

**Department for Education guidance 'Care of unaccompanied migrant children and child victims of modern slavery' – Consultation Response, March 2017**

Coram Children's Legal Centre (CCLC), part of the Coram group of charities, works in the UK and globally to protect and promote the rights of children through the provision of direct legal services; the publication of free legal information; research and policy work; law reform; training; and international consultancy on child rights. CCLC's Legal Practice Unit specialises in child and family law, education law, community care law and immigration and asylum law. CCLC operates the Child Law Advice Service (CLAS), providing free advice on family and education law, and the Migrant Children's Project, a centre of specialist expertise on the rights of refugee and migrant children.

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The Department for Education's consultation on this guidance asks:

1. Is there anything in the revised guidance which should be amended?
2. Is there anything further which should be added to the revised guidance?
3. Do you have any suggestions for further links or resources that could be included at Annex A of the guidance?

We welcome the opportunity to comment on this draft and hope that it is useful for you to have some suggestions of amendments (with explanations) outlined below. Our comments are in two parts; general observations about the guidance and some specific comments/additions listed under each section heading. CCLC also supports the Refugee Children's Consortium's response.

### **General Comments**

- The section on the best interests principle in this guidance is welcome, but comparatively little reference is made to the best interests of children throughout this document. The intersection between immigration control and children's welfare can cause confusion and practitioners would benefit from being reminded that the best interests of the child must be a primary consideration in all actions concerning them.
- In places, this guidance focuses disproportionately on children whose vulnerabilities arise from their experience of being trafficked, with less attention on, or explanation of, the needs arising from the experience of being unaccompanied and having insecure immigration status. The latter group of children are frequently seen as less in need of protection and support as their trafficked counterparts by social work professionals, so it is particularly important to strike the right balance when discussing how to support unaccompanied children.
- The sections on accessing legal advice and outcomes of the asylum application are inaccurate in places and so we have suggested some detailed edits. As this is one of the areas that can cause a lot of confusion for social workers and other practitioners it is vital that all the terminology and explanations are correct.

## Suggested changes/additions by section:

### Introduction

- This guidance covers all migrant children who are unaccompanied, including victims of trafficking, which is to be welcomed. However, it would be helpful to give readers a clearer sense of the experiences of those children in the wider group – the following paragraph is suggested:

*‘Each year, thousands of unaccompanied children claim asylum in the UK, having fled conflict, oppression and serious human rights abuses in their country of origin. Much less is known about the numbers of unaccompanied migrant children who do not apply for asylum but who are subject to immigration control in a variety of circumstances – for example, while some may have been trafficked for the purposes of sexual or labour exploitation, some children may have been brought to the UK for private fostering, and subsequently abandoned when the arrangement fails.’*

### Definitions used in this guidance

- Paragraph 8 could be helpfully amended as follows so that it clearly includes those seeking asylum:

*‘The cohort of unaccompanied migrant children and child victims of modern slavery includes a wide range of children with a variety of circumstances that a local authority will need to be aware of in order to ensure that the child receives appropriate legal advice and support. Some will have been ~~trafficked~~ persecuted and may have witnessed or been subject to horrific acts of violence. Other migrant children may not be in need of protection or may not have been trafficked but may have been sent in search of a better life, or abandoned in the UK. The terms below are used throughout this document with the following definitions:’*

### Local Authority Responsibilities

- The following paragraph could helpfully be added:

*‘Article 3 of the UN Convention on the Rights of the Child obligates local authorities and the Home Office to ensure that the best interests of the child are a primary consideration in all actions concerning the child. This guidance must be read with this principle clearly in mind. The principle of best interests should always guide your decision making and should frame a continuous assessment that starts from the moment the child is encountered and continues until such time as a durable solution has been reached.’*

- It is important to be clear that ensuring a child in their care is able to access timely and quality legal advice is a local authority *responsibility*. This has been the subject of a couple of Local Government Ombudsmen cases recently. In one concerning the Royal Borough of Greenwich,<sup>1</sup> the local authority failed to assist a child in care to obtain representation and regularise her status. Greenwich was found to have failed in its duties, owing compensation of £5,000 and an apology. It was also told to improve practice and ensure staff were sufficiently trained. A similar finding was made against Dudley Metropolitan Borough

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<sup>1</sup> (13 019 106): 19 January 2016. <http://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/13-019-106>

Council<sup>2</sup> when the local authority failed to obtain quality legal advice for two children in care around citizenship.

### **Training and awareness**

- Paragraph 18 is important in setting out the knowledge required of local authority staff, as well as signposting staff to obtaining legal advice for those children in their care. However, it should be clearer when discussing asylum cases that immigration applications and processes are different. There should also be clearer information about legal aid and the regulations around this – particularly that legal aid is available for asylum cases and that only those with the IAAS qualification level 2 can provide children with such advice under a legal aid contract. The following changes are suggested:

*18. Social workers' knowledge of the ~~asylum immigration application~~ process should include an understanding of the Welfare Interview, Statement of Evidence Form, the purpose of the asylum case review, the importance of the substantive asylum interview, the different possible outcomes of a child's asylum claim and how that impacts on pathway planning. The social worker should also have an understanding of the immigration system and how it interacts with the asylum process – for example the immigration application process, human rights, different types of leave, making further leave to remain applications and the appeals process. Social workers must also have an understanding of the trafficking referral process and nationality law.*

*~~know, and~~ One of the most crucial aspects of the social worker's role is how to access specialist asylum and/or immigration legal advice and representation for all unaccompanied children and child victims of modern slavery, including those who may not have asylum cases. This specialist advice will be required to ensure the child can fully present their case for asylum or leave to remain. Legal advice about immigration must be provided by a registered immigration adviser, who is either a regulated solicitor or registered with the Office of the Immigration Services Commissioner (OISC)<sup>23</sup> to provide immigration advice to the relevant level. For example, to advise on issues such as asylum applications, out-of-time applications for leave to remain or applications for citizenship, the adviser would need to be competent to provide advice to OISC level 2. Ideally, the adviser would specialise in working with children as well. Details on where to find legal representation can be found using the Adviser Finder function on the OISC website.*

*It is important to note that legal aid is available for asylum cases and children in care will be eligible for legal aid. The local authority will normally be asked to provide written confirmation of the support provided to the child in care by the legal representative. Anyone providing immigration legal services to clients under a legal aid contract from the Legal Aid Agency must additionally be accredited within a scheme called the Immigration and Asylum Accreditation Scheme, which is operated by the Law Society. Those providing legal aid services to unaccompanied asylum-seeking children, must be accredited to a certain level within that scheme - at least to level 2: senior caseworker.*

*~~For example, to advise on issues such as asylum applications, out-of-time applications for leave to remain or applications for citizenship, the adviser would need to be competent to provide advice to OISC level 2. Ideally, the adviser would specialise in working with children as well. Details on where to find legal representation can be found using the Adviser Finder function on the OISC website.~~*

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<sup>2</sup> (15 015 327): 19 May 2016

## When is a child a victim of modern slavery?

- In paragraphs 27 & 28, the guidance sets out the situation for a child who is identified as a potential victim of modern slavery. However, the guidance neither specifies that a child can receive leave to remain on the basis of being conclusively identified as a victim of modern slavery, nor that a conclusive decision will be important in relation to any asylum claim that the child victim of modern slavery may have made. The following addition is suggested:

*'28. If the child receives a positive conclusive grounds decision they should continue to be treated as if they have the status of a child victim of modern slavery and receive all the relevant support associated with that status.'* *When a child receives a positive conclusive grounds decision, the Competent Authority should consider whether they require a residence permit. This would be a renewable residence permit, granted for a minimum of 12 months and up to 30 months (2 ½ years). However, they do have discretion to provide a permit for less than 12 months or more than 30 months should it be considered appropriate.'* A child could argue for a longer period of leave in these circumstances on the basis of ensuring a durable solution for the child victim of trafficking.

*It has also been recognised that a victim of trafficking/modern slavery or former victim of trafficking/modern slavery may be recognised as a refugee or be entitled to subsidiary protection.'*

## Age determination

- The 2014 edition of this guidance from the Department of Education stated that:

*'Age assessments should only be carried out where there is **significant** reason to doubt the individual is [the age they claim]'* (emphasis added).

The current version of the guidance leaves out the word 'significant' – this should be added back in.

The phrase 'significant reason' is important in the context of ensuring that age assessments are not carried out as a matter of course. A young person not having ID may be a 'reason' to doubt they are the age they claim, but not necessarily a 'significant reason'. This phrase is also used in the ADCS Age Assessment Guidance, which the DfE guidance rightly cites and which was recently praised in the High Court, the Judge stating that, in part *'because of the expertise of its authors', 'it is plain that the ADCS Guidance is relevant to any consideration of whether the Defendant had cogent reasons for departing from the Statutory Guidance.'*<sup>3</sup>

## National Transfer Scheme

- A number of children in the NTS currently are finding long delays between arrival and transfer. While it is presumably more appropriate to include timescales in the National Transfer Protocol, this guidance could helpfully include the reminder:

*'Transfer of a child must only take place when it is in the child's best interests and in a timely fashion.'*

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<sup>3</sup> *R(S) v Croydon* [2017] EWHC

## Assessment

- The following sentence should be added to paragraph 35:

*'It is important to note that in the context of age assessments, an ADCS-Home Office information-sharing protocol has been produced – for more information, see the ADCS Guidance on Assessing Age'*

- We suggest that paragraph 42 be amended as follows:

*'No assumptions should be made about the child's language skills and interpreters will often be required. It is essential that any interpreter used speak both the correct language and dialect.- Interpreters ~~Where interpreters are required, they~~ should be appropriately trained to understand the particular issues the child may face. ~~In particular~~ For example, "trafficking, slavery, servitude and forced or compulsory labour" may not translate literally or easily as concepts, and may need to be expressed in a different way to ensure the child fully comprehends their situation. Ideally a trusted service should be used and c~~Care~~ should be taken and appropriate checks made to ensure that the interpreter is not linked in any way with those who may have been involved in the child's trafficking or exploitation.'*

## Family Tracing

- The perception can be that if an unaccompanied child has family in their country of origin they can simply return, and little mention is made of family assessment. In that context, the following addition is suggested:

*'49. Where a child maintains or renews contact with a family member in their home country or a third country this is not necessarily an indication that there is therefore no risk to the child (or the family). Family tracing should be understood as a preliminary stage in determining the potential reunification of a child and their family, and a detailed family assessment will always be required.*

*Guidance on local authority roles and responsibilities towards children reunited with family, including under the Dublin III regulation, is described in the Department for Education (2010) Family and Friends Care: Statutory guidance for local authorities.'*

## Care planning

- The section on education is very clear and helpful. It might be beneficial to emphasise in paragraph 54 that most of these children learning English will be essential so that they have a better understanding of everything else that is happening to them, and to minimise the risks that are associated with not being able to communicate.

## Planning, Protection and Placement

- This section focuses on accommodation and planning for child victims of modern slavery, and could benefit from a more general section on how to provide the right support for unaccompanied children more generally. The following addition is suggested:

*'Accommodation provided under section 20 of the Children Act must be suitable; it must, as far as practicable, meet the needs of the particular child, and take their wishes and feelings into account. Some forms of accommodation – including B&Bs and hostels – are accepted as being unsuitable for any child in need.'*

Children under the age of 16 are often placed in foster care and 16- and 17-year-olds are frequently placed in semi-independent accommodation with more limited support. It is important to note, however, that some older children require more intensive support and there is nothing that prevents a local authority from placing an older child in foster care or keeping them in a foster placement. The location of accommodation should not unduly disrupt the child accessing education or their support network.'

### Planning transition to adulthood

- Paragraph 73 should be amended in light of suggested changes to paragraph 18 (see above)
- Paragraph 75 – this section does not adequately reflect the different outcomes for all unaccompanied migrant children, and in some places the terminology is inaccurate. Suggested changes below:

75. There are four main possible outcomes of the asylum or immigration process for an unaccompanied child, which will determine what the durable solution might be, and they are outlined below including the impact they may have on care and pathway planning.

I. ~~Granted refugee status (i.e. granted asylum), with limited leave to remain for five years, after which time the [child or](#) young person can normally apply for ~~permanent residence~~ [settlement](#) (i.e., ~~settlement~~: indefinite leave to remain).~~

II. ~~Refused asylum but granted humanitarian protection, with limited leave to remain for five years, after which time the young person can normally apply for [settlement](#) ~~permanent residence~~ (i.e. ~~settlement~~: indefinite leave to remain). This is most commonly granted where the person is at risk of a form of 'ill treatment' in their country of origin but which does not meet the criteria of the Refugee Convention.~~

~~Those granted refugee status or humanitarian protection are normally granted five years' limited leave, after which time they can apply for permanent residence. As it is very likely that those granted refugee status or humanitarian protection~~ ~~ey~~ will qualify for ~~permanent residence~~ [indefinite leave to remain](#), their care and pathway planning should primarily focus on their long-term future in the UK, in the same way as for any other care leaver.

III. ~~Refused asylum but granted Unaccompanied Asylum Seeking Child (UASC) Leave. This is normally for 30 months or until the age of 17½, whichever is the shorter period. This form of leave is granted to unaccompanied children where they do not qualify for refugee status or humanitarian protection, but where the Home Office cannot return them to their country of origin because it is not satisfied that safe and adequate reception arrangements are in place in that country. It is a form of temporary leave to remain. [It is important to note that this decision is a refusal of the child's asylum claim and will attract an appeal right. The child should be assisted to obtain good quality legal advice on appealing such a refusal.](#) Before the child's UASC leave expires, they can submit ~~a further asylum claim or other human rights an~~ application for further leave to remain [and/or a fresh claim for asylum](#), which will be considered. It is ~~important essential~~ [that they are assisted to access legal advice and representation and make this application before their current leave expires. that planning should cover any action or support required to enable the child to do so in a timely way, in conjunction with their legal adviser.](#)~~

In such cases, care and pathway planning should therefore consider the possibility that the young person may have to return to their country of origin once their current leave expires or that they



may become legally resident in the UK long-term (if a subsequent application or appeal is successful). Planning should also cover the possibility that they reach the age of 18 with an outstanding application or appeal and are entitled to remain in the UK until its outcome is known.

IV. Refused asylum and granted no leave to remain. In this case the unaccompanied child is expected to return to their country of origin and their care plan will need to address the relevant actions and the support required. The Home Office will not return an unaccompanied child to their country of origin unless it is satisfied that safe and adequate reception arrangements are in place in that country. Any appeal or further application should be submitted where appropriate by the child's legal adviser.

Although these are the four main types of outcomes for an unaccompanied child, there may be others. As discussed above, a child may be granted discretionary leave following being conclusively identified as a victim of trafficking. Other examples include: leave as a stateless person; limited or discretionary leave for compassionate reasons; and limited leave on the basis of family or private life.

Pathway plans should always consider the implications for the young person if their asylum claim is refused without a grant of leave, if their application to extend their leave is refused or if their appeal against a refusal is dismissed. In such circumstances, the person will become unlawfully present in the UK and be expected to make plans for a return to their country of origin. A plan for a return to their country of origin may also need to be made at any other point, should the care leaver decide to leave the UK.'

#### **Access to welfare benefits, ~~and other public funds~~, education and employment**

- We suggest amending the title of this section, as education is not a public fund.

#### **ANNEX A**

- Please amend as follows:

*The Migrant Children's Project advice line at Coram Children's Legal Centre  
Provides specialist advice to professionals, young people and families on the rights and entitlements of asylum-seeking, refugee, trafficked and migrant children and young people:  
Phone: 0207 636 8505 (~~Monday to Friday~~ Tuesday to Thursday 10am to 45pm) Email:  
mcp@coramclc.org.uk*

*Coram Children's Legal Centre, 'Seeking Support: A guide to the rights and entitlements of separated children' [www.seekingsupport.co.uk](http://www.seekingsupport.co.uk)*

- Please add to the Training Section:

*'Coram Children's Legal Centre offers a range of training courses on supporting unaccompanied refugee and migrant children and young people's rights for professionals and practitioners, aimed at service-providers in the statutory and voluntary sectors and all those working with or supporting children, young people and families including social workers, advocates, independent reviewing officers, support workers, teachers, foster carers, mentors, advisers and volunteers. For more information, see [www.coramchildrenslegalcentre.com](http://www.coramchildrenslegalcentre.com)'*