

SELECT COMMITTEE ON THE EUROPEAN UNION
Call for evidence: Unaccompanied minors in the EU
Coram Children's Legal Centre's response, 10 March 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. 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.

The Migrant Children's Project at Coram Children's Legal Centre has worked for ten years to ensure that young refugees and migrants in the UK receive the support and protection they need. Our focus and experience has centred on policy and practice in this country, although the Project has been involved in EU-wide research projects.

[2] What are the key challenges faced by unaccompanied minors in the EU? Are there common issues across Member States?

1. There are a number of challenges facing unaccompanied minors in the EU. Unaccompanied minors are incredibly vulnerable - many will have fled war, persecution and torture or they may have been abandoned by, or become separated from, their parents or carers. Many have experienced extreme trauma and conflict in their countries of origin or harrowing journeys to the UK involving exploitation and that leave them both physically and emotionally scarred. Such children, who are already vulnerable, can be further distressed by the complex legal and social systems they face on arrival. With a lack of consistency throughout Europe, misinformation and differing treatment can lead to further distress and confusion. Evidence has shown that in certain EU countries children are arbitrarily detained, have a lack of interpreting provision, lack of data collection and lack support and services to meet their needs.¹ Poor information and lack of services in the country they are in can lead to children being misinformed, treated inhumanely and be put at risk of exploitation. In the UK, there have been various reports and evidence highlighting failures and difficulties in reception, protection and integration of unaccompanied minors.²

¹ For example the University of Oxford report on unaccompanied minors in Greece - <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2014/12/unaccompanied>,

² See for example: CCLC, Happy Birthday? May 2013 - http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday_Final.pdf; Connect (CCLC & Garden Court Chambers),

Reception

2. In relation to reception arrangements, a good example of best practice is the guardianship services in Scotland and the Netherlands. CCLC strongly believes that it is crucial that an unaccompanied minor in Europe have access to a guardian to assist them in navigating the complex systems and services in that particular EU country. 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, as well as having someone supporting them through a range of complex processes, including child welfare assessments, age assessments and asylum applications. The guardianship service can also assist in ensuring that the child receives quality legal advice and representation. 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.³
3. In the UK, an independent child trafficking advocates pilot was run for 1 year and was found to have a positive impact for children supported through this pilot. However, the UK government has decided not to roll out the scheme nationally and will look to re-pilot over a longer period with some variations. It remains CCLC's strong belief that all separated children in the UK should have a legally-powered guardian/advocate appointed to support and assist them throughout the various processes they encounter in the UK.
4. In the EU context, there is a varying practice with regards to age assessments, with many countries relying on medical methods for age determination (such as bone or dental x-rays) which are flawed and inaccurate. Best practice in this area involves multidisciplinary age determination procedures which draw on assessments by psychologists, social workers, and others. In situations of ambiguity, the child should always be given the benefit of the doubt. England and Wales have developed guidance for social workers on best practice in conducting age assessments,⁴ as has Scotland,⁵ but there is more work to be done to ensure that children are only age assessed when there is significant reason to doubt their claimed age – in 2015, age disputes were raised in 766 cases, compared to 318 in the previous year – 25% of all cases of children claiming asylum.⁶

Always migrants sometimes children, August 2014 -

<http://www.childrenslegalcentre.com/userfiles/UK%20mapping%20report%20CONNECT.pdf>

³ 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

⁴ <http://adcs.org.uk/safeguarding/article/age-assessment-information-sharing-for-unaccompanied-asylum-seeking-children>

⁵ Scottish Refugee Council & Glasgow City Council, Age Assessment Practice Guidance, June 2012

http://www.scottishrefugeecouncil.org.uk/news_and_events/news/1725_scottish_refugee_council_launches_guidance_to_help_social_workers_assess_age_of_young_people_seeking_asylum

⁶ <https://www.gov.uk/government/statistics/immigration-statistics-october-to-december-2015>

Protection

5. A clear protection gap that exists in a number of countries is that regarding children that have not been granted refugee status but been given a form of subsidiary protection - a status they can lose upon reaching 18 years of age.⁷ This is a key problem facing unaccompanied children in the UK, many of whom are refused refugee status but granted limited leave to remain instead. Whilst support systems predominantly focus on addressing the immediate safety and stability of these children, consideration of their long-term needs in the immigration context is poor. As a result, when they reach adulthood they face a process which can leave them in a legal limbo, without support and facing destitution. While it is important to ensure that children are united with their families when and where it is in their best interests, the current policies and processes do not allow for this to happen systematically and safely.
6. The EU Connect project (2014-15), of which Coram Children's Legal Centre was a part, aimed to identify and promote good practices on reception and protection, focusing on the roles and responsibilities of actors engaging in the situation of these children and based on national experience in Italy, the Netherlands, Sweden and the UK. Each country developed practical tools which can be used by actors across the EU Member States – these can be found at: <http://www.connectproject.eu/index.html>

[5] Article 3 of the UN Convention on the Rights of the Child states that the best interests of children must be the primary concern in making decisions that may affect them. Do EU measures seeking to “mainstream” the best interest principle form a comprehensive and coherent whole? Do the obligations they set out translate into sufficiently clear requirements for all national actors dealing with unaccompanied minors?

7. CCLC strongly believes that the principle of the best interests of the child being the primary concern in decisions affecting them must be at the heart of any law, policy and practice, whether here in the UK or within broader EU measures. Although not in a position to comment on how the best interests principle is translated into practice in other EU countries, it is clear from EU legislation that there have been attempts to mainstream the best interests principle into law and policy. In the UK, legislation does highlight the best interests principle in immigration and asylum law but this is not often reflected in practice. In June 2013 the Joint Committee on Human Rights (JCHR) in its report, *Human Rights of unaccompanied migrant children and young people in the UK*, urged the Government to “ensure that all those working with unaccompanied migrant children are given clear guidance about the importance of these best interests” and to “evaluate whether more formal processes are required to properly determine best interests in cases involving unaccompanied migrant children.” In response to the Committee's comments, in February 2014, the government agreed to consider the case for establishing a Best Interests Determination process⁸ but has still not done so and recent reports have highlighted gaps in how children's best interests are currently being considered both as

⁷ http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279104/UnaccompaniedMigrantMinors.pdf

children go through the asylum process and in relation to substantive decision-making.⁹

8. There must be greater emphasis placed on ensuring that the best interests principle is not just referred to, but dealt with substantively in all decisions, with clear reference to an assessment being carried out as to a child's best interests, and what, if anything, justified the departure from that position. The UNHCR & UNICEF have produced a useful report on what EU states can do to ensure respect for the best interests of unaccompanied and separated children in Europe.¹⁰
9. We would support the recommendations made in the 2012 Committee on the Rights of the Child Report of the Day of General Discussion on the rights of all children in the context of international migration that:
 - *States should conduct individual assessments and evaluations of the best interests of the child at all stages of and decisions on any migration process affecting children, and with the involvement of child protection professionals, the judiciary as well as children themselves.*
 - *States should make clear in their legislation, policy, and practice that the principle of the child's best interests takes priority over migration and policy or other administrative considerations.*
 - *To the greatest extent possible, States should conduct continuous and individual best interests of the child assessments as well as formal determination procedures at all stages or decisions of any migration process affecting children, with the involvement of child protection professionals and the judiciary.*¹¹

[7] Should there be another EU Action Plan on Unaccompanied Minors? If so, what should the content, focus and purpose of the next Action Plan be, with reference to the 2010–2014 Action Plan and evaluations thereof?

10. The EU Action Plan on Unaccompanied Minors “*aims to provide concrete responses to the challenges posed by the arrival of significant numbers of unaccompanied minors in the EU territory, while fully respecting the rights of the child*”. It is noted that it aimed at a global and integrated approach across its policies. There are three main strands for action: prevention, regional protection programmes, reception and identification of durable solutions¹².

⁹ Including Law Centres Network, Put Yourself in Our Shoes: Considering Children's Best Interests in the Asylum System, 2015 at <file:///C:/Users/Kamena.Dorling/Downloads/Put%20Yourself%20In%20Our%20Shoes%20-%20web.pdf>; UNCHR, *Considering the Best Interests of a Child Within a Family Seeking Asylum*, 2013, at http://www.unhcr.org/fileadmin/user_upload/docs/UNHCR-Best_Interest-screen.pdf; Greater Manchester Immigration Aid Unit, *Children's Best Interests: A Primary Consideration?*, 2013; Kent Law Clinic, *How children become 'failed asylum-seekers'*, 2014 at http://www.kent.ac.uk/law/clinic/how_children_become_failed_asylum-seekers.pdf

¹⁰ UNHCR & UNICEF, *Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014 <http://www.refworld.org/docid/5423da264.html>

¹¹ http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf

¹² Connect Project summary at <http://www.connectproject.eu/eu3.html>

11. Although not in a position to comment on the previous action plan in detail, CCLC believe that there should be a future coordinated plan for unaccompanied minors in Europe. The focus must be on a full and ongoing consideration of the best interests of the child in all decisions, policies and plans. In the joint open letter to the European Council, of which CCLC was a signatory,¹³ there is a call on the EU and its member states to the following actions (among others):

- *Consider children's rights and views, and guarantee their best interests when making decisions, including on immigration and asylum applications and in any decision to move a child or family to another country. The best interests of the child must never be outweighed by migration and border control concerns.*
- *Ensure that all children have **non-discriminatory access to services**, such as health care, including mental health, and education, and have adequate accommodation*
- ***Protect family unity** when in the child's best interests, including by ensuring that no child is separated from a parent by immigration-related detention.*
- ***Provide adequate search and rescue and humanitarian assistance** to prevent all avoidable deaths, whether at sea or on land.*
- *Provide **regular and safe ways for children and their families to come to Europe** to seek protection and join family members and open more rights-respecting avenues for work and study.*
- *Empower children to access justice, and have their views heard, including through **providing information and access to legal representation** in all proceedings that can affect their status, rights and freedoms.*

12. Much work to date has focussed on unaccompanied minors in the asylum process. All children involved in or directly affected by international migration are entitled to the enjoyment of their rights, regardless of age, gender, ethnic or national origin and economic or documentation status, in both voluntary and involuntary migration situations, whether accompanied or unaccompanied, on the move or otherwise settled, documented or undocumented or any other. It is vital that future discussions and action plans recognise that, given the reality of migration, a child may fall into several categories over time and therefore rigid definitions or categorisation can be unhelpful. There is the need to mainstream child rights into migration laws and processes, including best interests determination and assessment procedures, applied to all international migration situations involving children, not only to those involving unaccompanied children.¹⁴

¹³ Various organisations, *Joint open letter to the European Council Time to act to ensure children's rights in the EU's migration policy: 10 action points*, October 2015 http://cdn.ifsw.org/assets/ifsw_80457-7.pdf

¹⁴ http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf

[9] The UK has not opted in to the second phase of the Common European Asylum System, and does not participate in the Family Reunification Directive. What, if any, are the implications of this for unaccompanied minors in the UK?

13. The purpose of the Family Reunification Directive is to determine the conditions under which third-country nationals residing lawfully on the territory of EU Member States may exercise the right to family reunification. The Directive provides the right to family reunification for refugee children of the child's first-degree relatives in the direct ascending line. Although the Directive allows for wide discretion for EU member states, by not opting-in, and imposing harsh rules for unaccompanied minors in the UK to make family reunion applications, the UK has created a harsh environment for children that is contrary to their best interests.
14. The UK has some of the most restrictive rules for family reunion for refugee children in the EU. It is very difficult for a UK-based refugee child to be reunited with their family members. If a family member was in a European country, they may be able to be reunited under the Dublin process but if their parents, siblings or family members remain in the country of origin or another non-EU country, the child has an extremely limited chance of being reunited with their family in the UK.
15. The current rules do not recognise the refugee child's right to be reunited with their parents but regards it as a matter of discretion to be exercised only when there are compelling circumstances. These restrictions make it difficult to see how the UK complies with the UK's obligations under the United Nations Convention on the Rights of the Child (UNCRC) and especially Article 8 of the European Convention on Human Rights (right to family life). It should also be noted that such policies and rules are arguably in breach of the Home Office's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 – to ensure that a child's welfare is safeguarded while in the UK, including decisions taken about them or that could impact their welfare.
16. Separated child refugees often face barriers to integration, particularly due to separation from their family, isolation and access to correct information and services. The UNHCR states that, *"Family reunification plays a significant role in meeting the long-term needs of resettled refugees...The family is often the strongest and most effective emotional, social and economic support network for a refugee making the difficult adjustment to a new culture and social framework."*¹⁵ It is noted that there are currently amendments being considered in the Immigration Bill that relates to a review of the rules relating to family reunion, requiring a review of family reunion and to make provision for refugee family reunion for minor children. The Immigration Practitioner's Law Association has briefed on the importance of extending these rules to minor children, including on the harshness of these rules on refugee children¹⁶. CCLC are firmly of the view that extending the family reunion rights to refugee children would significantly reduce the risks to which they are exposed in the UK.

¹⁵ Background Note for the Agenda Item: Family Reunification in the Context of Resettlement And Integration, 2001 <http://www.unhcr.org/3b30baa04.html>

¹⁶ ILPA, briefing to amendments tabled for House of Lords Committee Stage of the Immigration Bill 3 February 2015: Part 5...refugee family reunion, 1 February 2016

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