health"* (p. 11). This is an area in which there is a great deal of scope for improvement. One good example of this is a conference organised by West Sussex SSD and the Family Welfare Association in November 2000 to promote inter-agency planning and working with separated children, informed by a video of young people's views of services provided. The Social Services Inspectorate facilitates the Children and Families from Overseas Network which is a good example of joint working amongst statutory and non-statutory agencies predominantly in the London area. It provides a forum to share good practice, air concerns and facilitate dialogue between statutory and non-statutory agencies working with refugee children, although there is concern that information shared at meetings is not disseminated widely by the agencies attending. Some local authorities such as Merton have set up local fora to facilitate joint working amongst agencies working with asylum seekers. In addition there are local fora set up to facilitate joint working on refugee children.

Many NGOs have projects working with separated children and refugee children and their families. In some cases these projects provide "added value", but in other cases they have been a response to the inadequacies in statutory provision. This means it is very easy for work to be duplicated and certainly for provision as a whole to be piecemeal given the overall lack of co-ordination.

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<sup>21</sup> The Asylum and Immigration Appeals Act 1993; the Asylum and Immigration Act 1996; the Immigration and Asylum Act 1999.

The Children's Consortium, a group of concerned NGOs and Unicef, was established in 1999 to lobby on the issue of refugee children during the passage of the 1999 Act. It lobbied to ensure that 16 and 17 year old separated children continued to receive services under the Children Act. It has continued to meet with a focus on service provision and has supported for a research project on the impact on refugee children of the 1999 Act and other issues. The Consortium are also preparing a "living commentary" on the implementation of Article 22 (on refugee children) of the CRC within the UK. Three members of the consortium (Barnardos, Child Poverty Action Group and NSPCC) specifically included recommendations to political parties on unaccompanied asylum seeking children in their recent document "*Our Children- Their Future: A Manifesto*". 56 other NGOs have signed up to the manifesto. The main recommendations contained in the manifesto are found below.

#### **MANIFESTO RECOMMENDATIONS**

- \* Local Authority SSDs should provide a full assessment of need for all separated children
- \*all separated children should be cared for under section 20 of the Children Act unless the young person's needs can be met in other ways, for example by staying with family or friends
- \*separated young people leaving care should be provided with the same support and services as other care leavers
- \*the Home Office should make every effort to process a separated child's asylum applications before his or her 18<sup>th</sup> birthday in order to minimise disruption to education or damage employment prospects
- \* clear systems for family tracing need to be established

Children's consortium

A correspondent from ISS commented that it would be very useful to "*ensure that staff of organisations involved with separated children are made aware of existing umbrella organisations as well as organisations (such as ISS) working with agencies in countries of origin.*"

The following case study illustrates the benefits of inter-agency co-operation between the Home Office, embassy staff and NGOs working in three countries. The separated child was not in the UK but rather in Kosovo.

A six year old Kosovar Albanian girl had been separated from her family at the Macedonian border during the height of the refugee crisis in 1999. Her parents had been evacuated to the UK and she had eventually been returned to Pristina where she was cared for by her grandfather. Save the Children in Pristina contacted the British Refugee Council for assistance. The BRC wrote to the Home Office who despite initially saying the girl had no right to family reunion, agreed on compassionate grounds to allow her entry into the UK. A travel document for the girl was secured and the Immigration Service faxed instructions to the British Embassy in Tirana, Albania to grant her a visa. A Save the Children worker accompanied the girl from Pristina to Tirana. There they met with a Kosovar Panel Adviser who had flown to Tirana to bring the girl to the UK. The girl was reunited with her parents in the UK.

(Refugee Council Children's Section)

Recommendation:

- the Department of Health (DH) should assume a key standard-setting, monitoring and co-ordinating role in relation to local authority provision for separated children and multi-agency working at national and local levels. This should be done in partnership with other government departments, local government associations and the voluntary sector.

## **5.9 Staff Training**

*“Those working with separated children must receive appropriate training on the needs of separated children. Immigration or border police staff must receive training in conducting child-friendly interviews.”* (SGP, para. B9)

The training of professionals who have contact with separated children is generally inadequate: while some training does occur, it is not provided systematically or in all the areas in which it is required. Panel Advisers report that they spend a great deal of time informally educating other professionals about separated children, their needs, the asylum process and so on. In 1995 the DH produced guidelines and a training pack designed to help local authority social services provide appropriate care and give staff training, but it is not known how many local authorities are aware of or make use of this valuable resource. The findings of the Barnardos study suggest that since only a minority of local authority SSD's include separated children in their policies and planning processes, most are unlikely to be providing training. However the LGA reported that training organisations

are beginning to address the issue of working with refugees and the social-work post-qualifying award does now include refugee related subject requirements.

The Asylum Directorate states that caseworkers who are dealing with children's applications receive training and that where interviews are necessary they are conducted by specially trained officers<sup>22</sup>. It is not clear how this training is being provided. In the past annual training was provided by the Immigration Law Practitioners Association for those representing children in the asylum and immigration fields. The Refugee Council's Education Adviser has provided training to teachers on refugee issues for a number of years and some local authorities also provide in-house training to teachers on working with refugees. The Separated Children in Europe Programme is developing a training pack on implementation of the Statement of Good Practice and this will be available in 2001.

One NGO representative commented that: "*It would be advisable to encourage a combination of agency and inter-professional training. I have seen an inter-professional group working out a modus operandi in regard to trafficking. This has been vital since, without it, the long range strategies of one organisation may inadvertently be obstructed or destroyed by the actions taken by another, also with good intent.*"

### **5.10 Durability**

*"Decisions that are taken regarding separated children should take account of, where ever possible, the long-term interests and welfare of the child."* (SGP, para. B10)

A minority of local authorities are providing good to excellent quality care to separated children that includes a thorough assessment of their needs and planning for the future. Unfortunately, it is fair to say that the majority of separated children in the UK do not benefit from the sort of careful assessment of needs and planning that would promote their long-term interests. The quality of care most children are currently receiving from local authorities precludes this development. Most 16 and 17 year olds, who constitute the majority of separated children, are being provided with basic services such as accommodation in a hostel or B&B setting and minimal cash payments and/or vouchers, after which they may be left to their own resources without benefit of a social worker or a care plan. The Barnardo's survey of local authorities revealed that nearly two thirds of respondents did not have specific policies for separated children and nearly three quarters did not include separated children in their New Assessment Frameworks (see 3.1). Under these circumstances many individual social workers are not being provided with the guidance or necessary tools to ensure that appropriate planning for separated children can take place. Furthermore with increasing numbers of children being housed outside of local authorities responsible for them, this can only increase the likelihood that these children's contact with social services providers will be at a minimum.

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<sup>22</sup> See the UK's Second Report to the UN Committee on the Rights of the Child, para. 10.13.

Education is vital to promoting a child's long-term interests. Some Social Services Departments have developed a very good relationship with schools and colleges so that education for separated young people works well. However, in some Local Education Authorities (LEAs) there are no school places available for newly-arrived children despite new guidance<sup>23</sup> from the DfES and DH which states that "looked after" children (see section 4.1) should not be out of school for more than 20 days. If a child is already 15 years old when they arrive they may not be allowed to begin GCSE courses unless the LEA agrees. If a young person is not living within the area of the local authority with responsibility for him/her, the possibility that the young person will not enrol in education or have difficulties doing so increases. Young people who do not have a decision on their asylum claims must pay university tuition fees as "overseas" students and cannot qualify for educational grants, while those with Exceptional Leave to Remain are treated as home students for the purpose of fee assessments but must wait three years from entry before qualifying for grants. There is also concern that there is likely to be inadequate provision of English language classes for children living in areas with little or no previous experience with refugee and migrant groups. The DfES is providing a grant of 500 pounds (for a six month period) for English language teaching for each child who is dispersed out of London and being supported by NASS<sup>24</sup>. However this is not nearly sufficient to pay for English as an additional language teaching for those children. Only 15 percent of that sum can be spent by the LEA and the remainder goes directly to the school concerned.

Family reunification is an important element of durability but the rights of separated children in this area are very limited and largely incompatible with the CRC. Although this is an issue of vital importance to separated children there is a notable dearth of information on and research into family tracing, contact and reunification. This issue discussed in detail below at section 6.6.

### **5.11 Timeliness**

*"All decisions regarding separated children must be taken in a timely fashion."* (SGP, para. B11)

Indications are that quicker decisions are now being taken on the asylum applications of newly-arrived separated children. This is a welcome development since the prioritising of children's claims has been an issue for a considerable length of time: *"A child's concept of time is different to that of an adult...for children, even a short period of limbo is experienced as stretching on for ever."* (Medical Foundation for the Care of Victims of Torture) However, this comes with the proviso that some children, particularly those who have been directly exposed to violence, torture and human rights abuses or have been

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<sup>23</sup> "The Education of Children in Public Care" . This also gives a statutory right to a Personal Education Plan and states that schooling should be in place before a child is moved to a new care placement.

<sup>24</sup> This grant is also available to children who are being supported by NASS in London because of urgent medical needs eg. paediatric HIV/AIDS cases and those in need of services from the Medical Foundation for the Care of Victims of Torture.

told to keep secrets<sup>25</sup> may require longer periods and considerable support before they are able to fully talk about their experiences. There are an unknown number of children have been waiting for lengthy periods for a decision to be made. For example, Panel Advisers cited two cases where separated children had not received a decision three and four years after submitting an application.

*In one of these cases the girl had reached 18 and been offered a place in university but did not have the money to pay the fees and was ineligible for a grant.*

Currently the Panel of Advisers is unable to allocate all cases referred to them due to a lack of resources. This means that some separated children will either wait considerable periods before seeing an Adviser or may never be allocated one. Thus the purpose for which the Panel was established, i.e. to provide rapid assistance to separated children as soon as they identified in order to ensure they got access to proper care, education and legal representation, is not being realised in the case of some children.

In many instances the process of family tracing is not initiated promptly by local authorities where it would be safe to do so. There is no evidence that applications for family reunification are dealt with in an expeditious manner.

A 15 year old Afghani boy terminally ill with leukemia was only able to get his family to join him in the UK when his story was aired in the media. The application had not been treated quickly by the Home Office despite a report from Great Ormond Street Hospital which indicated that he had not long to live.

Refugee Council Children's Section

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<sup>25</sup> See Melzak, Sheila, "Secrecy, Privacy, Survival: Repressive regimes and growing up." in the Bulletin of the Anna Freud Centre, London, no. 15, 1992, pp. 205-224.

## 6. Main areas of concern

### 6.1 Care of Separated Children

*Statement of Good Practice:*

*Separated children should be found suitable care placements as soon as possible after arrival. Care authorities should conduct a careful assessment of their needs. Where children live with or are placed with relatives these placements should be assessed. Young people aged 16 and 17 should not be treated as “de facto” adults and placed on their own without adult support. Professionals working with separated children should understand their cultural, linguistic and religious needs. Regular reviews of care arrangements should be carried out. (See, para. C10.1)*

The care being provided to separated children in the UK has been negatively affected by a number of inter-related factors several of which have been examined above: the wide ranging and frequent changes to asylum law and policy over the last seven years (see section 3); the significant increase in the numbers of separated children coming to the UK since 1997 (see section 2); the gap between funding available and the real costs to local authorities of caring for separated children; the lack of a central agency with overall statutory responsibility for separated children; the shortfall in funding to the Panel of Advisers to enable them to carry out their mandate with all separated children (see section 5.1); the growth, in the 1990s, of a negative political climate and prejudice towards asylum seekers and refugees, including children (see section 5.2). It is estimated that from 5,000 to 6500<sup>26</sup> separated children are currently receiving services from local authorities, a huge increase from 2,500 one year ago. This is largely due to the influx of Albanian Kosovar children following the armed conflict in 1999. The majority of separated children, an estimated 70 or more per cent, are found in the Greater London area and South East England. Clearly some local authorities are assuming a disproportionate responsibility for separated children. Despite all these issues a number of local authorities and dedicated professionals are providing separated children with high quality care and have developed imaginative policies and programmes for this group of children.

The interviews carried out for this assessment show that most of the “actors” involved in provision of care for separated children agree on the nature of the problems and issues. What is needed now is a comprehensive framework for consultation and discussion involving all sectors (central and local governments, statutory and non-statutory agencies, professional bodies) in order to find solutions to the problems, as well as leadership and resources from central government to ensure they are implemented.

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<sup>26</sup> Estimates from respectively the Audit Commission and the London Government Association.

Below are outlined the main problems and concerns that have been identified, namely:

- \* services provided to 16 and 17 year olds
- \* services provided to some children under 16 years of age
- \* “out of borough” placements
- \* dispersals and after care services
- \* funding to Local Authorities
- \* the role of the Department of Health
- \* regional variations and lack of regulation

A 15 year old boy had been housed in the Croydon area in a B&B for eight months and needed to be placed in a more secure environment. Social Services are now attempting to find him a foster carer, however this is proving difficult. Also the boy has spent so much time on his own that he has got used to it and is reluctant to move.

(Panel of Advisers, Refugee Council)

### **Services for 16 and 17 year old Separated Young People**

Approximately 70- 80 percent of the separated children in the UK receiving services from local authorities are aged 16 and 17, although poor data keeping means this figure cannot be considered definitive. Barnardos conducted a survey of local authority services to separated children in July 2000. 63 percent of local authorities in England and Wales responded while Scottish authorities replied they did not have any separated children in their care. Some of the key findings of the report can be summarised as follows:

- the great majority of local authorities responding to the survey do not have specific policies for working with separated children (72%), do not include them in their management action plans (62%) or in their New Assessment Frameworks (74%).
- the most significant problem experienced by LA s in delivering services is the lack of appropriate accommodation and placements.
- 71% of separated children receiving local authority services are aged 16-17.
- the vast majority of 16-17 year olds are receiving services under section 17 of the Children Act, consisting primarily of housing and payments in cash, kind and vouchers . They are not therefore “looked after” children i.e. those who are accommodated under section 20 of the CA and benefit from a number of safeguards and provisions<sup>27</sup>.

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<sup>27</sup> Local authorities have a duty to safeguard and promote the welfare of looked after children, form care plans and carry out rigorous reviews of the child’s care. They are responsible for a whole raft of “parenting” duties such as overseeing appropriate placements in foster care or children’s homes, ensuring education and health care, facilitating family tracing and contact, arranging legal representation, attending to a child’s cultural, linguistic and religious needs and generally promoting a child’s well-being. Looked after children are also entitled to after care support under section 24 of the CA and to have an

- a considerable number of 16 and 17 year old separated young people are placed in unsupported Bed and Breakfast housing and may or may not be visited by a social worker.

According to the Audit Commission report cited in the Barnardo's study one half of 16-17 year olds were placed in single adult accommodation such as bed and breakfast and hostels. Furthermore the Commission stated that *"Many authorities do not offer 16 and 17 year old unaccompanied children a full needs assessment and the Commission's survey found that only one-third had individual care plans in place for those children in their care."*<sup>28</sup>

Many respondents to this report were also of the opinion that often 16 and 17 year old children were not subject to a thorough needs assessment as is their right when they present to social services. In some cases the pressures of limited resources or prejudicial attitudes about asylum seekers or an presumption that many 16-17 year olds are in fact adults underlie a cursory assessment of their needs and result in inappropriate placements.

Separated children are expected to budget without help or, in most cases, any former experience of doing so, and are unlikely to be able to make ends meet. It is very difficult to maintain a proper diet on the limited sums on offer, particularly when vouchers have been issued to the young person by the local authority. No change can be given when the cost of items purchased is less than the amount of the voucher. Furthermore, access to culturally specific foods and items is likely to be extremely limited or non-existent since only certain retailers will accept the vouchers. Using vouchers identifies separated children as asylum seekers and may expose children to prejudice on the part of shop personnel. Issuing vouchers is discriminatory in terms of Children Act provision.

Thus a significant number of 16 and 17 year olds are living alone in unsupported housing conditions without the care of a responsible adult. They must face the difficult adaptation to a strange culture and new language, the transition to adulthood and the pain of exile and loss without any adult support. While some separated children have developed "survival" skills due to their experiences in their home country they are nonetheless vulnerable adolescents in a daunting situation. Those who have specific mental health needs due to exposure to violence and repression are likely to suffer more acutely from isolation and loneliness. Many separated young people in this situation are not getting access to education and may become vulnerable to exploitation for example, in the sex industry.

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Independent Visitor appointed to assist, befriend and advocate for them. Looked after children should have an allocated social worker.

<sup>28</sup> Barnardo's op.cit. p. 6

A Local Government Association spokesman considered that *“the service response for 16 and 17 year olds is so poor, we have to look realistically at how we can improve things”*. This did not include accommodating 16 and 17 year olds under section 20 of the Children Act , but in his view, could include a planned dispersal into supported environments rather than into unacceptable B&Bs anywhere. He would like to see the Department of Health assisting local authorities to work co-operatively on this issue with the voluntary sector and refugee communities in order to develop specific resources in certain areas. An example of this is “The Cedars” hostel run by the Refugee Council in partnership with Hillingdon Social Services. However, other respondents from NGOs and some local authorities considered all separated young person should be accommodated under section 20, at least during the six week period of initial assessment outlined in the DH new assessment framework. One senior social services manager, providing care to considerable numbers of separated children, commented: *“ I see nothing wrong with the full application of the Children Act as it stands.”*

An Audit Commission briefing<sup>29</sup> described good practice in this area as including:

- \* a full assessment of a child’s needs as soon as possible after arrival plus regular review meetings;
- \* a dedicated social services team for separated children;
- \* joint commissioning of accommodation possibly in partnership with voluntary sector organisations;
- \* promoting links with the refugee communities and development of social support networks
- \* preparation for independence.

### **Services Provided to Some Separated Children under 16 Years of Age**

A 15 year old Kosovar boy was placed in the King’s Cross area in a bed and breakfast hotel. His Panel Adviser made several visits to the hotel and she noticed that the boy had lost a significant amount of weight. It was obvious that he was not able to look after himself properly and was not receiving the care and attention he needed. The Panel Adviser brought his case to the attention of social services. Together with a social worker they were able to lobby for him to be moved to a more suitable accommodation. This has been done and he is reported doing well.

(Panel of Advisers, Refugee Council)

Agencies working with separated children have reported disturbing instances of children under 16 being housed in bed and breakfast or hostel accommodation. Audit Commission

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<sup>29</sup> “A New City. Supporting Asylum Seekers and Refugees in London”, Audit Commission Briefing, July 2000.

findings indicate that 12 percent of children under 16 have been placed in single adult accommodation. The Barnardos survey indicated that, with regard to services offered under Section 20 of the Children Act (see 4.1.1):

*“The majority of LAs provide a combination of foster and residential placements to these young people which provides them with a responsible carer in their lives. However, a significant number of Authorities place young people in a variety of other placements under this provision, including supported lodgings; bed and breakfast; hotels and hostels and approved lodgings. From the data it is not possible to conclude whether these other types of placements were provided only to 16-17 year olds or also to under 16’s....it would seem entirely inappropriate to place a child under 16 in any type of accommodation without a permanent adult carer.” (p.20)*

Not only are such placements inappropriate they are in conflict with the provisions of the Children Act. It is impossible for a local authority to act as a good parent in conditions where a child is placed in unsupported housing in contact with unknown adults who may place the child at risk of abuse or exploitation.

A 15 year old girl who was also the mother of a small child was placed in adult accommodation. She came from Kosovo where her husband had been killed by a landmine. There she had been used to the support of her extended family and found the isolation very difficult. The housing was of extremely poor quality raising health and safety concerns. At one point a door fell in the accommodation and hurt her child.

(Medical Foundation)

### **Placement “Out-of-Borough”**

One facet of the care of separated children, which is causing particular concern, is the housing of children in local authorities other than the one which has responsibility for them. This is the result of arrangements with private rental agencies and inter-borough housing agreements concerning the accommodation of asylum seekers, including separated children. Some authorities do continue to provide appropriate follow-up and support following the transfer. Unfortunately in many instances there are no clear notification procedures between authorities for these transfers and, as a result, separated children have been placed in areas without knowledge of the receiving local authority.

A diabetic boy who must inject insulin four times a day was referred to a London SSD which immediately issued him with a rail ticket for Leeds. The boy returned to the one stop service, who directed him back to the SSD saying he should not be dispersed because he was a minor. The SSD again directed the boy to Euston station. Eventually he got on a train to Leeds but missed his transfer and became lost. He had to return to London where he was helped onto the right train to Leeds. There someone contacted the Panel of Advisers who have visited him. In Leeds he walks two hours to and from college and the London SSD has failed to provide him with a blood-glucose monitoring machine and fridge for him to store his medicines as promised in a letter to his solicitor.

(Panel of Advisers, Refugee Council)

One consequence of this is the lack of planning for school admissions leaving some children out of education. Separated children housed out of borough will find it much more difficult to maintain contact with social workers and to request or receive support and services from the authority which is responsible for them. They may be isolated in a community where they have no contacts, friends or relevant refugee community organisations. They are usually housed together with adults, whose needs are likely to be very different and may even place a young person at risk.

A boy aged 16 was placed in a hostel for adult single homeless people. The boy alleges that the manager and the manager's brother have threatened and assaulted him. In addition he was sexually abused by a female resident but withdrew his allegation because he did not wish to jeopardise her asylum claim.

(Panel of Advisers, Refugee Council)

### **Dispersal and After Care Provision**

Under the Asylum and Immigration Act 1999 the Government introduced a new system for the reception of asylum seekers which involves their dispersal throughout the country including areas where previously few or no asylum seekers had gone. Housing is provided on the basis of a one-time "take it or leave it" offer and asylum seekers are maintained through a combination of vouchers and cash equivalent to 70 percent of income support levels. This new system is administered by the National Asylum Support Service (NASS) within the Home Office. As a result of lobbying during the passage of the Act, separated children aged 16-17 were exempt from the provisions of the scheme and it was re-emphasised that they should be subject to the provisions of childcare legislation. However, in practice, many separated children assessed as being in need under the Children Act are dealt with, not by childcare teams within SSDs, but usually by teams working with adult asylum seekers. They may end up being dispersed along with adults even if their costs are recouped by a different budget. Thus dispersal may be wrongly described by local authorities as "out-of-borough placements".

If a young person receiving services under Section 17 of the Children Act does not receive a decision on their asylum application<sup>30</sup> by the time they become 18, they will be transferred to the NASS and may be dispersed i.e. required to leave the area in which they are living. NASS has made a concession that if a young person is in their final exam year they will consider not dispersing a young person until the exams are taken. There are many concerns about the impact of dispersal on this group of young adults, for example their education will be disrupted, they are likely to be isolated and will again suffer the loss of friends and familiar surroundings mirroring their original exile. Most young people are members of visible minorities and they may face prejudice and racism in areas with little multi-cultural experience. There is also likely to be a dearth of interpreters in these areas. Young people will also have difficulties arranging meetings with their legal representatives in London and paying the travel costs required.

The situation is more complicated for young people who have been accommodated under section 20 of the Children Act and who have not yet received a decision on their asylum application. Under The Children (Leaving Care) Act these young people are entitled to after care services (section 24) when they reach 18 years of age. This may include financial assistance in addition to advice and befriending. However, under Home Office policy, looked after young people who have not received an asylum decision by their 18<sup>th</sup> birthday will become the responsibility of NASS and will be dispersed except where a young person is taking examinations or is receiving treatment at the Medical Foundation for the Care of Victims of Torture. It is hard to see how aftercare provision can be provided under these circumstances, and clearly the policies of the Department of Health and the Home Office are in conflict here.

### **Leaving Care**

It is generally acknowledged that most young people leaving care are receiving poor services. The Children (Leaving Care) Act was introduced in order to improve after-care services. Only "looked after" children who are accommodated under section 20 of the Children Act qualify for after care services. Thus the great majority of separated children will not be affected by this legislation since they do not qualify for after care provision because either they are only provided with section 17 services.

### **Funding to Local Authorities to Cover Costs of Care**

In 1996-97 the Department of Health established a special grant for separated children seeking asylum. The terms of this grant have changed over time, but for the year 1999-2000<sup>31</sup> the grant provided £200 per week for each child aged 16-17 and £400 per week for children under 16. These unit costs are premised on the assumption that 16-17 year olds will only receive services under section 17 of the CA which are much less expensive than the costs incurred when a child is accommodated under section 20. This is clearly a disincentive for Local Authorities to accommodate 16 and 17 year olds under section 20. Also, the 12 authorities caring for the largest numbers of separated children qualified for

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<sup>30</sup> Young people who are recognised as refugees or granted ELR become eligible for welfare benefits.

<sup>31</sup> "Local Authority Circular LAC(2000)2". Department of Health.

unit costs of £300 per 16-17 year old and £500 for each child under 16. According to the DH<sup>32</sup>, all the eligible claims submitted by local authorities for 1999-2000 have been met within the total budget that had been allocated (£41.3 million). (See also footnote 31).

While earmarked funding from central government for the provision of services for this group of children is welcome and important, since it is impossible to plan for the arrival of separated children, many local authorities are having difficulty keeping within the spending guidelines and providing adequate care. This is particularly the case with sudden arrivals of large numbers of children. In some cases the local authorities have accepted to overspend in order to maintain a high quality of care. In other instances children are provided with lower quality care so that the local authority can remain within the spending limits. It must be remembered that local authorities are also struggling to provide services for other children in need within a framework of limited resources.

One respondent remarked that the Children Act is “ambivalent” with respect to all 16-17 year olds and as a consequence separated children in that age group are not the only ones who find themselves in unsuitable housing and lacking essential support. Another interviewee remarked that the funding scheme was a “lottery” since only 12 authorities qualified for the higher unit costs, while other authorities who did not benefit nonetheless faced considerable pressures due to caring for significant numbers of children<sup>33</sup>. For example, West Sussex has overspent the grant amount by £1 million, due in part to providing costly protective care for children at risk of trafficking. Furthermore, even the higher unit costs do not necessarily cover the real costs, for example, Hammersmith and Fulham, one of the 12 authorities receiving the higher grant, overspent by some £1.5 millions. The LGA estimates that the actual total expenditure for separated children by local authorities is between £80–100 millions as compared with the £52 millions (source for this figure: LGA<sup>34</sup>) that was actually disbursed.

### **Role of Department of Health**

The Department of Health has responsibility at central government level for the care of separated children who, according to Government guidelines (1995), are considered to be children in need as defined under national childcare legislation. Previously the Department also oversaw the special grant for asylum seeking children (see previous section), but this has now been transferred to the Home Office. During the passage of the Immigration and Asylum Act 1999 the DH suggested that services for 16 and 17 year old children would best be provided via the new NASS. But this was opposed by the Home Office, child welfare agencies and the LGA on the grounds that young people under 18 are children and the DH is the department with the relevant mandate and experience.

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<sup>32</sup> “Local Authority Social Services Letter LASSL(2000)6” Department of Health

<sup>33</sup> Since this study was prepared, new grant terms have been established. All local authorities with more than 100 unaccompanied asylum-seeking children will receive higher level grants of £575 for under 16s and £300 for 16 and 17 year olds. The old rates will apply in local authorities with less than 100 asylum-seeking children.

<sup>34</sup> There is a discrepancy between the £41.3 millions cited in the letter from the Department of Health and the figure of £52 millions cited by the LGA representative. Efforts to clarify this have been unsuccessful.

A source within the DH described the difficulties that social work managers and practitioners face: *“Separated children have varying degrees of vulnerability. There are children who are completely on their own, those with older siblings and those with adults where the relationship is not at all certain. You must assess the levels of vulnerability that the child has in their own right and also as part of the refugee experience. Then you have to assess their vulnerability in relation to that of all the other children that social services comes in contact with such as abused children and disabled children. In a world with unlimited financial, placement and staffing resources this wouldn’t be a problem, but it is very hard to weigh up the conflicting priorities when there is only so much to go round.”* The respondent added that some local authorities have better infrastructures and resources at the outset than do other authorities (eg. Inner city authorities) and therefore can more readily provide quality services to separated children.

In 1995 the Department of Health issued a training pack and practice guidelines on “unaccompanied refugee children”. The Social Services Inspectorate (London Region), which is part of the DH, co-ordinates the Children and Families from Overseas Network. The DH has recently employed a consultant to advise on current needs for practice guidance in working with separated asylum seeking children. As a result of wide-ranging consultation with LA s and the voluntary sector the consultant has concluded that the guidelines only require minor revision (for example with guidance required in relation to the new assessment framework); what is rather needed is decision making and co-operation at senior levels to address current concerns. BAAF (British Agencies for Adoption and Fostering) are now preparing new guidelines which may be endorsed by the DH.

Key issues for the DH are: poor quality of services for many separated children, inadequate statistical information on arrivals and locations of children, age determination procedures, out-of-borough placements and family reunion. It will be necessary to clarify the rights of separated children and the obligations of SSDs within a context of confirming the primacy of the Children Act and the importance of the new assessment framework. Consultation with all levels will be crucial to air concerns and resolve competing and complex opinions.

### **Situation in Wales, Scotland and Northern Ireland**

It is clear that the services provided to separated children vary considerably amongst local authorities in England, and this also appears to be the case in relation to the different countries of the UK. Below is a brief summary of information gathered from Scotland, Wales and Northern Ireland.

#### Wales

Most separated children in Wales are found in Cardiff where (when this report was researched in 2000) some 20 children, were accommodated under section 20 (no separated children are receiving section 17 services). Most were boys aged 13-17 from Somalia, Kosovo, Albania and North Africa. There were also about 10 children living in Newport. Other Welsh authorities may have one or two children who are more likely to be treated as single adults. Cardiff’s policy is reasonably comprehensive and consists of a thorough assessment by the Children and Families team (under 16s) or the Leaving Care Team (16-17 year olds). Where a young person has already made contact with local

people, they are assessed and if considered suitable will be paid as foster carers. Otherwise all young people under 16 have been placed with Council foster carers. Within a few days a legal representative is found for each child and a referral is made to the Panel of Advisers. Social services have developed links with schools and colleges sensitive to the needs of separated children and prepared to adapt their curriculum. Children's religious needs are respected and they are encouraged to retain their home language. Contact with family and friends in the UK and abroad is encouraged and a monthly phone card is provided. Wales has no specialist children's services for refugee children as exist in London and those children outside Cardiff and Newport are very isolated. Young people in Wales have to go to Croydon for their pro-forma interviews and are not accompanied by their legal representative since legal aid will not pay for the solicitor's time: it is thus a difficult experience for them. At the time of interview, the NASS was not yet operational, but there are considerable concerns that young people on reaching the age of 18 will be sent to parts of Wales where there is no support.

### Scotland

While Scottish local authorities who responded to the Barnardo's survey stated they had no separated children in their care, voluntary agencies in Scotland have identified small numbers of separated children. At the time of writing the Scottish Refugee Council had seen fewer than five separated children which they had referred to social services. To date they have been satisfied with the response. Save the Children Scotland has commissioned research into refugee children in Scotland. Although small numbers of people including separated children claim asylum at ports in Scotland, it is likely that other separated children are going to Scotland from England. This would include children who have absconded from LA care or who have been placed "out-of-borough" across the border without any follow-up, or who arrive as part of a group of young adults and are not identified as separated children or are assumed to be in the "care" of an older travel companion. In these circumstances children are not being identified by social services, unless they later come to the attention of authorities by for example committing an offence.

In the view of Save the Children in Scotland, the development and planning of services for separated children is hampered by Immigration and Asylum being a reserved matter which has overwritten the relevant Scottish legislation governing the care of children, leaving the Scottish Executive and LAs in some confusion as to their responsibilities. Scotland has received no funding to address the needs of separated children and currently receives less funding than English LAs to develop services for any refugees/asylum seekers. Consequently there are no systems in place to identify separated children; there are few appropriate resources for separated children once their needs are addressed; there is very poor monitoring and follow-up of young people from England who move to Scotland. Xenophobia and racism are also issues highlighted in a recent report from Save the Children and which is referred to in section 5.2.

Two Algerian boys arrived unaccompanied, entering the UK hidden in a container, after their parents were killed in Algeria. They absconded from care in England and were found sleeping rough in Waverley station. They were placed in an Edinburgh Council Social Work Department children's home. The boys found it difficult in the home, and got caught up in incidents with other children in the home, so Edinburgh Council referred the matter to the Home Office. The Home Office arranged to detain them in Gateside Prison, Greenock, as illegal entrants. A Scottish judge then ordered Edinburgh Council to accommodate the boys. It was later reported that the boys had absconded from care again amid concerns for their well-being. The boys did not have access to a proper interpreter while in care and gave different versions of their ages, names and circumstances throughout the period. It is generally thought they were about 14 and 15.

(Save the Children in Scotland)

### Northern Ireland

There are a small number of separated children in Northern Ireland. The South and East Belfast Trust has devised guidelines for working with asylum seekers including separated children who are considered to be children in need under the Children (NI) Order 1996. The Trust has dealt with two separated children from Kosovo. The Belfast Law Centre has provided legal representation for five separated children from China, Somalia and Nigeria. In their experience social services has been very responsive and concerned to meet the young people's needs. All the children are "looked after" and attend their review meetings. Children are encouraged to develop contacts with their communities through the Council for Ethnic Minorities. They attend school or college and everything has been done to facilitate contact with their families. They appear to have good relations with their social workers. Also, the Immigration Service is very concerned to expedite matters for children and has good working relations with Social Services. The Trust and the Belfast Law Centre are aware that Northern Ireland agencies are relatively inexperienced with refugees. The Medical Foundation has established two new posts to help the regions develop work with refugees and they have been invited to Belfast. Training is needed for all the professionals involved. Members of the African Cultural Centre have visited schools to talk about the refugee experience and this has been well received.

### Recommendations

- Local Authorities should be required to include separated children in children's services planning process and Management Action Plans for Quality Protects.
- joint working between local authorities, housing providers and central government is required to create suitable accommodation for separated children
- wherever children are placed they should be dealt with by children's and families social work teams or specialist separated children teams, not by teams for adult asylum seekers.
- all separated children referred to social services should have a thorough assessment of their needs and accommodation under section 20 should be provided during the

assessment period, unless the young person's needs can be met in other ways eg. by staying with family or friends.

- no children under 16 should be placed in bed and breakfast or hostel accommodation
- 16-17 year olds should not be placed in unsuitable B&B or hostel accommodation without the regular and frequent support of a responsible adult
- care should be taken that children are placed in areas where there are people of their own national background and other separated children
- inspections of SSDs carried out by the Social Services Inspectorate should specifically look at the quality and appropriateness of services provided to separated children
- the entitlement of young adults who qualify for after care services must be ensured
- the Department of Health should carry out a wide-scale promotion of revised guidelines when they are published.
- pro-forma asylum interviews should be conducted at local immigration offices.

## **6.2 Trafficking in Children**

*Statement of Good Practice:*

*The Statement of Good Practice encourages states to take active measures to counteract trafficking in children for exploitation and to approach it primarily as a child protection issue rather than one of crime control (see Annex, para. C1.2 )*

### **Child Trafficking is a Global Reality**

Trafficking in human beings for the purposes of various kinds of exploitation is a rapidly expanding world-wide phenomenon. In a report published recently by Save the Children (Ayotte, 2000) it was suggested that increasing numbers of children are being smuggled into western European countries for the purposes of, amongst other things, prostitution, child pornography, sweat shop work, forced begging and pick-pocketing and drug trafficking. Children are known to have been brought from Central and Eastern Europe, the Commonwealth of Independent States (former USSR), West Africa and China. Children become vulnerable to this form of trafficking for a number of reasons such as: widespread poverty and lack of opportunity in certain countries of origin; low status of girl children; unstable family life and child neglect or abuse; placement in under-resourced institutions where children suffer neglect and abuse. Traffickers employ numerous ways to "obtain" children, for example, through deception (eg. offers of marriage, false employment offers), abduction and coercion. Many children (and their parents) have contracted a large debt (to pay the trafficker for the child's travel to Europe) which they can only repay through submitting to the work imposed by the traffickers. Violence, threats and intimidation are commonly used to ensure the children continue to do the work and remain compliant. In many cases children are kept as virtual prisoners by those who use them, have little or no access to health care and no opportunities for education or play. Furthermore, most trafficked children are undocumented and have no legal status in Europe, rendering them even more vulnerable to the control of their traffickers and fearful of approaching authorities.

## Child Trafficking in the UK

Due to the clandestine and relatively recent nature of the phenomenon there are no reliable statistics available on the smuggling of children. Children are known to have been trafficked to the UK from West Africa and China for exploitation in prostitution and sweat shop labour, but it is likely that other nationalities are also affected. Since many 16 and 17 year olds are not being thoroughly assessed for need by local authorities, it is probable that many instances of child trafficking are not coming to light. A recent report commissioned by the Home Office<sup>35</sup> estimates that between 142 and 1420 women are smuggled annually for sexual exploitation in the UK and a majority of sex workers in London are of foreign origin. It is not known how many of these women may be under 18 years of age: "*Some of the women are working willingly, but increasing evidence shows that many have been kidnapped and forced into the work; that they are, in fact, sex slaves.*"<sup>36</sup>

A separated girl arrived from West Africa. She was placed in detention and referred to the Panel of Advisers. Her Adviser judged her to be from Nigeria rather than Sierra Leone as she claimed. The girl had a solicitor known to the Adviser to be unscrupulous, but the girl adamantly refused to change solicitors. The Adviser phoned the solicitor who became angry when told the girl should only be released into the care of the SSD. Later the solicitor tried to get the girl released on bail under false pretences and not into the care of social services. Eventually at the request of the Panel Adviser, social services liased with the Immigration Service and the girl was released to a safe house in West Sussex. There have been attempts subsequently to abduct the girl - none successful.

(Panel of Advisers, Refugee Council)

A significant number of children from West Africa have been brought to the UK which is being used as a transit country by trafficking networks. The children applied for asylum and were taken into the care of social services. They then disappeared and it is known that some of them have been taken to Northern Italy where there are large numbers of West African sex workers. West Sussex Social Services reported that from October 1995 to July 2000, 59 separated children had disappeared from children's homes. More than 70 percent were from West African countries and three quarters were girls. Furthermore, the Immigration Service "*have information from all London airports and know of about 50-60*

<sup>35</sup> Kelly, Liz and Regan, Linda, *Stopping Traffic: Exploring the extent of, and responses to, trafficking in women for sexual exploitation in the UK*. Policy Research Series, Paper 125, Home Office, UK, May 2000.

<sup>36</sup> The Guardian Newspaper, May 30, 2000

*West African girls and young women who have been moved through the UK.”<sup>37</sup>* The other children who disappeared from West Sussex came from the following countries: Afghanistan, China, Gabon, the Punjab, Sri Lanka and Sudan. It is not known whether they were victims of trafficking.

During the last few years, work with the young people by West Sussex SSD has revealed details of how the traffickers operate. Many but not all young people had taken part in voodoo or voodoo-like rituals before coming to the UK whereby they vow to do what they are told on the understanding that terrible things will happen to their families if they do not comply. The children had clearly been very carefully briefed before arriving: to destroy their travel documents; to ring certain telephone numbers; given maps of Gatwick airport; told what clothes to wear, what to expect and what stories to tell. Many young people in care were clearly terrified that they might be abducted or did not want to leave care when contacted by the traffickers. An Inter-Agency group was formed to address the problem. Once the Immigration Service identifies a young person thought to be at risk of trafficking, they are protected and not removed from the UK. They are referred to West Sussex SSD which operates a safe house for such children. There adults are present 24 hours a day and children are chaperoned when they go out. Education is provided in-house and cameras are located outside the premises. SSD explains the reasons for the protective measures to the children and involves them in the child protection plan. They are also able to meet with other children who had been trafficked at an earlier date and can reassure them as to the bonafide intentions of social services.

West Sussex is concerned about what might happen to young people if they are dispersed once they reach 18 and are no longer provided with any protection. They may then become vulnerable to abduction by the traffickers. Any possible return of a young person to their country of origin needs to be carefully assessed as they may be at risk of further victimisation or reprisals.

Significant numbers of Chinese children, boys and girls, are referred to the Refugee Council's Panel of Advisers (205 between 1/4/99 and 31/3/00) but rarely are Panel Advisers able to make contact with the children. Most Chinese children do not want to receive help from Social Services and seem to “disappear” within the Chinese community. It is known that some of these children are working in sweat shops or restaurants paying off large debts to traffickers. One Adviser stated she had only been able to contact two Chinese children out of approximately 50 who had been allocated to her. Often children give the same address but when the Adviser goes there either the address is not a bonafide one or no Chinese person is living there.

*One Panel Adviser went to an address where five Chinese girls were meant to be living. When she arrived all the girls ran away. By the time social services investigated, the girls had disappeared. It seems likely that they were involved in prostitution.*

Two other case studies gathered for this assessment involved boys from Turkey subject to debt bondage (see below) and a Nigerian girl forced into domestic slavery.

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<sup>37</sup> Kelly, Liz & Regan, Linda Ibid. p.19

Three boys arrived together from a Turkish village and were placed in accommodation in Kent. The next day a person claiming to be the relative of one of the boys made contact. The SSD asked the Panel Adviser to visit the relative's accommodation which he did and found suitable. Three months later the Panel Adviser saw the boy working in a shop. The boy told him that the other two boys were also working in a shop. The boy was earning only 50p an hour and the rest of his earnings went to repay the man who brought him to the UK. The Panel Adviser reported the case to the local SSD but nothing was done. One year later the boy called the Adviser - he said he would like to go and live with his father, now in the UK, but was afraid he would be killed if he stopped working at the shop.

(Panel of Advisers, Refugee Council)

### **Legal Situation in the UK**

The UK has not enacted any specific legislation with regard to trafficking in human beings. Currently child prostitutes, traffickers and those using child prostitutes are dealt with principally under sexual offences legislation, the 1971 Immigration Act, the Criminal Justice Act 1988 and the Proceeds of Crime Act 1995. In 1999 the Home Office and Department of Health issued joint guidance on children involved in prostitution which "*emphasises that children in prostitution are primarily victims of coercion and abuse and that therefore the emphasis should be on the care and protection of young people*"<sup>38</sup>. However, soliciting, loitering and importuning by children remain criminal activities. The Government has conducted a review of sexual offences and penalties with an emphasis on child protection and a consultation document on sexual offences. Since 1997 the UK has the capacity to prosecute the sexual offences carried out by UK citizens against children outside the UK, commonly referred to as "sex tourism". The Government stated in its second report to the CRC Committee that "*The UK has comprehensive laws to deal with those who engage in activities associated with trafficking.*" (para. 10.58.2) However, a recent study commissioned by the Home Office concludes that: "*Whilst law enforcement officers have been able to use existing law to prosecute traffickers and exploiters, the current legal framework requires modernising...New law should be drafted to aid detection and prosecution of trafficking with sentences that are likely to have a significant deterrent effect.*"<sup>39</sup>

The Council of Europe's Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, has recommended that

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<sup>38</sup> UK Government Second Report to CRC Committee, 1999, para. 10.52.3

<sup>39</sup> Kelly, Liz and Regan, Linda, Op.cit. p.11

the member states review their legislation and practice with a view to introducing and applying the measures described in Recommendation No R(2000)11 of the Council of Europe (19<sup>th</sup> May 2000).

The European Union is currently working on a Proposal for a Council Framework Decision on combating trafficking in human beings, and a Proposal for a Council Framework Decision on combating the sexual exploitation of children and child pornography. These are very much focused on criminal law and judicial proceedings. Article 8 of the Proposal on Trafficking relates to adequate legal protection for victims and ensuring that criminal investigations and judicial proceedings do not cause additional damage for a victim. This is considered to be weak and inadequate with regard to victims, however. A group of NGOs, including the International Save the Children Alliance, has called for measures addressing the human rights of trafficked persons. The UN High Commissioner for Human Rights and the UN High Commissioner for Refugees have made a joint representation to the EU Council which states "*The lack of reference to even basic protective measures for victims and witnesses of trafficking, as well as the omission of a saving clause concerning asylum-seekers and refugees, may create an impression that such protections are both unimportant and optional in the fight against trafficking*" (27 June 2001)

At the international level, the UK has signed up to the ILO Convention on Eliminating the Worst forms of Child Labour and the recent Optional Protocol to the CRC on the Sale of Children. The ILO Convention clearly includes trafficked children within its remit since extreme forms of child labour include "*all forms of slavery or practices similar to slavery such as the sale and trafficking of children...*". The Optional Protocol to the CRC on the Sale of Children focuses on the criminalisation of the sale and prostitution of children and international co-operation to combat it. Some NGOs are concerned that this Optional Protocol does not go far enough.

The UK also signed the Convention on Transnational Organised Crime, and the two accompanying protocols as soon as it opened in December 2000. The first protocol concerns the prevention, suppression and punishment of trafficking in persons - especially women and children, and the second concerns the smuggling of migrants.

The UK Government has made a clear expression of its commitment to action by signing up to these agreements. Following the introduction and adoption of so many European and international agreements in a short space of time, it would seem appropriate for the UK to review the full implications of the agreements it is signatory too, and to invite wide-ranging professional discussion about the way forward.

### Recommendations

- *Child victims of smuggling for exploitation should:*
- be treated as victims and provided with protection and rehabilitation. They should not be subject to criminal proceedings.
- be enabled to apply for asylum and asylum officials should be provided with guidelines on the determination of these cases.
- not be returned or deported to their home countries without a thorough assessment of the risks involved.

- Social services departments should be alerted to the existence of child trafficking which should inform their assessments. They should provide protective care for children at risk on similar lines to the system that has developed in West Sussex.
- a central data collection system on the trafficking of children needs to be established.
- a new legal framework on trafficking should comprehensively deal with all aspects of trafficking including specifically the trafficking of children and introduce stringent penalties that are likely to have a deterrent effect.
- UK foreign, development aid and trade policies should address the causes of trafficking and support education campaigns in the countries of origin.

### **6.3 Asylum Procedure**

*Statement of Good Practice:*

*Child appropriate asylum procedures should be developed for separated children who apply for asylum, including inter alia free legal representation by skilled individuals, prioritising of children's claims and clear rights of appeal; independent assessments of a child's ability to articulate a well-founded fear of persecution; interviews conducted by trained officers in non-threatening atmosphere; consideration of the ways in which children's experience will differ from adults, of child specific forms of human rights violations and the situation of the child's family; the liberal application of the benefit of the doubt. Children should be exempt from fast tracking measures relating to "manifestly unfounded claims", "safe third country" or "safe country of origin". (See, para.11)*

Far reaching changes have been made to the asylum procedures over the last seven years (see sections 3 and 5.1). While positive provisions for child asylum seekers have been introduced, the changes in asylum law and procedure have also had negative impacts on children. The most recent change, the Immigration and Asylum Act 1999 makes no reference to children in relation to the asylum procedure.

The developments which have improved the asylum process with respect to children can be summarised as follows:

- provision within the Immigration Rules (350-353) with regard to child welfare considerations vis interviews<sup>40</sup> and general guidelines on assessing a child's claim;
- a commitment that *"no unaccompanied child under the age of 18 will be removed from the UK unless there are adequate reception and care arrangements for them in their country of origin"* (Second Report to the UN Committee, para. 10.9.2);
- the establishment of a Children's Unit in March 2000 - this is a dedicated team of caseworkers who specialise in children's applications. (The previous Unaccompanied

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<sup>40</sup> Children will not be interviewed about their asylum claim if it is possible to obtain sufficient information to properly determine their application. Where interviews do take place the child must be accompanied by a responsible adult and the interviewer must take account of the child's well being during the interview.

Children's Module in the Asylum Directorate which handled children's claims was disbanded in 1998 following the establishment of the Integrated Casework Directorate and there was a subsequent drop in decisions taken on children's claims).

- there is currently a commitment to reducing the time taken for a decision on a child's claim;
- some training is provided to asylum officials and immigration officers but little is known of the content, quality and frequency of this training;
- the Home Office has provided funding for the Refugee Council's Panel of Advisers for Unaccompanied Refugee Children since 1994;
- the grant of immediate settlement to children and adults recognised as refugees;
- the grant of four years leave to remain/enter to children and adults with ELR;
- regulation of immigration advisers which appears to have significantly reduced the incidence of unscrupulous and neglectful representation.

A number of unsatisfactory areas within the asylum procedure remain unchanged, despite the issue of more detailed guidelines by UNHCR in 1997<sup>41</sup> which included the asylum procedure in relation to separated children.

Training of asylum and immigration officials regarding child asylum seekers should involve expertise from the voluntary sector and UNHCR. In the past individuals from the Refugee Council and the Medical Foundation have provided training but this is infrequent and not in-depth. It is highly desirable that regular training take place with inter-agency involvement.

The immigration rules state that when deciding a child's asylum claim, account must be taken of the child's maturity, more weight given to objective indications of risk and a child should never be refused because they are too young to have a well founded fear of persecution. However, these rules, according to Amnesty International: "*do not touch on the most important aspects of refugee status determination: the decision itself. Further, crucial elements of domestic practice in other areas of law are omitted, such as the "no delay" principle and the rules do not govern the behaviour of special adjudicators*".<sup>42</sup> (The "no delay" principle here refers to the Children Act 1989). The Panel of Expert assessors consists of child psychiatrist, psychologists and psychotherapists who have expertise in carrying out assessments of separated children with respect to their ability to articulate a well founded fear of persecution.

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<sup>41</sup> UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997

<sup>42</sup> Russell (1999), p. 34

Relatively few separated children are recognised as refugees, although a significant number do receive a grant of ELR. The Home Office does not compile separate statistics on determinations of applications by separated children. These should be published separately so that the situation could be reviewed.

Key aspects of the asylum process concern the interpretation of the definition of a refugee under the 1951 Refugee Convention and how the notion of persecution is construed. There is currently little guidance available to asylum caseworkers on how to include children within the refugee definition. In all cultures children's experiences and status differ from those of adults and it is not appropriate that their claims should be required to fit the paradigm of the supposedly more "typical" adult male applicant. (The same issues have arisen in respect of women asylum seekers who have also been disadvantaged). For example children commonly have a well founded fear of persecution because of the political activities of their parents or other family members<sup>43</sup>. They themselves may know little or nothing of the views or activities of the family member but they are none the less at risk. There are also many situations in which children, in particular, face serious harm, for example: forced conscription, being trafficked for exploitation and female genital mutilation.

Cecile is from an African country and the eldest in her family. Her mother had been involved in a political group fighting on behalf of women and marginalised people. Her father belonged to a different political party and when the government began to target members of her mother's political group he left his family since he was afraid he would lose his social position due to the activities of his wife. After that soldiers came to her house often. They beat Cecile, her mother and sisters and raped them all. Her younger sister became very ill afterwards. After one of these incidents Cecile's mother decided to send her away. Here in the UK she is very distressed thinking of her family and reliving scenes of violence and rape. She is terrified of being attacked here in the UK and fearful of sleeping. She has been unable to tell her story to her lawyer.

(Medical Foundation)

Persecution is not defined under the Refugee Convention, but the prevailing view is that refugee law should concern itself with the denial of core human rights as set out in the body of international law<sup>44</sup>. The Convention on the Rights of the Child sets out children's human

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<sup>43</sup> See Ayotte (2000) section 6.2.

<sup>44</sup> See James Hathaway *The Law of Refugee Status*, Butterworths, Canada, 1991, p. 108. Also the UNHCR Handbook para. 51

rights and the denial or violation of rights contained in the CRC can be seen as a standard of what might, if sufficiently serious, constitute persecution. Furthermore what might not be seen as persecutory in the case of an adult, may very well be in the case of a child who is more vulnerable, dependent and powerless. In the case of *Jakitay v SSHD*<sup>45</sup> the Immigration Appellate Authority found that the facts of the case did constitute persecution for a child, and “*In our view the same matrix of facts for an adult claimant do not necessarily lead to the same conclusion as they would for a minor.*” If children’s applications are to be fairly considered, caseworkers must be provided with guidance and training in order to consider the child’s perspective and the ways in which a child’s experience is relevant to the Refugee Convention. The Lord Chancellors Department has just issued gender guidelines to ensure that gender related persecution is fully considered within the asylum process. This will be helpful for children’s cases involving for example gender-related violence against girls. It may also open the door for consideration of guidelines on children. Amnesty International has produced a proposed set of such guidelines<sup>46</sup>.

The Home Office instituted a system of Country Assessments of countries from which asylum seekers come. There is concern that there is inadequate information on the situation facing children contained in these assessments and that as a consequence case workers are not in a position to judge the objective factors that might contribute to a child having a well-founded fear of persecution in particular countries.

### **Appeals**

There have been previous efforts to introduce child appropriate measures into the asylum appeals process. Unfortunately none of them have been implemented as a matter of firm policy. At present children’s appeals are considered in the same manner as those of adults and adjudicators receive no special training for hearing children’s cases. In other areas of law special procedures are put in place in recognition of children’s needs as vulnerable witnesses.

### Recommendations

- in camera hearings and holding hearings in less formal settings;
- consideration of how and whether a child will give evidence and the use of video-link facilities;
- consideration of the Immigration Rules on unaccompanied children and UNHCR 1997 Guidelines;
- guidelines on children’s cases for adjudicators including consideration on how to interpret the Refugee Convention in a child-specific way (see above);
- references to relevant determinations on children’s cases and child specific information on countries of origin;
- the appointment of a guardian ad litem or other suitable person to represent the child’s welfare;

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<sup>45</sup> Reported in Russell(1999), p. 44.

<sup>46</sup> See “Draft guidelines on the Examination and Determination of Asylum Claims by Children” in Russell (1999), also Ayotte (2000) section 6.2 and UNHCR guidelines.

- training of adjudicators and Home Office presenting officers.
- adjudicators for separated children should have a background in family law.

### **Immigration and Asylum Act 1999**

The Immigration and Asylum Act introduced a number of measures which affect children and here a few issues are briefly touched upon. Unfortunately an opportunity was missed to recognise the UK's commitments as States Party to the UNCRC, to introduce the child friendly measures advocated above and to end the detention of children (see section 4.4). The regulation of immigration advisers was widely welcomed, but no specific means of regulating those who provide immigration advice to children was introduced although this had been strongly recommended by SCUK based on research carried out in 1998<sup>47</sup>. The Act has also strengthened the Carriers Liability Act and there are concerns it will make it more difficult and risky for separated children to gain access to the UK. Some children have died in their attempts to come to the UK:

*In 1997 a 12 year old Kenyan boy stowed in the landing gear of a plane and was crushed when the wheel retracted. His body was found after the plane landed at Gatwick airport.*

During the last 10 years, the UK along with all other European states, has instituted measures<sup>48</sup> which make it more difficult for asylum-seekers to enter<sup>49</sup>. Existing criminal offences regarding those who seek to enter or remain in the UK by deception have been extended. Numerous factors oblige asylum seeking children fleeing danger to use false documents or to travel clandestinely, including the difficulty and danger involved in obtaining bona fide documents in many countries of origin, the requirement of a valid visa when there is no such thing as a refugee visa and the low levels of birth registration in certain countries. Furthermore the travel of many children is arranged by adults who provide children with documents: the child may have no idea if the document is false. The Refugee Convention (Article 31) recognises that asylum seekers must sometimes travel with false documents in order to flee from danger. It is incompatible with the Convention to criminalise children for the use of false documents and harshly punitive given the situations from which separated children have come. The 1999 Act has also reformed the asylum appeals system with the aim of speeding up the process. While this is welcome it will be important to bear in mind that children may have particular difficulties recounting painful histories which they are reluctant to remember and talk about. Additional time may be required to commission special reports to support their cases.

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<sup>47</sup> Ayotte (1998)

<sup>48</sup> These include visa requirements for all refugee producing countries, fines on carriers who bring in those without proper documentation and the use of Airline Liaison Officers who advise airline companies on detection of false documents.

<sup>49</sup> For discussion of these issues see: Morrison, John (1998) *The Cost of Survival: The trafficking of refugees to the UK*. Refugee Council and (2000) *The Trafficking and Smuggling of Refugees; The end game of European asylum policy?* UNHCR Geneva.

## Recommendations

- asylum caseworkers and immigration officers must be provided with in-depth and ongoing training on child welfare and asylum issues.
- guidelines should be developed on how to determine a child's asylum claim in relation to the definition of a refugee.
- the appellate authority should introduce child-friendly appeals procedures as outlined above.
- the HO should compile statistics on determinations on asylum applications by separated children
- there should be a Panel of accredited legal representatives who are competent to represent separated children in the asylum process.

## **6.4 Detention of Separated Children**

### *Statement of Good Practice:*

*“Separated children should never be detained for reasons relating to their immigration status. This includes detention at the border, for example, in international zones, in detention centres, in police cells, in prisons or in any other special detention centres for young people.” (Para. 6)*

The UK detains more asylum seekers than any other country in Europe - more than 9,000 per year - and UNHCR has criticised the UK for this practice. The UNHCR Representative in the UK and Ireland stated recently: *“It is quite staggering that for the past 20 years UNHCR in London has been urging the Government to abandon the practice of arbitrary detention for the simple reason that we think it inhumane and see it as a violation of basic human rights. So far we have been unsuccessful and far from improving the situation, there is a clear determination to increase the use of arbitrary detention and not just for people about to be removed after their asylum claim has failed.”*<sup>50</sup>

The Immigration and Asylum Act introduced changes into the way asylum seekers are detained. As before, asylum seekers can be detained without time limit and for any reason. The Act introduced the use of detention as a mechanism to aid the removal of failed asylum seekers and thus it can be expected that more people will be detained: indeed three new detention facilities are planned. All detained asylum seekers will now have two bail hearings, one week after detention and one month later if still detained, and they will have a new general right to be released on bail. Bail hearings do not examine the reason for detention, only whether the detainee is suitable for release. Children will not be released unless they can be given into local authority care or another suitable person.

There are ongoing concerns about the detention of separated children in immigration detention, young offender and prison facilities. The detention of separated children for reasons related to their immigration status or entry into the UK is incompatible with the principles of the Children Act, with the 1984 Police and Criminal Evidence Act and, in

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<sup>50</sup> Interview with Hope Hanlan in *In Exile*, Refugee Council, October 2000, p.5.

particular, Articles 3(3) and 37 of the UNCRC (deprivation of liberty). The only situation in which detention might be necessary, according to the Refugee Council, is: *“If within a prompt system of judicial overview by those skilled and experienced in work with children it is deemed that a child is likely to injure themselves or other persons.”*.. Since 1994 when the Panel of Advisers started its service, the Panel has seen over 220 children who were in detention. A Home Office spokesperson stated: *“There is an undertaking that unaccompanied children should never be detained other than in the most exceptional circumstances and only for a very short period. For example, it may sometimes be necessary to detain a child who arrives at an airport.”* This undertaking, however, does not appear to have been honoured, although it does seem there have been improvements in the last year.

Young people are being detained in a number of centres: Campsfield (Oxfordshire), Oakington Reception Centre (Cambridgeshire), Tinsley House (Gatwick), in Haslar and Rochester prisons and Feltham young offender facility. In most cases children are detained on the assumption that they are adults. This arises because the child is travelling on a false document giving her or his age as an adult. Many children who are smuggled for exploitation are told by the traffickers they must stick to the stories they have been given and threatened with dire consequences if they do not. Often children will eventually confide in a detention visitor that they are in fact under 18. With the child’s permission the visitor will contact the Panel who will work with the young person.

A child from West Africa aged 16 was told by compatriots that he needed to pay a solicitor in order to claim asylum. So instead of applying for asylum he started to work to save the money and was eventually arrested when he applied for a NI number. The police duty solicitor told him he had a right to legal aid. He was first interviewed by immigration and then by a doctor at the detention centre. He told both of them his true age although at the first interview he complained that the interpreter was not doing his job correctly. He was assigned a volunteer visitor and she referred him to the Panel of Advisers. Immigration claimed not to know he was under 18 until contacted by the boy’s solicitor. This means that neither the interpreter at the first interview nor the doctor had passed on information about his age. The Panel Adviser discovered that the solicitor had a valid birth certificate and had not shown it to Immigration. Once this was presented and validated the boy was released into the care of social services. He had been detained for nearly seven weeks.

(Panel of Advisers, Refugee Council)

In other cases a young person may have no documentation or may tell the Immigration Service that their papers are false and they are in fact under 18. Under these circumstances children have been detained, although Immigration Service staff at Campsfield or Tinsley normally refer them to the Panel. Staff in prison settings will not necessarily do this.

If a young person appears to be under 18 and has good legal representation they will normally be released within a few weeks or less. If not, a medical assessment (see section 6.5) is required and the Immigration Service normally only give credibility to reports from the Medical Foundation paediatricians who are not always available. Furthermore the Immigration Service will not in any event release a child on the strength of a positive medical assessment, so the case will have to go before an adjudicator. If the medical assessment strongly favours the view that the young person is under 18, then he/she will be released, but it will be more difficult if the medical report only states he/she could be under 18. Some young people do not know their exact age due to lack of birth certificates, or cultural factors relating to celebrating birthdays. One boy had lived in a refugee camp since about the age of six without any family members to tell him his age. One legal representative at the Refugee Legal Centre commented: “ *Disputed minors are often detained and the benefit of the doubt<sup>51</sup> is rarely exercised as it should be in such cases. The practice of the IS appears to go in waves. When there have been a number of cases which have been proved to be minors they are more careful for a while and then practice lapses again.*”

Thus separated children can remain in detention for as long as three or more months, which for a child represents a very long period. Separated children are detained following what are frequently long, exhausting and dangerous journeys at a time when they are trying to cope with the loss of family and country and facing an uncertain future in exile. Some have been exposed to violence and extreme suffering. Save the Children research in 1998 interviewed seven children, aged 13-17 who had been detained for periods ranging from one week to a year: “*All the young people felt strongly about their detention experience and said it had marked their whole experience here in the UK. They did not understand why they were in detention and felt criminalised although they had done nothing wrong. The problems they mentioned included: being incarcerated with adults, the length of time in detention, the lack of information and the living conditions. One said of his three month detention period: “The time I spent in detention was just like a year.”*”

Recent research<sup>52</sup> into the mental health implications of detaining asylum seekers has been carried out by an NHS trust. The conclusion states that:

“*Detention, based on the evidence presented, generates a climate of misinformation, threat, deterrence, lack of choices, punishment, criminalisation, powerlessness, adverse conditions, discrimination and so on and thereby recreates the oppression from which*

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<sup>51</sup> As recommended in UNHCR Guidelines, 1997.

<sup>52</sup> C K Pourgourides, S P Sashidharan & P J Bracken (1996), *A Second Exile: The Mental Health Implications of Detention of Asylum Seekers in the United Kingdom*, Northern Birmingham Mental Health NHS Trust, p. 99. See also Chapman, Nigel (1999) *Detention of Asylum Seekers in the UK: The Social Work Response*. Social Work Monographs, University of East Anglia, Norwich.

*people have fled. It places detainees in the predicaments parallel to those they may have faced under torture or previous detention. It maintains the mechanisms of persecution which precipitated their flight. Detention is therefore clearly abusive and inhumane. This report has presented compelling evidence against detention, which is a noxious practice which should be opposed on medical and humanitarian grounds.”*

An immigration Detention Centre “Compact” has been drafted by the Home Office which offers certain guarantees to detainees in relation to housing, food, recreation, protection from bullying and racism, provision of information, religious practice, pocket monies and work opportunities. In return detainees are expected to abide by a set of rules. The Compact is meant to be signed by the detainee and a detention centre official. There are penalties for detainees who do not comply with the terms of the Compact and should the detainee have complaints, they can approach their allocated “Personal Officer”. It is uncertain whether young people under 18 will also be expected to sign. It is probably unreasonable to expect separated children to engage in such a compact when they are in such particularly vulnerable circumstances in detention.

The reception detained children receive on release depends on the attitude of the local authority where the detention centre is located. Children who have been released into the care of West Sussex SSD and formerly Oxfordshire SSD have received good services and support. Recently responsibility for Campsfield detention centre has been transferred to Oxford City.

While it is to be hoped that guarantees of improved treatment will lead to less suffering among immigration detainees, it is regrettable that the incidence of detention is expected to increase. In the case of children, it can never be right to detain them together with adults, many of whom will be distressed and traumatised, looked after by staff who have not been vetted for their suitability or trained in looking after children and young people, without recourse to educational facilities and with their freedom of movement severely curtailed.

### Recommendations

- as soon as a person in detention is identified as possibly being a child they should be removed into local authority care pending any assessment of their age.

## **6.5 Age Assessment**

### *Statement of Good Practice:*

*There should be a presumption that someone claiming to be under 18 years of age will be treated as such. In making an age determination separated children must be given the benefit of the doubt. If an assessment of age is thought to be necessary it should be carried out by an independent paediatrician with appropriate expertise and familiarity with the child’s background. Examinations should never be forced or culturally inappropriate. Age assessment is not an exact science and a considerable margin of error is called for. (See Para. C5)*

The assessment of the age of a person claiming to be a separated child is currently an important issue in relation to: immigration detention (see 5.4), whether the individual's asylum application will be treated as a child's and the provision of local authority care. Thus officials in the Immigration Service, at the Asylum Screening Unit and in SSDs are involved in making decisions about the age of those presenting as separated children.

Unfortunately there appears to be a hardening of practice and attitudes in this area. A Home Office spokesperson stated that; *" We cannot accept the recommendation that anyone claiming to be under 18 will be treated as such. The age of a person is not easily determined in every case. This is especially so where individuals enter the country with documents which suggest that they are adults and later claim to be minors"*. A letter from the IND to the Refugee Council (June 2000) states that the department's practice has been revised in light of *"an increasing number of disputed cases."*

*"Henceforth where an asylum applicant has claimed to be an adult ....but subsequently claims to be a minor, the burden rests with the applicant to demonstrate that despite the earlier statement s/he is after all a minor. An applicant who has previously claimed to be an adult will only be accepted as a minor if her/her appearance clearly supports the claim to be a minor or s/he is able to produce conclusive medical and other persuasive evidence to substantiate the claim to be a minor... the new Statement of Evidence Form now warns the applicant against providing false information. Accordingly any information given on this form will normally be taken as a statement of fact and will be relied on in the event that the applicant subsequently disputes age."*

In section 6.4 the reasons why young people maintain they are adults were explored: they are normally fearful of deviating from what adults have told them to say, sometimes under threat of reprisals. In many instances the Home Office or the Immigration Service comes to acknowledge that the documents held by the young person are false but illogically maintains that the age contained therein is correct. There appears to be an unwillingness to understand the predicament of these young people and to impose even greater penalties on them despite the Refugee Convention's recognition that the use of false documents is often necessary to save lives.

According to Panel Advisers the Immigration staff at the Asylum Screening Unit (ASU, dealing with in-country applicants) in Croydon are generally reasonable in this respect, but there have been instances where an officer has stamped a child's form as a "disputed minor" and given the child a Self-Evidence Form (for adults) to complete rather than the Minors self-completion form. Such a decision is being made solely on the basis of a visual assessment by an untrained official, without any expert assessment.

Some local authorities do not accept that a young person is under 18 even though the IND has already done so and it is stated on the document from the ASU. Some do not take individual circumstances into consideration, such as where a child comes from, their previous experience etc but simply assess the young person by UK standards. Again a very significant decision is decided by an untrained official and without expert opinion being sought.

A voluntary sector respondent suggested: “ *Sometimes adults will claim to be children ...I would, in disputed cases, want to ask why a person would claim to be a child when they are not - could it be that they are expressing a need, for protection, for more support, a carer, access to education, time to get used to the system in a safe environment etc.*”

Clearly the radical changes to the ways in which asylum seekers are being supported enacted under 1996 and 1999 legislation (see section 5.8) does provide some incentive for adults to claim they are children in order to access better treatment. It is unlikely that under the previous regime where asylum seekers had entitlement to income support, that there would have been a significant number of adults claiming to be children. Nonetheless this situation of a small proportion of adults claiming to be children should not result in the penalisation of separated children as a whole whose welfare should remain the overarching consideration.

One local authority interviewee commented:

*“Some authorities have made a lot of fuss about age assessments, saying that they have accommodated people who have turned out to be over 18 years old. This has happened to us a few times, but the fact that it sometimes happens doesn’t seem to me to be a good reason for adopting a policy of not accommodating young people. What you do is to get to know a young person, find out about their life back home and the sort of things they did. You soon build up a picture of how old they are. Anyway, in our experience, when someone has been over 18 they quickly want to leave care when they realise they are going to be treated like a 15 year old and have to come in at 9 or 9.30pm!”*

The following case from a Panel Adviser illustrates some of the difficulties for children in establishing their age while in detention.

*“Child C arrived in the UK from Africa. He spoke some English, but he was not literate in any language. Child C was referred to the Children’s Panel by a member of the Charity BID. He was being held at Haslar Detention Centre but was transferred from there to Campsfield because BID had notified Immigration that they were holding a possible minor. I visited Child C and found he was frightened, confused and largely incoherent. He appeared very young one moment and very mature the next. I got his agreement to contact Social Services, his Solicitor and Immigration, on his behalf.*

*Child C had been interviewed as an adult and his Solicitor was not present at the interview. Child C phoned me to say that he was to have another ‘interview’. I suspected that this would be the reading of a refusal letter and explained this. I also explained that I could not go to the interview as I had another appointment, but I rang the Solicitor to check that he would be sending a representative. The representative did not attend and Child C told me that the Immigration officer did not read the letter to him, but simply handed it over and told him to sign at the bottom. As Child C is illiterate, he had no idea what was in the letter.*

*I phoned Immigration to point out that this young person was claiming to be a minor, but the Immigration Officer said that they did not believe this to be true and that, in the absence of any documentary proof, they would not release Child C without a paediatric medical. The Solicitor agreed to visit Child C after I pointed out that there were only four days to lodge an appeal after a Refusal Letter. We saw Child C together and the Solicitor agreed to refer Child C to the Refugee Legal Centre and to lodge an Appeal. She also agreed to contact the Medical Foundation to ask for a Paediatric Opinion as to Child C’s age, as Child C had no identifying documents and had no contact with his family. Social Services agreed to send a Social Worker to interview the boy. He was seen by a Medical Foundation Paediatrician; the Doctor phoned the next day to say that he will be writing a positive report. I went to see Child C with his new Representative from the RLC, who told Child C that as soon as she was able to forward a copy of the medical report to Immigration, she would also be pressuring them for his release. Child C was released after 10 weeks of detention. The Appeal Hearing was fixed and the RLC Representative asked for a ‘for mention’ hearing to deal with the issue of age before the main Appeal Hearing.*

*During the period before his Appeal Hearing, Child C absconded from the hostel. He was missing for a week and it took some time to track him down. When we eventually persuaded him to return to the hostel, he was obviously terrified as to what would happen at the Appeal Hearing. We had a message from the court to say that there was no need to attend tomorrow as his age has now been accepted.”*

(Panel of Advisers, Refugee Council)

There is a clear lack of overall policy and practice in this area and the treatment afforded those claiming to be children is erratic and too often reliant on inexpert judgements. As the Statement of Good Practice underlines, age assessment is not an exact science. A thorough assessment should involve not only physical factors and developmental indicators but also emotional and psychological development. These pose particular difficulties in relation to separated children since, for example, there are no reliable bone atlases available to assess the physical development of non-Caucasian children. Children from certain backgrounds may be more physically developed than indigenous children of the same age. Because of their experiences, eg. care of younger siblings, conscription, facing life-threatening situations, separated children often present as being mature by UK standards. Thus it is not acceptable that untrained officials should make an age assessment on the basis of how a child looks or behaves during a brief encounter. The Immigration

Service makes use of Port Medical Inspectors who have neither the background or paediatric expertise to carry out assessments. They must be undertaken, as required by the Statement of Good Practice, by paediatricians with the skill and background to give a considered judgement. Having said that, the fact remains that there is a considerable margin of error inherent in age assessments: they may err by a factor of at least two years in either direction. UNHCR guidelines call for the benefit of the doubt in such cases and it is crucial that this principle be upheld in those cases where an age assessment is indeterminate.

Finally under the Immigration and Asylum Act 1999 “*the Secretary of State may enquire into, and decide, the age of any person.*” (s.94(7)). According to the Medical Foundation<sup>53</sup> this gives the Secretary of State the legal power to determine the age of any asylum seeker where there is dispute and this power does not lie with any other body. Such a determination of age could be challenged by way of judicial review. Furthermore “*The Secretary of State himself can, as he has done in the past, decide that the person should be treated as under 18 without prejudice to the Secretary of State’s being able to argue at a later stage that the person is over 18. This allows the SS to ensure that no child is disadvantaged while an age dispute is debated.*” This is clearly the most humane and appropriate course of action and one that could be implemented immediately.

### Recommendations

- no judgements of age should be carried out by Home Office or local authority staff. Pending a resolution of an age dispute all alleged children should be treated as such.
- where thought to be necessary age assessments should be carried out by designated competent paediatricians in a culturally sensitive manner.
- the Immigration Service should release any disputed child in detention into the care of Local Authorities pending the outcome of an expert paediatric examination to determine probable age.
- bearing in mind the considerable margin of error involved in medical age assessments, the benefit of the doubt should be exercised in all disputed cases.

## **6.6 Family Tracing, Contact and Reunification**

### *Statement of Good Practice*

*Tracing for a child’s parents and family needs to be undertaken as soon as possible except in cases where tracing would endanger family members in the country of origin. States should co-operate with tracing agencies and separated children should be properly informed and consulted about the process. Where appropriate communication between a child and his or family should be facilitated.* (Para.C8)

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<sup>53</sup> Briefing prepared for the Barnardos Conference

*European states should facilitate family reunification between separated children and family members living in different European countries. This should occur in the state where the child's best interests will be met. (SGP, para. C9)*

*Applications made by a separated child for family reunion in the UK should be dealt with in a "positive, humane and expeditious manner" in accordance with Article 10 of the CRC. (SGP, para. C12.1.2)*

Despite the crucial importance of this issue, there is very little information available about family tracing and reunification activities carried out by UK agencies. Family contact and tracing occurs through the British Red Cross, International Social Service, Refugee Community Organisations and UK consulates abroad. The Home Office previously passed on details of every separated child who applies for asylum to the British Red Cross who had a confidential register of unaccompanied children in the UK. The register has been discontinued because they experienced difficulties compiling accurate information on children which would be of use. The British Red Cross uses two methods for family tracing and contact: the message service whereby individuals can send messages<sup>54</sup> out and tracing requests. There have been some positive results, but in a very small proportion of cases. International Red Cross do prioritise tracing requests from children but the security situation in certain countries means that they are not always able to make progress. Sometimes children get in contact with their families through other means. Assistance with family tracing is one of the mandatory services offered by local branches of the British Red Cross and headquarters is encouraging local branches to become more engaged with their local SSDs and refugee community organisations. As discussed in section 3.6 the Red Cross always ensures a child has consented to the tracing before proceeding. International Social Service can assist with making contacts with family members in another country and in obtaining a social report abroad in regard to family reunification. ISS has co-operative contacts with a range of services in more than 150 countries.

While family tracing is of great importance for separated children, there are no comprehensive and sensitive policy and practice guidelines which would inform and guide practitioners to assist children in this difficult process. The promotion of links with a child's family abroad varies amongst local authorities, for example, in terms of the value of phone cards, if any, provided to children. Some authorities and children themselves are not aware of the importance of checking out the likelihood that a child's home government may monitor international calls which could put their family at risk.

Sometimes contact and reunification takes place through fortuitous circumstances or through the actions of committed carers or volunteers, as illustrated in the following cases.

*"I was cooking when Mohammed shrieked in the lounge. I rushed in and he was pointing at the TV - a woman in a refugee camp was being interviewed through an interpreter. He was shouting "My mum, it's my mum!" I phoned the news programme and told them about Mohammed's mum. After a few days, the journalist phoned me*

<sup>54</sup> The International Committee of the Red Cross has a Website where messages can be left to trace relatives ([www.familylinks.icrc.org](http://www.familylinks.icrc.org)).

*and told them about Mohammed's mum. After a few days, the journalist phoned me who had been in the camp in Kenya and gave me the details of where it was. I phoned Mohammed's social worker who said she didn't have time to do anything about it so I went straight to the mosque where a lot of Somalis worship each day. One of them said he would make enquiries and in a few days, it was arranged that the relative of a friend of his who was going to Kenya would take a letter from Mohammed for his mum, Fatma. In just two weeks, there was a phone call - it was Fatma calling from an NGO worker's phone. She and Mohammed's little brothers and sister were all alive. After that, Mohammed was a changed boy - calmer and more confident."*

*(African Caribbean foster carer for Somali boy aged 14)*

*"My wife and I were fostering two siblings from our country. They had been split up from their parents in a security raid on the airport just as they were fleeing for Europe, and the agent had travelled with the children to the UK. They had no news of their parents. It was my job in the community to visit fellow nationals in immigration detention, and I was sure one man I visited in Rochester Prison must be the children's father. He showed me their picture and their stories matched up. I said nothing then, but contacted Social Services. It was all looked into thoroughly, he was their dad, and we were able to get him out of detention on compassionate grounds so he could be reunited with the children."*

*(Foster carer and volunteer in Refugee Community Organisation)*

## **Reunification**

Separated children have no clear entitlements to family reunification in the UK, whatever their immigration status, because official policy is based on bringing spouses and dependent children into the UK. *"There are no provisions in the immigration rules for adults to come to, or remain in the UK because they have children (under 18) born or living in the country who need their care."*<sup>55</sup>. In special cases separated children may apply to bring their parents to the UK but this is discretionary, based on compelling compassionate considerations and outside the family reunification policy. If family reunion and reunification in the UK are rare even for children with refugee status, this seems to be even more difficult for children with ELR (immigration rules involve a wait of 4 years for adults and children with ELR) and even more difficult for child asylum-seekers whose claim has not been determined.

The UN Convention on the Rights of the Child states that applications by parents or children to enter or leave a State for the purpose of family reunification are to be dealt with in a *"positive, humane and expeditious manner"* (Article 10). The UK's report to the Committee

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<sup>55</sup> Shutter, Sue (1999) *Immigration, nationality and refugee law handbook*. Joint Council for the Welfare of Immigrants, p.86.

on the Rights of the Child (1999, para. 10.12) makes no reference at all to the needs of separated children who are in the UK, for family reunification. The report only refers to the rights of adult refugees and those with ELR to bring in family members. While it may happen that applications for family reunion made by separated children are granted, this is exceptional and completely outside the rules.

This situation appears to be both anomalous and incompatible with Article 10 of the CRC. The Government has asserted in its report to the CRC Committee that the “*UK’s immigration and nationality law is entirely consistent with the Convention*” and that “*the Convention is not intended to establish any new rights in relation to immigration.*”. However, either a state’s law and policy are compatible with an article of the CRC or they are not, and State Parties are required to demonstrate to the Committee the manner in which they are working towards implementation of the Convention articles. To assert that one or more particular articles are not meant to result in any changes or modifications to a particular area of law is to say in effect that the articles are meaningless. An analysis of the UK’s record on family reunification rights for children was contained in a report to the UN Committee on the Rights of the Children published in 1994 by a coalition of UK NGOs<sup>56</sup>. Here it was clearly demonstrated that there are numerous provisions regarding family reunification as it affects both children in the UK and abroad which are incompatible with the CRC: most of these restrictive and discriminatory provisions continue to be in effect<sup>57</sup>. The fact that separated children with immigration status are not allowed to apply for family reunion with their parents or ascendants, whereas adults may apply for reunion with their descendants is clearly discriminatory. The rules regarding family reunion for separated children are neither “positive” nor “humane” as the CRC requires.

### **European Union**

The European Union is considering a draft directive on family reunification as part of the harmonisation measures in the immigration field. If applied in the UK this looks likely to positively enhance family reunion provisions in country for children with refugee status. The Directive proposes that separated children who are recognized as refugees in an EU state can apply to bring over parents or grandparents or, in their absence, other family members. However, the UK has negotiated not to opt in to this Directive and will therefore not be under any obligation to apply it.

The EU Commission will be bringing forward a draft directive on complementary or subsidiary protection (this would be expected to cover children with ELR) and it is intended that the issue of family reunification will be dealt with in this directive. The Commission has stated that “*It considers that persons in this category must have the right to family reunification and need protection*” (Amended proposal for a Council Directive on the right to family reunification 02/07/2001.)

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<sup>56</sup> Children’s Rights Development Unit (1994)

<sup>57</sup> See Shutter (1999) chapter 3.

## Recommendations

- separated children with refugee status and ELR should have clear entitlements to family reunification with their parents or legal/customary carers.
- separated children whose asylum claims are not decided within one year should be entitled to apply for family reunification
- where a separated child has no parents or legal/customary carers who can be brought to the UK (if they are dead, imprisoned, missing or unable to travel due to illness etc) then they should be able to bring over other relatives such as siblings and extended family members.
- the Department of Health should produce detailed practice guidance on family tracing and reunification.
- The UK should opt in to the more generous family reunification policy for separated children which the EU is considering through the draft directives

## **6.7 Guardianship for Separated Children?**

### *Statement of good Practice*

*As soon as a separated child is identified a guardian or adviser should be appointed to advise and protect separated children in a long-term perspective. Their role is to ensure that decisions are made in the child's best interests, that a child has suitable care, education, health care and legal representation, to consult with children and provide a link between the child and service providers, to assist the child with family tracing and to contribute to a positive durable solution. Guardians require training and specialist skills to carry out this role. (See Para. C3)*

For many years the question of guardianship has been discussed amongst those working with separated children. In the UK, there is no system of guardianship as exists in many other European countries. When children are provided with services under section 17 of the CA or accommodated under section 20, the local authority does not acquire parental responsibility for them. Local authorities only acquire parental responsibility for children who are at risk of serious harm and become the subject of a care order. In most cases this is not the case for separated children. However, problems can and do arise, for example when consent for a medical intervention is required and a child is considered too young to give it.

Organisations lobbying during the 1991-1993 period to establish what was to become the Refugee Council's Panel of Advisers had favoured a statutory service that would have given advisers the legal authority to insist on suitable provisions for separated children. In the end the Panel was established on a non-statutory basis. At the outset Panel Advisers were able to spend considerable periods of time with each child. The numbers of children arriving has increased dramatically over the last two years and while Home Office funding has also increased it is not sufficient to maintain the service at previous levels. Currently Advisers are on average spending only spend 12 hours with a child and a majority of cases are not allocated. In the year from April 1999 to March 2000, 2893 cases were not allocated to advisers, or 60 percent of the total number of children referred to the Panel. If a case remains unallocated after two months or the Panel has not been able to trace a separated child to inform them of the drop-in service, the case will be closed with the provision that the

case can be reopened if the young person requests help. Thus a service that was specifically created to provide advocacy for separated children and to provide for the appointment of an independent person to speak with and for the child (in the absence of their legal guardian), is restricted in its ability to do so.

Clearly, it is desirable that social services remain responsible for caring for separated children on a day to day basis and carrying out the attendant parental duties. However an increasing number of professionals and agencies concerned with separated children agree that it would be desirable for some form of guardianship to be established. The EU Council “Resolution on Unaccompanied Minors who are Nationals of Third Countries” (June 1997) states that Member States should provide legal guardianship or representation by a national organisation which is responsible for the care and well-being of the child or other “appropriate representation”. The EU Draft Directive on Asylum Procedures (when it becomes law it will be binding on the UK and other Member States) calls for the appointment of a guardian or adviser as soon as the child is identified. In UK law there is provision for the appointment of a guardian ad litem for children in public law proceedings under the Children Act. The *Guardian ad litem* ensures that the court is fully aware of issues relating to the child’s welfare, that the child’s wishes and feelings are known and also instructs the child’s lawyer. However, in contrast children in the asylum and asylum appeals procedures are not afforded this protection. In Canada a designated person is appointed for each child asylum applicant and serves a similar function to the *Guardian ad litem*.

Amnesty International comments: *“There are also compelling reasons of efficiency to appoint guardians for unaccompanied refugee children. If the elements of a durable solution are identified at the early stages of the asylum determination process, then that is both better for the child and healthier for the system as a whole by reducing time wasted.”*<sup>58</sup>

It is thus the case that there are no mechanisms in the UK that provide for an independent, legally empowered individual who ensures that a separated child’s entitlements are respected and their needs are met. In some situations the involvement of such an individual would be minimal because the quality of care, legal representation, education etc provided for a child are appropriate. Improvement in the care provided by social services would thus diminish the need for the involvement of guardians. Nonetheless since no legislation or policy, however good, can ensure this will always be the case guardians would provide insurance that separated children do not fall through the safety net or face discrimination or neglect. Given that this group of children are distinguished by the complete absence of their parents or usual carers, that they are in exile under painful circumstances, that they face a foreign and bewildering culture and language, that their right to remain in the UK has yet to be determined, the appointment of a guardian could be should be seen as a minimal guarantee for their safety and well-being.

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<sup>58</sup> Russell (1999), p. 52.

### Recommendations

- the UK should ratify the *Hague Convention of the Protection of Children 1996*. This provides *inter alia* for measures including guardianship that are required to provide effective protection for children who are outside their countries of nationality or habitual residence.
- a review should consider whether to place the Panel of Advisers on a statutory footing with consideration being given as to whether Panel Advisers should also acquire legal guardianship of separated children
- adequate funding for the Panel should be provided to enable them to be involved with each individual child until a child's claim is decided on an "as-needed" basis.

## **7. Summary of obstacles to and opportunities for realising the rights of separated children**

From the information presented in this report it appears that some long standing problems faced by separated children remain unresolved for example the detention of children and the lack of rights to family reunification, while in other areas such as care and age assessment initiatives are underway that may result in improvements. While the overall climate within the UK and Europe has been markedly unwelcoming to refugees and asylum seekers during the 1990s some shift in these attitudes may be brought about by the recent recognition<sup>59</sup> that Europe needs to significantly increase immigration in order to maintain its working age population over the next fifty years. Ministers have indicated that the UK Government may be beginning to rethink its closed door immigration policy. More positive rhetoric on the part of Government with regard to the need for and role of immigrants in UK society may also have a beneficial impact on the public perceptions of asylum seekers and refugees. The creation of fora concerned with refugee children and separated children is an encouraging sign of the increasing priority being given to this group of children. It is also unfortunately indicative, in some instances, of the inadequacies of Government policies and services that have called forth a response from the voluntary sector. Below are summarised the obstacles to and opportunities for realising the rights of separated children that are apparent in the current situation.

### **Obstacles**

#### **Asylum Policy and Asylum Seekers**

- the UK along with the rest of Europe has increased measures which prevent the arrival of some asylum seekers, refusing greater numbers of asylum applicants and reducing support whilst they apply for asylum.
- anti asylum seeker prejudice has grown during the 1990s and the recent policy of dispersal has increased the incidence of racism and xenophobia;
- the UK detains more asylum seekers than any other European state and is planning to expand its capacity to detain. At least 220 children have been detained in the last five years.
- the reservation to the CRC regarding immigration and nationality has been retained and defended by the present Government which shows no sign of wishing to withdraw it;
- there are no guidelines on the application of the refugee definition to separated children and the recognition rate for separated children remains low;

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<sup>59</sup> See UN study : *Replacement Migration: Is it a solution to declining and age-ing populations?* Population Division of the Dep't of Economic and Social Affairs, New York, March, 2000

- children with Convention status and ELR have no clear entitlements to family reunification;

### **Care system/Education**

- there is an overall lack of direction and co-ordination from central government with respect to provision for separated children;
- the care system is under strain due to cut backs over an extended period of time and a significant increase in the numbers of separated children coming to the UK;
- separated children have no legal guardians in the UK and are thus without an independent person who can ensure that their voices are heard and that they receive proper care and treatment;
- there is a lack of suitable accommodation for separated children;
- despite a clear duty in this respect there is a paucity of policies, training and planning for separated children in most Local Authorities;
- the treatment of 16 and 17 year olds as adults has become institutionalised in many local authorities.
- many separated children are being effectively excluded from education due to dispersal, difficulties with accommodation and out-of-borough placements. Their long-term educational futures are being put at risk.

### **Age Disputes**

- a culture of disbelief in respect to the age of those claiming to be under 18 has grown in some local authorities and amongst some immigration and asylum officials.

### **Exploitation**

- there is a marked growth in the traffic of children for exploitative purposes and UK law and policy is presently inadequate to address this problem.
- many separated children are in vulnerable situations without the support of a responsible adult and may become prey to those who would exploit them, for example in the sex industry.

## **Opportunities**

### **UK Legislation and Policy**

- the Human Rights Act 1998 presents opportunities to strengthen entitlements for separated children in several areas;
- the new UK gender guidelines for the asylum procedure may enable more girl children to receive protection under the 1951 Refugee Convention and also set a precedent that may open the way for the introduction of guidelines on children;
- the Quality Protects initiative and the New Assessment Framework are positive initiatives that can address many of the current lacks in care provision for separated children;
- the development of a more acceptable grant formula from central government should free up local authorities to develop better policies and practice in relation to separated children.
- the continued application of the DH guidelines (currently being revised) on separated children should provide a focus for local authorities to develop appropriate policies and practice.
- the importance of the role of local authority councillors as corporate parents has been strengthened by the Quality Protects initiative and this could be utilised to lobby at a local level.

### **Inter-departmental and inter-agency work**

- the broad government approach to combat social exclusion and to foster joined-up working between government departments ought to enable a more positive approach to ensuring that the rights of separated children can be met more appropriately;
- the development of joint working between the DH, HO and LGA is a promising start and should be further cultivated;
- the creation of the NGO Children's Consortium is a positive development and reflects the commitment to separated children and to joint working present within the voluntary sector, as do the variety of innovative projects that have been established.

### **Participation**

- the consultations with separated young people that are being carried out by Save the Children will provide an opportunity to hear their views and wishes and when the research is published autumn 2000 these should inform future policies and planning for separated children;

- Separated children can and do make a considerable contribution to UK society as do refugees as a whole. The qualities and life skills they have developed, in order to deal with the enormous hardships they have suffered, are assets that need to be recognised and supported.

## **Europe**

- discussions at a European level on the need for increased immigration into Europe may positively affect official and public attitudes towards asylum seekers and separated children;
- the Separated Children in Europe Programme provides an opportunity to enhance the rights of separated children on a Europe wide basis, to learn from and exchange with NGO partners in the programme and to benefit from the work of UNHCR a partner in the programme.
- The EU draft directives on asylum and immigration policy will come into force by 2004, providing welcome minimum standards and a common framework across Europe.

## **International Legislation and Policy**

- the ILO Convention on the Worst Forms of Child Labour provides some mechanisms for protecting child victims of trafficking;
- a new international instrument is available in the UN Convention on Trans-national Organised Crime and its two accompanying protocols - one to prevent, suppress and punish trafficking in persons, especially women and children, and the other against the smuggling of migrants. This was opened for signing in December 2000.
- An EU directive on the trafficking in human beings, the sexual exploitation of children and child pornography on the Internet is soon to be finalised; the Committee of Ministers of the Council of Europe has recommended that the governments of all Council of Europe member states review their legislation and practice on the trafficking of human beings for the purpose of sexual exploitation and ensure the issue is brought to the attention of all relevant public and private bodies.
- the provisions of the EU draft directive on family reunification will provide separated children with refugee status with clear entitlements to family reunification in most European countries; the forthcoming draft directive on complementary status is expected to include provisions for family reunification;
- ratification of the Hague Convention on the Protection of Children would provide mechanisms within the UK and between states signatories to the Convention that will enhance the protection of separated children;

## **Finally....**

Separated children need our help, care and commitment as well as a willingness to learn from them and work with them. The current picture, while presenting serious challenges clearly offers many opportunities to effect concrete improvements in the lives of separated children: what is needed above all is a willingness to effect change, action to bring together the relevant government departments, local authorities and voluntary agencies and the implementation of clear nation-wide policies that treat separated children as children first and asylum seekers or migrants second.

## 8. Agencies consulted in the preparation of this report

Home Office

Department of Health

Local Government Association

### Local authority Social Service Departments:

Belfast South & East Health & Social Services Trust

Cardiff City Council

Kent County Council

West Sussex County Council

London Borough of Camden

Royal Borough of Kensington & Chelsea

London Borough of Westminster

### Voluntary organisations

#### *National:*

Barnardos

British Red Cross

Children's Society

International Social Service

Medical Foundation for the Victims of Torture

Refugee Council

Refugee Legal Centre

Save the Children

#### *England:*

Asphaleia, Worthing

#### *Northern Ireland:*

ASANI

Belfast Legal Centre

#### *Scotland*

Save the Children (Edinburgh)

Scottish Refugee Council

#### *Wales*

Welsh Refugee Council

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## 10. Glossary

<b>UNCRC / CRC</b>	United Nations Convention on the Rights of the Child
<b>SGP</b>	Statement of Good Practice of the Separated Children in Europe Programme
<b>Panel of Advisers</b>	The Panel of Advisers for Unaccompanied Children run by the Refugee Council
<b>NGO</b>	Non-Governmental Organisation
<b>CA</b>	Children Act 1989 (legislation applying to England and Wales)
<b>ELR</b>	Exceptional leave to remain (an immigration status which confers protection for a limited period)
<b>ILR</b>	Indefinite Leave to Remain (an immigration status which confers protection on a long-term basis)
<b>LA</b>	Local authority
<b>LGA</b>	Local Government Association
<b>SSD</b>	Social Services Department
<b>SSI</b>	Social Services Inspectorate
<b>LEA</b>	Local Education Authority
<b>DfES</b>	Department for Education and Skills (within Government)
<b>DH</b>	Department of Health (within Government)
<b>HO</b>	Home Office (within Government)
<b>NASS</b>	National Asylum Support Scheme
<b>IS</b>	Immigration Service