

Family tracing

This fact sheet provides an overview of the law relating to family tracing for children, including the duty on the Home Office to trace, practical steps and the effects of no tracing being carried out.

If you have any questions about family tracing relating to a refugee or migrant child or young person, you can call our Migrant Children's Project advice line on 0207 636 8505 or email mcp@coramclc.org.uk.

Family tracing

There are a number of ways in which an unaccompanied child may have been split from their family. For example, they may have fled persecution following the death of family members, been sent away by family for their own safety or lost their family on the journey from their home country.

Losing contact with their family can have a devastating impact on children and young people, particularly on their mental health and support networks.

The obligation on countries in the EU to trace the family members of unaccompanied children is outlined in the EU Directive on minimum standards for the reception of asylum seekers.

This Directive states that,

Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. (emphasis added) **[1]**

The Directive notes that where there may be a danger to the child or their close relatives, care must be taken to ensure that any contact and the collection of information is undertaken confidentially. This will be particularly relevant where family members remain in the child's home country and may be placed in danger should information be shared in that home country.

Family tracing is a difficult process and consideration of a child's views and consent to tracing should always be at the forefront of any discussion of the appropriateness of tracing.

Home Office duty to trace

The EU duty to trace is incorporated into UK regulations for the reception of asylum seekers. This re-iterates the Home Office's obligation to endeavour to trace family members where it is in the child's best interests. **[2]**

Furthermore, the Home Office is under a duty to safeguard and promote the welfare of children under section 55 of the Borders, Citizenship and Immigration Act 2009 in all decisions made where a child is involved.

The Home Office has published guidance on assessing an asylum application made by a child and this outlines how a decision maker at the Home Office should effect family tracing. **[3]**

Important aspects of the Home Office guidance include:

- The case owner must understand the nature of the asylum claim and gauge the risk to the child or his/her family;
- In some cases a direct telephone call to parents may be appropriate when it is clear that this would not place either the parent or child at risk; (emphasis added)
- The child may not want to be re-united or even contact his family and the Home Office must adhere to their duty of confidentiality towards the child;
- The case owner must take into account any child protection issues that may make contacting the family inappropriate; and
- All tracing efforts should be noted on file and updated as necessary.

The Home Office will also consider whether re-unification with family members is possible and desired by the child.

Case law has held that the state's duty, while independent of the asylum claim, may be relevant to the claim because information obtained during an attempt to trace family members may cast light on whether the child will or will not be at risk if returned to their country of origin. [4]

Family tracing and family reunion should only be considered and undertaken if it is in the best interests of the child to do so.

Effect of failure to trace by the Home Office

There have been a number of cases in recent years which have considered the failure by the Home Office to trace family members of unaccompanied minors. This is particularly relevant where a child was refused asylum and has now turned 18.

Appeals were raised on the basis that the Home Office's failure to trace had led to an historical injustice which could only now be corrected by granting the appellant leave to remain. [5] In the case of tracing it was argued that former unaccompanied children who were now adults had suffered injustice as tracing could have led to corroboration of their asylum claim and a different decision could thus have been made at the time of the decision on their asylum claim.

In *KA (Afghanistan)*, six young Afghan asylum-seekers argued that their asylum claims had been undermined by a failure of the Home Office to trace their family. The court held that just giving children the details of the Red Cross family tracing facilities was not enough and that the failure to endeavour to trace may have had a negative impact on those appellants' cases. [6]

However, in *EU (Afghanistan)*, when the same six cases came to be re-considered, it was held that no leave could be granted unless it is shown that on the particular facts there is causative link between the Home Office's breach of duty to trace and the individual's claim to protection. It was held in those six cases that there was no such link. [7]

The Supreme Court re-affirmed the principle that asylum applications should be decided on the facts existing at the date of the decision 'without exception'. Any grant of leave to correct an injustice caused by the Home Offices failure to act only relates to cases where the decision-maker is applying their discretion rather than following specific criteria. [8]

Therefore, although there appeared to be further scope for arguing for leave on the basis of the Home Office's failure to trace after *KA (Afghanistan)*, the courts have subsequently significantly closed this avenue.

Dublin III Regulations

The Dublin Regulations set out which country in the EU is responsible for considering an asylum claim made by a non-EU national. The most recent regulations came into force on 1 January 2014. [9]

Tracing could play an important role in determining where a child's asylum claim is considered within the EU and allow the possibility of reuniting families within the EU.

For example, a child may flee with her family from their home country and subsequently be separated from her family on the journey. The child may enter the UK and claim asylum. The child's family may be traced to another EU country, such as Germany. The child would then normally be re-united with her family in Germany, unless it was determined not to be in her best interests.

Another example would be if a child arrived in the UK and claimed asylum. Subsequent checks by the Home Office lead to information that his older brother is a refugee in Sweden. Again, subject to a determination of the child's best interests, the UK may seek to re-unite the child with his brother in Sweden.

For more information on the Dublin III regulations please see the MCP fact sheet at: <http://bit.ly/25w5ww2>.

British Red Cross

A child should be informed that they may be able to trace their family if they so wish. It is important that the child or young person makes an independent and informed decision as to whether to start an international tracing enquiry. They must not be coerced or feel pressured into undertaking one.

When a child wishes to try to trace their family overseas it may be appropriate to contact the British Red Cross International Tracing and Messaging Service. **[10]**

This service aims to restore contact between family members who have been separated by conflict or disaster. The British Red Cross is entirely independent from the Home Office.

Initial enquiries can be made by the child or young person going to a local British Red Cross branch. They can be assisted in doing so by a social worker, foster carer, advocate or support worker. To locate the nearest branch, please follow the link in the endnotes below. **[11]**

Only specially trained staff at the British Red Cross, who have passed a Disclosure and Barring Service (DBS) check, will conduct interviews with a child, and all information disclosed will be confidential.

The British Red Cross will only accept requests which are made voluntarily and directly by the child or young person. They are unable to accept requests from third parties or those working with the child or young person.

The outcome of a family tracing procedure will be communicated to the child or young person directly. It is important to note that the British Red Cross cannot give guarantees regarding the outcome of tracing enquiries.

Tracing can be a difficult process, particularly when attempting to trace in war-torn countries. Children and young people may also receive news about family members that they are not prepared for. The British Red Cross will normally write a letter confirming any outcome of tracing and will normally advise that they will continue to attempt to trace family if unsuccessful at that stage.

Failure to trace a family member does not necessarily mean that the sought person is missing or that they do not exist. No conclusions can be drawn from the absence of information. The opening of a tracing request will also not be accepted as evidence of the relationship existing.

The British Red Cross also run a 'trace the face' service within Europe. This service is particularly relevant for those who have lost family members on their way to, or within, Europe. Individuals and families can look for family members by looking through the database of photographs.

A person can also have their photo published on the website and on Red Cross posters in several countries in Europe so that their family can look for their photograph.

Again, it is important that the child or young person makes an independent and informed decision before starting this process, and that there is consideration of any child protection concerns relating to the publication of the child's photo on the website. **[12]**

Practical steps

As noted above, there can be reasons why a child does not want to trace their family and there should be no pressure on a child to try to do so or to give details so that the Home Office can attempt to trace their family on the child's behalf. Their legal representative may need to explore the reasons why a child does not want to trace their family.

Children will sometimes have been given a phone number for their family back in their home country, such as a parent or aunt. If the child wishes to contact their family member, they should be assisted to do so, providing there are no child protection concerns.

The Home Office will normally ask the child for any contact details for family members and must ask permission to contact that family member. The child can agree to this, but is under no obligation to do so and it should not be held against them in any decision made.

Sometimes a child or young person will have been told that they have family members living in the UK and

may have been in contact with that family member on the journey to the UK, or have their contact details. The Home Office will ask for the name, relationship and contact details of any family that the child knows of in the UK at the screening interview.

If a child wishes to contact or meet a family member they know of or have found in the UK, it is important that social services assess the safety of such contact and whether it is in their best interests. There may be times when contact is deemed inappropriate. For example, some trafficked children may have contact details of their traffickers and have been told to contact them when they arrive in the UK.

Having contact with family in the UK can be important for a child, particularly when they have been split from their wider family. The family member in the UK may also be in contact with the child's family members in his or her home country or elsewhere and this can be an important source for tracing family members.

Effect of failure to trace by the child

As noted above, any steps to trace a child's family must not put the child or their family at risk. It is important, in this context, to note that family tracing may not always be possible, or may not be appropriate (for example, in the case of a child who has been trafficked).

Before any action is taken an assessment of what will be in the child's best interests must be carried out. The family tracing provision in EU law specifically refers to protecting the unaccompanied child's best interests.

Whether a child has or has not made efforts to trace their family may be relevant to their asylum claim. However, if a child has not begun a family tracing procedure this should be held against them. [13]

NOTES

[1] EU Council Directive 2003/9/EC, Minimum standards on the reception of applicants for asylum in Member States <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003L0009>

[2] Regulation 6 of The Asylum Seekers (Reception Conditions) Regulations 2005 http://www.legislation.gov.uk/uksi/2005/7/pdfs/uksi_20050

[007_en.pdf](#)

[3] Section 15, Home Office, Processing an asylum application on behalf of a child https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processingasylumapplication1.pdf

[4] HK (Afghanistan) and others v Secretary of State for the Home Department [2011] EWCA Civ 305 <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/Original%20judgment%20-%202012%20EWCA%20Civ%20315.pdf>

[5] A principle previously decided on in Rashid, R (on the application of) v Secretary of State for the Home Department [2005] EWCA Civ 744 <http://www.bailii.org/ew/cases/EWCA/Civ/2005/744.html>

[6] KA (Afghanistan) & Ors v Secretary of State for the Home Department [2012] EWCA Civ 1014 <http://www.childrenslegalcentre.com/userfiles/file/KA%20Afghanistan%202012%20EWCA.pdf>

[7] EU (Afghanistan) & Ors v Secretary of State for the Home Department [2013] EWCA Civ 32 <http://www.bailii.org/ew/cases/EWCA/Civ/2013/32.html>

[8] MA and AA (Afghanistan) v Secretary of State for the Home Department [2015] UKSC 40 <http://www.bailii.org/uk/cases/UKSC/2015/40.html>

[9] EU Regulation No 604/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

[10] British Red Cross, International Family Tracing <http://www.redcross.org.uk/What-we-do/Finding-missing-family/International-family-tracing>

[11] British Red Cross, Services Finder <http://www.redcross.org.uk/Where-we-work/HealthandSupport?s=tm>

[12] British Red Cross, Trace the Face – Migrants in Europe <http://familylinks.icrc.org/europe/en/Pages/home.aspx>

[13] HK (Afghanistan) and others v Secretary of State for the Home Department [2011] EWCA Civ 305 <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/Original%20judgment%20-%202012%20EWCA%20Civ%20315.pdf>

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. Call 0207 636 8505 or email mcp@coramclc.org.uk.