

## Claiming asylum as a child

This fact sheet provides information on the asylum process for a child in the UK, including appeal rights and what different outcomes mean. It also outlines how other processes, such as the National Transfer Scheme, interact with the asylum process. It applies to all of the UK.

### Claiming asylum

The asylum process is complicated and children can find the process daunting, confusing and overwhelming over the course of the process. It is important that a child is supported throughout the process and has legal representation to help them navigate the complex system.

Children, like anyone else claiming asylum in the UK, can claim in two ways – either at port of entry (such as an airport) or 'in-country' (essentially any time after entry into the UK. For children, claiming asylum will normally occur at the national intake unit in Croydon or in other immigration centres depending on the location of the child.

The Home Office have recently published new guidance on children's asylum claims – 'Processing children's asylum claims'. [1]

The Dublin Regulation sets out which EU country is responsible for an asylum claim. Currently, if a child has claimed asylum in the UK, then their asylum claim should be considered in the UK, unless it is not in their best interests. See our fact sheet at [www.coramchildrenslegalcentre.com/resources](http://www.coramchildrenslegalcentre.com/resources).

Some children's cases will be complicated if their age is being disputed by the Home Office, local authority or both. For further information, see our fact sheet at [www.coramchildrenslegalcentre.com/resources](http://www.coramchildrenslegalcentre.com/resources).

### National Transfer Scheme

In July 2016 the national transfer scheme was introduced for unaccompanied asylum-seeking children arriving in the UK, so that children are no longer necessarily cared for in the local authority in

which they first present, but instead may be transferred to an authority with greater capacity on a voluntary basis. The Home Office published an interim national transfer protocol and flowchart to govern this scheme. [2]

In line with the new transfer scheme and after the welfare interview (see below), a referral will now also be made to the national asylum allocation unit for a child's case to be allocated to a case working team.

### The 'Dubs' amendment?

Section 67 of the Immigration Act stated that the UK government would make arrangements to relocate a specified number of unaccompanied children from Europe to the UK. This was in addition to the Middle East and North Africa and Syrian Vulnerable Persons' resettlement schemes.

This section is referred to as the 'Dubs' amendment as its main sponsor was Lord Dubs, a Labour peer who had escaped to the UK as a child fleeing the Nazis in 1939. His proposal was for 3,000 refugee children to be relocated from Europe. This number was not incorporated into the Immigration Act 2016 and the UK government later closed the 'Dubs' amendment route following the transfer of 350 children, although there was later found to be an administrative error by the Home Office (a further 130 were to be taken) and evidence of local authorities willing to take on higher numbers of unaccompanied children.

### Legal representation

A child or young person will need a legal representative to assist them to make their case for asylum to the Home Office. Under the UK Immigration Rules the Home Office is required to ensure that a child has legal representation and it is recommended that this be done before applying for asylum or as soon as possible. A legal representative should, along with having a thorough knowledge of asylum law and policy, have a special understanding of policies and procedures applying to separated

children, and skills in communicating with children and young people.

The legal representative must be regulated to provide immigration advice by either the Office of the Immigration Services Commissioner (OISC) or their registered body (e.g. the Solicitors' Regulation Authority). Legal aid is available for advice and representation on asylum issues and a legal aid adviser should be sought in order to provide the child with representation. The legal aid adviser must be regulated by the Law Society's Immigration and Asylum Accreditation Scheme (IAAS) to level 2 (senior caseworker) in order to work with children.

For more on legal representatives, see our fact sheet at [www.coramchildrenslegalcentre.com/resources](http://www.coramchildrenslegalcentre.com/resources).

A legal representative will also be funded to attend the welfare and substantive interviews with a child (a legal representative will not be funded to attend an interview with an adult). [3]

### Welfare interview & the statement of evidence form

When applying for asylum, a child will undergo a welfare interview and a series of checks. This was formerly called a screening interview. The process includes being finger-printed unless they are under five (if the child is under 16, there must be a responsible adult present when they are being fingerprinted). The child is also photographed and asked questions about how they travelled to the UK, details of their family history and (very briefly) about why they have come to the UK.

A responsible adult should be present during this interview. A solicitor can also attend the welfare interview. The welfare interview should not be used to explore the claim for asylum in detail.

During the fingerprinting process the child's prints will be checked on an EU database called Eurodac, which makes it possible to compare their fingerprints against those in the central database to determine whether the individual had previously lodged an asylum application in another EU country. If that is found to have occurred, a referral will be made to the third country unit.

A referral will also be made if the child states that they have family or relatives present in other EU member states under provisions in the Dublin III regulation.

During the welfare process the young person should receive immigration identification papers, including an Application Registration Card (ARC), a credit card-sized plastic card which includes the asylum claimant's photo and personal details. In practice, children do not always receive their ARC and instead later receive a letter inviting them to an immigration reporting centre in order to have their ARC processed.

All children will receive a blank statement of evidence form (SEF), which is the asylum application form that should be filled in with the support of a legal representative and submitted to the Home Office within the timeframe set out on the SEF, usually 28 days. If there is any uncertainty as to the date the SEF needs to be returned, this should be checked with the Home Office.

The Refugee Council's Panel of Advisers must be informed of an unaccompanied child's application within 24 hours of the application being made.

### UASC case review

The Home Office have recently introduced UASC case review events whereby, ten working days after a case is allocated, the social worker should be contacted to arrange a case review meeting. [4] The legal representative and a representative from the Children's Panel should also be invited to the meeting.

The purpose of the meeting is to check the progress of the claim – including checking whether the child has legal representation, explaining the family tracing process and checking on the progress of the case.

### Substantive asylum interview

All children aged 12 or over will normally be interviewed about the substance of their asylum application. A child under 12 can be interviewed if they are willing and deemed to be mature enough.

The purpose of the asylum interview is to establish whether or not the claimant is at risk of persecution

(for one of the five reasons outlined in the Refugee Convention) and/or serious harm or ill treatment that breaches Article 3 of the European Convention on Human Rights.

Interviewing children is difficult and most children will not clearly understand the purpose of the interview, or be able to relate events in the same way as an adult. Children invited to attend an asylum interview must be interviewed by a specially trained member of staff, and must be accompanied by a responsible adult. If needed, an interpreter must be present.

A responsible adult should be someone who the child trusts, and not a police officer, immigration officer, or an officer of the Secretary of State. It will usually be a social worker, or another member of staff of a local authority or voluntary sector organisation, a legal guardian or a foster carer. Their role is primarily to ensure that the welfare of the child is paramount in the process.

It is crucial that a legal representative is present to advocate on behalf of and represent the child and for the responsible adult to safeguard and promote the welfare of the child during the interview. The presence of both a legal representative AND a separate responsible adult is necessary as their roles are different. A legal representative should not take the role of responsible adult in a substantive interview.

The Home Office interviewer is required to have regard to the best interests of the child when making any decision on the child's asylum claim, including the interview, as a whole as encapsulated under section 55 the Borders, Immigration and Citizenship Act 2009.

### Asylum decision

The Home Office's current stated aim is to resolve initial asylum claims made by children within six months of an asylum claim being made.

When a claim has been decided, the decision maker must notify the claimant, local authority (where they have been notified of the case) and legal representative of the decision to the child.

The outcome will be one of the following:

- grant of asylum (refugee status);
- refusal of asylum but grant of humanitarian protection;
- refusal of asylum, humanitarian protection, unaccompanied minor leave but grant of leave for other reason (i.e. trafficking, family or private life);
- refusal of asylum and humanitarian protection but grant UASC (unaccompanied asylum-seeking child) leave (two and a half years or until 17 and a half, whichever is shorter); or
- refusal of any leave.

It is important to note that the decision should consider the risk of return of the child **at the time of the decision**. This means that if someone is refused asylum on the basis they will be returned as an adult (i.e. after their UASC leave would end), this is the incorrect. The same principle applies for an asylum appeal (see below). [5]

### Appeals

A child will normally receive an appeal right if he is refused asylum or humanitarian protection. This includes the right to appeal against a decision where a limited form of leave to remain (i.e. UASC leave) is granted after refusal or refugee status or other humanitarian protection status. This is sometimes referred to as an upgrade appeal.

Young people whose asylum applications are refused outright also have the right to appeal. An appeal must be made within 14 days of the decision being sent.

The recent case of *AM (Afghanistan) v Secretary of State for the Home Department* has highlighted the problems for unaccompanied children in the appeals process and the need for early consideration of issues in an individual's case – including any psychological, educational or psychiatric issues that may make it difficult for the child to give effective evidence at tribunal. [6]

If a child is refused asylum but granted UASC leave, it is important that they get legal advice on appealing the refusal as soon as possible. For further information on this type of leave, please see our factsheet on this type of leave at [www.coramchildrenslegalcentre.com/resources](http://www.coramchildrenslegalcentre.com/resources).

### Reporting

Some people going through the asylum process are asked to report to an immigration office or police station on a regular basis. This will most commonly be as a condition once an individual has been refused asylum or where a young person turns 18 and has not yet had their initial decision. Children should not be required to report.

There have been incidents where advocates have been successful in changing the reporting requirements of young people, for example, because of the distance to travel or medical reasons

For those children with UASC leave, the Home Office has issued guidance to its staff outlining that they must ensure that they establish an appropriate contact management strategy for each child. In the majority of cases it will be sufficient to maintain contact by telephone with the social worker until the young person reaches 17 and a half.

### NOTES

[1] Home Office, *Processing children's asylum claims*, July 2016

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537010/Processing-children\\_s-asylum-claims-v1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537010/Processing-children_s-asylum-claims-v1.pdf)

[2] See gov.uk website

<https://www.gov.uk/government/publications/unaccompanied-asylum-seeking-children-interim-national-transfer-scheme>

[3] Regulation 2, The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012

[4] Pages 28-30, Home Office, *Processing children's asylum claims*, July 2016

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537010/Processing-children\\_s-asylum-claims-v1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537010/Processing-children_s-asylum-claims-v1.pdf)

[5] See the cases of: *CL (Vietnam) v Secretary of State for the Home Department* [2008] EWCA Civ 1551 and *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123

[6] *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123. For further information, please see our case note, available here: [www.coramchildrenslegalcentre.com/resources](http://www.coramchildrenslegalcentre.com/resources)

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Email [mcpadvice@coramclc.org.uk](mailto:mcpadvice@coramclc.org.uk) or call 0207 636 8505.