**APPG on Refugees Enquiry: Refugees Welcome?
Inquiry into the experiences of new refugees in the UK
Coram Children’s Legal Centre’s response, 30 September 2016**

Coram Children’s Legal Centre (CCLC), part of the Coram group of charities, is an independent charity working in the United Kingdom and around the world to protect and promote the rights of children, through the provision of direct legal services; the publication of free legal information online and in guides; research and policy work; law reform; training; and international consultancy on child rights. Founded in 1981, CCLC has over 30 years’ experience in providing legal advice and representation to children, their parents and carers and professionals throughout the UK. The CCLC’s legal practice specialises in education, family and immigration law and CCLC operates several free advice phone lines including the Child Law Advice Line and the Migrant Children’s Project Advice Line. The Migrant Children’s Project at CCLC provides specialist advice and legal representation to migrant and refugee children and young people on issues such as access to support and services. As part of CCLC’s work to promote the implementation of children’s rights, CCLC has undertaken amicus curiae interventions in a number of significant cases, including in the European Court of Human Rights, the Supreme Court and the Court of Appeal, providing assistance to the court on matters of children’s rights and best interests.

CCLC firmly believes that the best interests of the child must be a major factor in all decisions about policy related to child refugees and migrants in the UK and should not be outweighed by considerations related to border control. CCLC welcomes the efforts made by the UK government to re-settle vulnerable children under their resettlement schemes, whether as unaccompanied children or as part of a family unit. However, it is crucial that those children who are re-settled in the UK and those who have claimed asylum in the UK are sufficiently supported in order to allow them to integrate and contribute to the UK, as well as ensure that best outcomes are achieved for all children. CCLC are particularly concerned that the support for unaccompanied children who have claimed asylum in the UK is neither as available nor as effective as that available for resettled children.

It is important to note that it is not possible to cover all the areas relating to the experiences of new refugees in the UK. CCLC’s response largely focuses on unaccompanied children and their early experiences in the UK, although some reference is made to children within families and their experiences.

Asylum system

For those re-settled under the Syrian Vulnerable Person programme (‘VPR’)[[1]](#footnote-1) and the children and adults resettlement scheme from the MENA region (‘MENA’)[[2]](#footnote-2), they will be granted humanitarian protection with five years leave to remain and are unlikely to face barriers in relation to the asylum system itself. The main legal or policy barriers for those granted humanitarian protection are around access to student finance and travel documentation.

A third re-location ‘scheme’ for unaccompanied refugee children in Europe was announced in May 2016[[3]](#footnote-3) and stated in section 67 the Immigration Act 2016 (this is often referred to as ‘the Dubs amendment’). The legal mechanism being used to bring children to the UK under the Dubs amendment appears to be the Dublin Regulation – either through the clauses relating to family members (articles 9-11) or the discretionary clause (article 17).[[4]](#footnote-4) Unless the child’s family member is a beneficiary of international protection, then the child may be granted leave in line with the family member. However, in most other circumstances, the child will likely need to go through the asylum process and have their claim decided by the Home Office. This will essentially put those brought into the UK through the Dublin Regulation on similar footing to those children who arrive unaccompanied in the UK and claim asylum.

The asylum process is extremely complex and those children, either arriving through the Dublin Regulation or unaccompanied, will struggle to negotiate the process without the required support, advice and representation. Unfortunately the standards of such services differ depending on children’s services, legal representation and other areas of support. The Principles to Practice (P2P) project considered how a child’s best interests were considered in the UK asylum system and one child who gave evidence stated that:

*“It’s like when you come here you are blind, then you get a stick to help you to go, because you don’t know the language, the words they don’t work, and you don’t know the way. By the time you find out, you are refused and all that, so it’s all mixed, and confusion and all that…”*[[5]](#footnote-5)

Unaccompanied children in the asylum process have to deal with various challenges and it has been found that there are many problems with the system, including:

* Too little emphasis on the needs of the child in the asylum process;
* A “culture of disbelief” when considering the age of the child;
* The lack of identification and support of many children trafficked into the UK;
* Inadequate consideration of children’s asylum claims, including their best interests;
* The lack of access to good quality legal advice and legal aid, particularly outside London; and
* The lack of guardians or consideration of guardians to support children.[[6]](#footnote-6)

Unlike in Scotland, there are no guardians or independent advocates in England for all separated and unaccompanied children. Evidence from the Scottish Guardianship Service and NIDOS guardianship service in the Netherlands shows that unaccompanied and separated migrant children (including confirmed and potential victims of trafficking) enabled those children to better access services, and provided someone to support them through a range of complex processes, including child welfare assessments, age assessments and asylum applications. The guardianship services not only informed children of these processes but improved the quality of the decisions, leading to more positive outcomes in the best interests of the child.[[7]](#footnote-7)

Age assessments and disputes continue to be a significant problem and cause significant delays in many children’s asylum claims and referrals as victims of trafficking. The UK government’s own guidance states that: *“Age assessments should only be carried out where there is significant reason to doubt that the claimant is a child. Age assessments should not be a routine part of a local authority’s assessment of unaccompanied or trafficked children.”*[[8]](#footnote-8) However, in practice this is very different, with recent statistics showing that in the second quarter of 2016, there were 216 age dispute cases out of 658 asylum applications, and this does not include children who are deemed by the Home Office to be significantly over 18 on the basis of the child’s appearance and/or demeanour alone.[[9]](#footnote-9) For further information on age disputes and the negative impact on children, please see CCLC’s 2014 report *“Happy Birthday?”*[[10]](#footnote-10)

A more recent issue for children arriving unaccompanied in the UK is the announcement of the National Transfer Scheme.[[11]](#footnote-11) There is currently an interim transfer protocol with an accompanying flowchart.[[12]](#footnote-12) The purpose of the scheme is to ensure that there is a more even distribution of caring responsibilities across local authorities so that some local authorities are not responsible for the vast majority of unaccompanied children. Those who have recently arrived, or will arrive in the future, will potentially be involved in transfer. It is important that the scheme is successful in promoting the best interests of the child and ensuring better outcomes. This will only occur if services and support are available in the local authority area and there is capacity for the number of children being transferred. This will include ensuring that social workers and foster carers are properly trained to work with unaccompanied migrant children; there are sufficient legal aid providers in the area; there is sufficient and appropriate accommodation; and there is access to other forms of support, including school and further education services, health services and support services.

Leave granted to refugees in the UK

We are further concerned by the types of leave being granted to both re-settled and unaccompanied children in the UK.

As noted above, those children who are re-settled in the UK under the VPR or MENA schemes are granted humanitarian protection. This is limited leave to remain in the UK for five years, following which the child or young person may be eligible to apply for indefinite leave to remain. However, being granted humanitarian protection rather than refugee status has a significant impact on the child’s ability to integrate in the UK.

One of the most significant barriers to integration is access to student finance. A child or young person granted humanitarian protection will be able to qualify for home fees in England if they are ordinarily resident in the UK on the first day of the first academic year of the course. However, that child or young person will not be able to obtain full student support in England unless they have been ordinarily resident in the UK for three years (in Scotland the three years ordinary residence is not a requirement).[[13]](#footnote-13) This rule is a serious barrier to education and integration for those who have been recognised as significantly vulnerable.

A major issue for unaccompanied children in the UK who have claimed asylum is where their asylum claim is refused. In this case, the child will often be granted limited leave as an unaccompanied minor (UASC leave) – for example in 2016 so far this type of leave was granted in 52% of all cases for children. This form of leave only lasts until the child is 17.5 years old or 2.5 years, whichever is shorter. Once a child reaches the age of 18, they will have lost the only reason they were granted this limited type of leave, because they will no longer be a minor.

It is important that children who are granted this type of leave appeal against the decision not to grant them refugee status or humanitarian protection when they receive their asylum refusal. However, in practice this often does not happen, either due to lack of quality advice or availability of representation. A grant of UASC leave is not a long-term solution for children and will place barriers to the child being able to integrate in the UK, including in education, employment and travel. The UNCHR & UNICEF have stated that *“While regularising immigration status, this temporary leave does not constitute a durable solution for the child but instead leads to an uncertain future. Evidence suggests it also can create barriers for local authorities in undertaking any meaningful long-term planning with the child.”*[[14]](#footnote-14)

Legal advice & legal aid

Following the Legal Aid Sentencing and Punishment of Offenders Act 2012, immigration law was largely removed from the scope of legal aid. This has meant that children, young people and families, who are unable to pay privately for legal services, are not able to use the justice system to secure their rights or access services to which they are entitled. Children are some of the most vulnerable in the system and the least likely to be able to access any of the limited alternative provision.

Although asylum advice and representation is still covered by legal aid, the removal of advice about immigration from the scope of legal aid means that those unaccompanied children who either need to make an immigration application or further leave to remain application may have to pay for legal representation (or the local authority will if the child is looked after and accommodated).

Furthermore, the provision of high-quality legal aid advice remains London focused with scant provision in other areas of the country. In December 2015, the Government reported on not-for-profits and found the majority of legal advice was provided within London.[[15]](#footnote-15) This matched the findings of the Justice Select Committee. This is a particular problem with a large number of children due to be transferred under the National Transfer Scheme (see above for further information). With provision already stretched in those areas where children are currently residing, for example in Kent, it is concerning that there will not be sufficient good quality, legal aid funded advice for unaccompanied children arriving in the UK and claiming asylum in many areas of the UK before and after transfer.

Family Reunion

A major barrier to integration for unaccompanied and re-settled children in the UK is lack of provision for children to be reunited with their family members. The rules on refugee family reunion in the immigration rules do not contain provisions for children to be reunited with their family. For a detailed examination of family reunion and problems for children, please see the ILPA briefing on the subject.[[16]](#footnote-16)

In summary, not allowing children to reunite with their parents, grandparents or siblings will continue the trauma and suffering of separation and loss. It is also extremely unfair that children do not have the same rights as parents; if a parent is granted asylum or humanitarian protection in the UK, their children can apply to join them. Delays in reunification of families can have a devastating impact; exposing the child or young person to trauma and mental health issues, and affecting their integration in the UK. It can further expose family members overseas to threats and debt bondage, and put them at risk of making the same dangerous journey the child had to make.

In the recent case of *AT and another (Article 8 ECHR – Child Refugee – Family Reunification: Eritrea) [2016] UKUT 227 (IAC)*[[17]](#footnote-17), the Upper Tribunal held that a child who had been granted asylum and whose family (mother and brother) had been refused entry to the UK on the basis of family reunion, breached the child’s right to family life under Article 8 of the European Convention on Human Rights. The Home Office has applied for permission to appeal but this case shows that there can be a disproportionate breach of Article 8 in cases involving children who are trying to reunite with their family. It is sometimes argued, in particular by the Home Office, that family reunion for children would encourage parents to send their children on the perilous journey to the UK in the first place, with no evidence to show that this is actually the case. It is important for a child’s integration in the UK, and ensuring the best outcome for the child, that an unaccompanied child, having been accepted as a refugee in need of protection, be able to reunite with his or her family members in the UK.

**For more information, please contact:**

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1. For further information, see Home Office, Syrian Vulnerable Resettlement (VPR) Programme, Guidance for local authorities and partners, October 2015 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472020/Syrian_Resettlement_Fact_Sheet_gov_uk.pdf> [↑](#footnote-ref-1)
2. <https://www.gov.uk/government/news/new-scheme-launched-to-resettle-children-at-risk> [↑](#footnote-ref-2)
3. <https://www.gov.uk/government/news/unaccompanied-asylum-seeking-children-to-be-resettled-from-europe> [↑](#footnote-ref-3)
4. <http://eur-lex.europa.eu/legal-content/EN/ALL/;jsessionid=jHNlTp3HLjqw8mqGbQSpZh1VWpjCyVQq14Hgcztw4pbfSQZffnrn!557467765?uri=CELEX:32013R0604> [↑](#footnote-ref-4)
5. Law Centres Network, Put yourself in our shoes, October 2015 <http://www.lawcentres.org.uk/policy/news/news/keep-children-s-best-interests-at-heart-of-asylum-system-new-report> [↑](#footnote-ref-5)
6. For further information see Joint Committee on Human Rights, Human Rights of unaccompanied migrant children and young people in the UK, May 2013, at <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf> [↑](#footnote-ref-6)
7. Heaven Crawley & Ravi KS Kholi, ‘*She endures with me’ An evaluation of the Scottish Guardianship Service Pilot*, 26 April 2013 <http://www.aberlour.org.uk/influencing_change/publications/519_she_endures_with_me_an_evaluation_of_scottish_guardianship_service> & NIDOS – Towards a European Network of Guardianship Institutions, 2010 <http://www.europarl.europa.eu/document/activities/cont/201110/20111019ATT29750/20111019ATT29750EN.pdf> [↑](#footnote-ref-7)
8. Department for Education, Care of unaccompanied and trafficked children, July 2014 at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf> [↑](#footnote-ref-8)
9. Refugee Council, Asylum Statistics, August 2016 <http://www.refugeecouncil.org.uk/assets/0003/8736/Asylum_Statistics_August_2016.pdf> [↑](#footnote-ref-9)
10. <http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday_Final.pdf> [↑](#footnote-ref-10)
11. <https://www.gov.uk/government/news/government-launches-national-transfer-scheme-for-migrant-children> [↑](#footnote-ref-11)
12. <https://www.gov.uk/government/publications/unaccompanied-asylum-seeking-children-interim-national-transfer-scheme> [↑](#footnote-ref-12)
13. For detailed information on access to student support, please see the UKCISA website ([www.ukcisa.org.uk](http://www.ukcisa.org.uk)) and CCLC’s factsheet on higher education: <http://www.childrenslegalcentre.com/userfiles/file/access%20to%20higher%20education_July2016.pdf> [↑](#footnote-ref-13)
14. UNHCR & UNICEF, What the UK can do to ensure respect for the best interests of unaccompanied and separated children, June 2016 [↑](#footnote-ref-14)
15. Ames, Dawes and Hitchcock, “Survey of Not-for-Profit Legal Advice Providers in England and Wales”, MOJ 2015 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485636/not-for-profit-la-providers-survey.pdf> [↑](#footnote-ref-15)
16. <http://www.ilpa.org.uk/resources.php/31782/ilpa-briefing-to-amendments-tabled-for-house-of-lords-committee-stage-of-the-immigration-bill-3-febr> [↑](#footnote-ref-16)
17. <http://www.asylumlawdatabase.eu/en/case-law/uk-and-another-article-8-echr-%E2%80%93-child-refugee-%E2%80%93-family-reunification-eritrea-2016-ukut-227> [↑](#footnote-ref-17)