

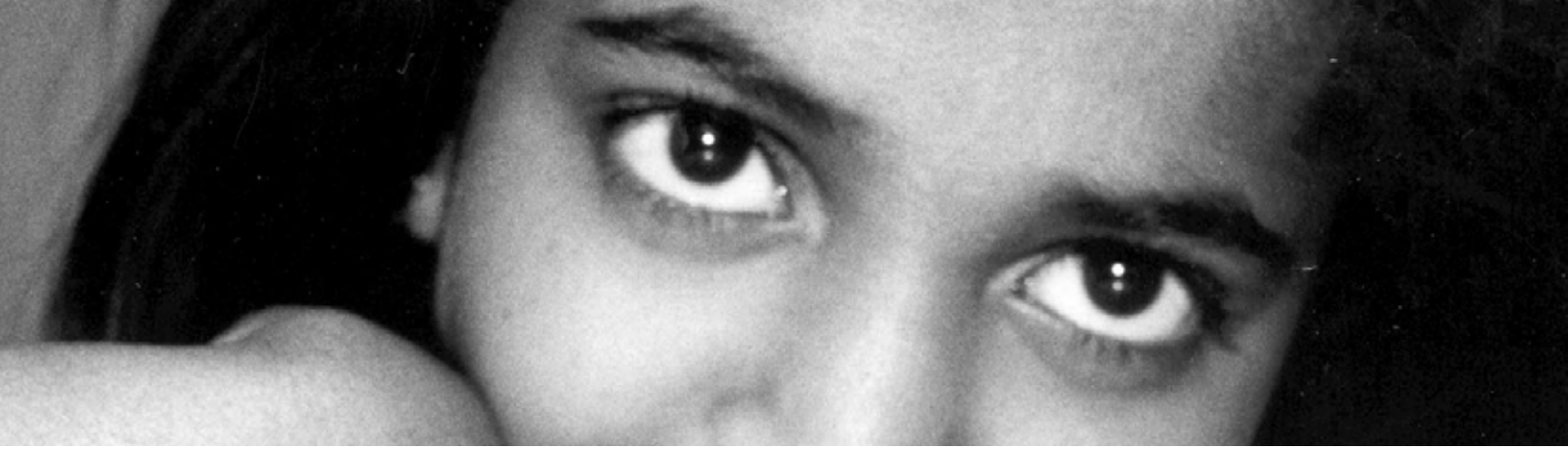


Refugee
and Migrant
Justice

Lawyers
defending
human rights

Does every child matter?

Children seeking asylum in Britain



Contents

Introduction and Executive Summary 3

Chapter 1: Children's Experiences 7

Chapter 2: Alternative Models 20

Chapter 3: Conclusions and Recommendations 23

Bibliography 26

Does every child matter?

Children seeking asylum in Britain

Does every child matter?

Children seeking asylum in Britain

Introduction

In 2007, around 7,700 children sought asylum in the UK, some with their families, some on their own. Many came from Afghanistan, Iraq and Iran – countries where some children and families have faced terrible persecution and danger in recent years. Some have been trafficked and abused on their way here.

They do not find themselves here by choice, but because they are fleeing intolerable situations in their own countries: according to a recent study, almost half of the unaccompanied children who arrived here had experienced combat in their home country and nearly 40% had witnessed or experienced torture. Many are suffering from post-traumatic stress¹.

Drawing on our daily contact with these children and their families, as well as a range of independent sources of evidence, this report paints a distressing picture of how children seeking asylum fare in Britain today: their families are consigned to poverty; if unaccompanied, they are subjected to a hostile legal process often marked by a culture of disbelief, sometimes without any adult representation or support; they are left for months and in many cases years without a clear decision about their future, traumatized and in limbo; and they are even locked up, sometimes for months.

In short, some of the most vulnerable children in the world are routinely denied basic protection that all other children in the UK enjoy, when all they are doing is seeking sanctuary here.

The Government has made a public commitment to keeping children who apply for asylum safe from harm, as set out in the *UK Border Agency Code of Practice for keeping children safe from harm*, which was published in January 2009. The Code asserts that “every child does matter, as much as if they are subject to immigration control as if they are British citizens.”

In this first comprehensive review of children’s experience of the asylum system since the introduction of the Code, *Does every child matter?* puts this assertion to the test, and finds the Government wanting, both in the principle and the practice of protecting children seeking asylum.

Our aim is not to attack the Government, but to show how far they have to go in meeting their genuine aspirations to protect children from harm and promote their welfare, and to present the UK Border Agency (UKBA) with an urgent action plan to help put this right.

Refugee and Migrant Justice are uniquely placed to offer this perspective. Through our network of legal centres across the country we provide advice and practical assistance to individuals, families and children who have fled to the UK, at all stages of the process. We represent around 1,000 unaccompanied children seeking asylum and work with many families with children as well. This gives us a depth of insight into the daily challenges they face and a clear understanding of the reality of immigration policy and how it is being implemented on the ground. We see what really happens to children when they arrive or try to stay in the UK – and we believe that it is vitally important that these children’s stories should be heard if the immigration system is going to ensure fair decisions, with proper legal representation; provide humane treatment; and ensure protection for those who currently fall through the net.

¹ Hodes, Matthew, ‘Risk and resilience for psychological distress in unaccompanied asylum seeking adolescents’ published in *Journal of Child Psychology and Psychiatry*, vol. 49, issue 7, pp. 723-732

Executive Summary

This report looks beyond the words of the Code at what is really happening to children seeking asylum. It highlights extensive bad practice and identifies breaches of the Code which are already occurring. As importantly, it highlights crucial welfare issues – such as disputes about the age of children claiming asylum - not currently covered at all by the Code. Our conclusion is that the Government is failing in its commitment to protect these most vulnerable children and is falling short both of its own aspirations and of most people's expectations of a fair and humane system.

The report documents the real experience of children within the asylum system. *Chapter 1* of the report highlights cases showing the problems that children are facing, illustrating at each stage how far the operation of the system is from the Code's commitment to safeguard children. We also show how the UKBA is disregarding its own internal guidance on processing asylum applications from children. All of the cases are heavily anonymised in order to protect the children, whose cases are still being considered by the authorities. Where we believe there has been a breach of the Code, or the claimant has been mistreated, we have brought this to the attention of the UKBA in the course of legal proceedings and, in some cases, also used official complaints channels. This report brings the cases together in one place for the first time.

The failings identified start as soon as a claim is made. While the Government's Code states: "Children's cases must be handled sensitively on arrival and when they make applications to the UK Border Agency" our report found that:

- Children are frequently interviewed by the UKBA without a legal representative, despite the fact that the issues can be a matter of life and death. One of the agency's offices routinely flouts internal guidance and interviews children as young as 12 without any responsible adult present. Across the country and throughout the process, children lack an independent voice.
- Children are subjected to a hostile legal process marked by a "culture of disbelief." For example, in the case of C, who was 12 years old when she arrived in the UK and was raped and made pregnant by the man who brought her here. The UKBA refused to believe she was trafficked even though it knew that she had had a termination and that the police were investigating the case.
- Children are wrongly identified and treated as adults. Due to incorrect age assessments, children are forced to make their claim as adults.

The Government's Code says they will put "children first and foremost." However, in contrast to this, we found that throughout the process, children were being let down and put at risk:

- Children's special needs are disregarded. Children can be interviewed in cells, and subjected to aggressive behaviour from Immigration Officers. They can be taken out of care by social services at the age of 16.
- Children here with their families are routinely condemned to poverty. They are excluded from the Government's target to reduce child poverty² and the support the Government chooses to give their parents is 70% below income support levels.
- Children who may already be traumatised have to grow up without stability, subject to unreasonable delays and unnecessary uncertainty about their legal status. One of our clients claimed asylum a year ago and, despite repeated requests by us has yet to be interviewed by the UKBA about their claim. Often, the UKBA grants a temporary status until the child reaches seventeen and a half years when it could have granted them refugee status when the claim was first made, making it hard for them to start to rebuild their lives.

² PSA Delivery Target 9: Halve the number of children in poverty by 2010, on the way to eradicating child poverty by 2020, HM Government, Footnote 3, October 2007

And there are failings at the end of the asylum process. The Code makes it clear that “Enforcement action must take into account the children’s needs.” However, the evidence we collected showed that:

- It is estimated that 2,000 children are locked up each year.³ There is no time limit on their detention and there are no provisions to ensure a court sanctions their detention.
- Children who have grown up in this country are often forcibly removed to the country they fled, sometimes even in poor health. A 16 year old client, in hospital receiving treatment for a life threatening illness, has been told by the UKBA that it cannot see any reason not to remove him as soon as he reaches 18, even if the treatment is unsuccessful.

If the Government is to meet its objective of “safeguarding children from harm” it must keep accurate data on how it treats them. Throughout this report we highlight Government failings to collate even the most basic statistics about children in the asylum system:

- Despite damning evidence of poor decision making by the UKBA on age assessments, it does not publish statistics on the outcome of age disputes.
- No statistics are published on how many children are detained each year. The Government defends this by saying that it would cost too much.
- No statistics are published on the outcome of appeals against refusal of asylum in children’s cases.
- They do not publish how long it takes to undertake welfare assessments on children in detention despite criticism in an inspection report by the Chief Inspector of Prisons that it was taking three weeks⁴.
- Children seeking asylum are excluded from national statistics on poverty.
- There are no comprehensive statistics on the removal of children.

The Government, led by the Prime Minister, has shown strong leadership in relation to the welfare of children both at home and abroad. It is time that this same leadership was shown in relation to children within the asylum system. We believe that action can still be taken to put things right. *Chapter 2* provides constructive and creative solutions to the issues raised in the case studies, drawn from UK and international examples and expert opinion.

A provision in the Borders, Citizenship and Immigration Bill currently going through Parliament will create a duty to promote the welfare of children seeking asylum, and the Government is to introduce new guidance to back it up, developed from the Code. In redrafting the existing guidance, the Government has an opportunity to solve many of the problems we have identified. But as we demonstrate in this report guidance is not enough: there must be a commitment to follow it. It must also underpin a thorough overhaul of policy and procedures for dealing with children’s cases.

At the conclusion of the report we offer government a set of specific recommendations to achieve *fair decision-making and proper representation; more humane treatment of children; and measures to stop children falling through the protection net*. These set out a manifesto of action that must be taken and reflected within the Bill, its guidance and the UKBA’s policy and procedures, a manifesto which will give the Government the chance to show leadership and ensure that they can meet their commitment to protect children and that it is something of which to be proud.

³ Crawley, H “No Place for a Child”, Save the Children, 2005

⁴ *Report on an announced inspection of Yarl’s Wood Immigration Removal Centre by HM Chief Inspector of Prisons (4-8 February 2008)* p.33

Above all we call for a clear commitment by Gordon Brown to put children first and foremost: to apply the same standards for asylum seeker children as other children, and extend the leadership he has shown for the welfare of British children to children in the asylum and immigration system.

Jasmine tells her story in the *New Statesman*

She was 12 when she was detained with her mother and Jessica, her little sister. The family was taken in a police raid and transported to the detention centre in a security van: "The van was nasty and smelly. There were bars and glass separating them from us: it was like we were some kind of disease." During the journey, her mother broke down and tried to commit suicide and Jasmine had to alert the guards to stop her. The family were detained for two months. At one point, they were taken to an airport to be removed. Jasmine refused to get on the plane and prevented the removal. Jasmine says of her experiences: "You don't know how it feels to be a kid full of dreams and to feel that nobody cares, that the dreams are not important to anyone. My little sister Jessica is 4 years old. You think, well, she won't understand, but in her world Jessica knew what was happening. She told my mum she hated the police because "One morning they came to arrest us and you started to cry". She said to my mum, "When I will be old I will fight for you, I will fight for you when they come to arrest you again."". After a successful legal challenge Jasmine and her family were granted permission to stay in the UK⁵.

⁵ Originally published in the *New Statesman*, 'Innocent Prisoners: The Scandal of Britain's child detainees' 04 September 2008. Now available at <http://www.newstatesman.com/uk-politics/2008/09/yarl-wood-mum-cameroon-trying>

Chapter 1:

Children's experiences

This chapter sets out what happens to children going through the asylum system and if their claim for asylum is refused.

1. Children sometimes have to make their own case for asylum, without help from a qualified professional or any responsible adult present

Key Facts: in 2007, around 7700 children aged 17 and under entered the asylum process in the UK. 3525 of these children were unaccompanied and made a claim for asylum in their own right.

Asylum cases can raise matters of life or death, and every decision made has serious consequences. It is therefore essential that children within the asylum system are guaranteed access to competent representation from the outset of their case. Unfortunately the UKBA gives no such guarantee and they are often left unrepresented. Children we have encountered have reported not being given representation at all, or only after a protracted delay during which time the UKBA has continued to process their case. Several reports into the asylum system have commented on this problem⁶. It is clear that effective representation at the earliest opportunity would help ensure better and fairer first decisions on children's cases. Indeed, the 2007 Independent Asylum Commission found that "Representation by an accredited and high quality legal representative is likely to play a significant part in the number of cases won on appeal."

As with other areas covered in this document, the lack of official research stymies in-depth examination of the problem but the cases we have encountered suggest this is a serious issue for child welfare.

The UKBA Code has no specific guidance on legal representatives for children's asylum claims. However, the damage caused to children by not having a legal representative to help them make their claim is contrary to some of the key principles of the Code. The Code states that the UKBA will "ensure that children receive full advice, guidance and support about any applications they make or about any contact they have with government agencies" and "will take positive steps to keep children safe from harm by...referring such children to the appropriate agency or agencies and working together effectively with that agency or agencies".

Case Study: Our client, G, is an eight year old boy who left his country because his family were threatened by insurgents. Rockets fired by the insurgents had destroyed the boy's family home and school, and his father had had to move away from the family. The boy had been taken to neighbouring country from where he was smuggled to the UK. On arrival, he was given a screening interview without a legal representative present. He was asked to complete an application stating his case for asylum, but given no legal assistance to do this. He was then refused asylum due to his lack of 'credibility'; this judgment was based solely on a case for asylum made out by an 8 year old boy. RMJ was instructed after the boy was refused asylum. The UKBA refused to withdraw its decision to enable us to help the boy make out a proper claim for asylum. Instead they forced him into the appeals system.

⁶ See, for example, *Promoting the emotional wellbeing and mental health of unaccompanied young people seeking asylum in the UK*, Thomas Coram Research Unit, July 2008; *Memorandum by Commissioner Hammarberg, Commissioner for Human Rights of the Council of Europe. Following his visits to the United Kingdom on 5-8 February and 31 March-2 April 2008. Issues reviewed: Asylum and Immigration*, 18 September 2008; the *UK Children's Commissioners' Report to the UN Committee on the Rights of the Child; and Deserving Dignity*, the final report of the Independent Asylum Commission, July 2008

There isn't just a problem in relation to legal representation. In many interviews the UKBA officials also routinely flout their own internal guidelines by interviewing children without any responsible adult present⁷.

In keeping with good practice in child care generally, the UKBA guidelines on interviewing children stipulate that this should always be in the presence of a responsible adult. This is someone who is responsible for assisting the child and looking after their interests. However, one of the agency's offices is interviewing children as a matter of routine without a representative or responsible adult present. RMJ believe Dover Enforcement Unit is conducting up to 20 such interviews a month.

This is happening at the outset of the process where children are often interviewed as suspected illegal entrants. The UKBA routinely refuses to disclose the interview record, although often information obtained at these interviews is used to discredit the child's case.

Case Study: Our client, L, is a 15 year old orphan who claimed asylum in the UK. On the day he arrived in October 2008, he was held in a cell for eight hours, alone and scared. He was taken out of the cell for two Illegal Entrant interviews without a legal representative or any responsible adult present. No interpreter was available in person and so the UKBA used one over the telephone. The interview notes were not read back to him. When he made his asylum claim, he was given a full interview about his case. His claim was refused in February 2009. In the Reasons for Refusal Letter, the UKBA cited details he had given in the Illegal Entrant interviews to discredit his asylum claim, even though these interviews were not even mentioned in his substantive asylum interview. The UKBA is even refusing to release the transcript of the Illegal Entrant interviews to his carer or legal representatives. We know that many such interviews take place before vulnerable unaccompanied children receive legal representation, even after the Code came into force.

Our evidence shows that the commitments in the Code and the UKBA Guidelines are not strong enough to guarantee the protection of all children, and are certainly not being observed in all cases. Moreover, the provisions themselves do not go far enough. First, there is no guarantee that a child will be legally represented throughout. Second, the role of the responsible adult is itself problematic. Often the responsible adult is the child's social worker. They will be involved in assessing the child's age to determine whether the Local Authority has responsibility to pay for their support. Local Authorities therefore have a conflict of interest with the child. A report by the Thomas Coram Research Unit, in conjunction with IOE London into the mental and emotional wellbeing of young unaccompanied asylum seekers looked at age assessment and social work and concluded that "Allocated social workers should not be expected to conduct age assessments with young people. This can undermine any trusting relationship that a professional might have built with a young person up until that point⁸." As we show in this report, children in the asylum system are in a uniquely vulnerable position and we believe they need far more help to ensure their voice is heard and their best interests are catered for. An independent guardianship role to look after the interests of unaccompanied children seeking asylum is an idea that has received support from, amongst others, the Council of Europe Commissioner for Human Rights and the Children's Commissioners for the UK⁹. The Independent Asylum Commission has said, "We believe that a corporate body... cannot perform the function of guardianship in the way that can and should be done by a named individual. Just as named individuals have the responsibility of safeguarding the best interests of a UK child who would otherwise be without such support, we believe the same should apply for unaccompanied asylum seeking minors¹⁰." The lack of this kind of figure means that the care of vulnerable unaccompanied asylum seeking children is often fractured and incohesive, with little communication between the different agencies in a child's life.

7 "Processing Asylum Applications From Children", the UKBA; this can be found at <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary>

8 *Promoting the emotional wellbeing and mental health of unaccompanied young people seeking asylum in the UK*, Thomas Coram Research Unit and the UK Children's Commissioners' Report to the UN Committee on the Rights of the Child, June 2008

9 See, for example, *Memorandum by Commissioner Hammarberg, Commissioner for Human Rights of the Council of Europe. Following his visits to the United Kingdom on 5-8 February and 31 March-2 April 2008*.

10 *Deserving Dignity: The Independent Asylum Commission's Third Report of Conclusions and Recommendations*, Independent Asylum Commission, July 2008

2. Children are subjected to a hostile legal process marked by “a culture of disbelief”

Key Fact: In 2007, children were granted asylum by the UKBA in only 11% of cases. In the same year 17% of adults were granted asylum ¹¹. Overall, 23% of the UKBA’s decisions were overturned at appeal. No statistics are published on the outcome of children’s appeals.

No one can dispute that children seeking asylum are entitled to a fair hearing, nor that children will face particular difficulties in presenting their case. The UKBA Code is clear on this point, stating that it will seek to “ensure that children are listened to with respect... [and] have their experiences taken seriously. Further, children “should not feel that they are up against a culture of disbelief.”

Case Study: Our client, C, arrived in the UK in 2007 when she was 12 (although her age is in dispute and the UKBA are currently treating her as being 2 years older). Her claim is based on ethnic violence in her country. Among other things, she witnessed the murder of her father. She fled to a neighbouring country where she was befriended by a man who offered to look after her. The man arranged for her to travel to the UK. After her arrival, the man took her to a house where, after several days, he forced her to have sex with him and another man. She managed to escape from the house and soon after came into contact with Social Services who took her into care. She discovered she was pregnant and had a termination. She was 13 at the time (or 15, according to the UKBA). She was interviewed about her claim for asylum a year ago. She was refused asylum earlier this year. The UKBA rejected her claim for asylum in its entirety. It also rejected outright her account of how she came to the UK. Although it has a letter from the Metropolitan Police confirming that it is investigating the matter, the UKBA did not believe she had been trafficked to the UK. The decision makes only one reference to her pregnancy, referring to her termination but noting she was now in good health. It does not appear to have occurred to the UKBA that the pregnancy may be evidence of trafficking of the worst, most abusive kind.

The Code echoes provisions in the Immigration Rules and the UKBA Guidance for processing asylum applications for children. For example, the UKBA Guidance states that the “when interviewing children consideration must be given to their age and maturity when pursuing, and making judgments, about credibility issues.” It states that when assessing claims “the benefit of the doubt must be applied more liberally than when dealing with an adult.” Based on the children we have represented the dominant culture that pervades decision making is contrary to these guidelines and the aspirations that underpin them. In the Case Study of G set out above, we saw the UKBA refusing to believe the claim of an 8 year old boy made out without any legal assistance. We have seen a number of other recent examples of how children are faced with a legal process marked by a culture of disbelief in which children’s claims are often assessed as though they were adult.

Case study: Our client Z is a 12 year old orphan from Afghanistan. He did not receive an education and was illiterate. The UKBA refused him asylum. In the refusal letter it stated that it had taken his age and illiteracy into account when assessing his claim. Nonetheless in many respects it assessed his cases as though he was an adult. It stated that the fact that he failed to claim asylum in a transit country damaged his credibility. It used caselaw applicable to adults sometimes to absurd effect: it argued that he could relocate to Kabul, rather than his home town quoting the case of RQ Afghanistan [2008], “unless there are particular reasons not to do so it would not be unduly harsh to expect an [asylum seeker] with no individual profile to live in Kabul and assist in the rebuilding of his country”.

¹¹ Figures taken from Home Office Statistical Bulletin 11/08: Asylum Statistics United Kingdom 2007

For some children, it is not a question of whether they receive a fair hearing: they receive no hearing at all. Where an asylum seeker fails to attend an asylum interview without reasonable explanation the Home Office has power to refuse asylum even if it has no information about the basis of claim. Understandably, the UKBA Guidance requires that great caution be exercised in making such decisions in children's cases. It states that applications must only be refused on grounds of non-compliance when "every avenue of obtaining information has been fully explored". It requires that efforts "must be made to investigate the reason for non-compliance". The following decision was therefore extraordinary:

Case study: Q, a 15 year old girl who arrived in the UK in January 2009. She is very vulnerable, having been abducted and raped multiple times, and seen most of her family die. She was smuggled out of the country by an uncle. The UKBA first tried to insist that she was 18, but a Social Services age assessment put her at 16, so she is at least treated as a minor. After she disclosed that she was raped to our caseworker 10 days before her UKBA interview, we requested a postponement to take further instructions from her. She is very fragile due to her traumatic experiences. We asked the UKBA to inform us if there was a problem with our request for a postponement. They did not reply despite repeated reminders. Nor did they respond when we telephoned them on the day of the interview to request a new date for the interview. In fact we heard nothing until we received a refusal of asylum on "non-compliance" grounds.

Poor decision making also encompasses inhumane decisions, as in this RMJ case:

Case Study: Our client, M, is a 16 year old boy whose family has been persecuted; most of them have fled to a neighbouring country, but he cannot join them as they are living illegally. Therefore, should he be removed from the UK, he would have nowhere to go, and no support in his country of origin. He has recently been diagnosed with a life threatening illness. It is hoped the treatment will be successful. The UKBA state in the refusal letter that it cannot see any reason not to remove him even if the treatment is unsuccessful. And yet the health service in his country is in a state of collapse and there is little chance of him receiving treatment there. The UKBA will wait until the child is 18 and then intends to remove him: it does not appear concerned at the prospect of removing a seriously ill child to a country where he has no immediate family and where health facilities are virtually non-existent.

Although the UKBA has made concerted efforts over recent years to improve the speed and consistency of decision making, independent research has shown that initial decisions are still often flawed; the 'culture of disbelief'¹² is still strong. The disparity between the much higher numbers of cases won on appeal for all asylum seekers, including children, when the initial decision was to refuse is tangible demonstration of this. Almost 75% of all asylum claims are rejected at the initial stage, yet there is a 23% success rate at appeal¹³. It affects children directly when they are not believed, or when their experiences and stories are judged by "adult" standards; interviewing officers often seem to expect high levels of knowledge about the socio-political circumstances of the child's country of origin, sometimes from illiterate children who know only what their parents told them. Given that most asylum seekers arrive in the UK having fled for their lives, they tend not to be carrying a full set of evidence about the circumstances of their flight. This is even more true for children, who are often put in the hands of agents by desperate relatives.

¹² Please see *Fit for Purpose Yet? The Independent Asylum Commission's Interim Findings*, The Independent Asylum Commission, March 27th 2008, especially Chapter 1

¹³ Figures taken from *Home Office Statistical Bulletin 11/08: Asylum Statistics United Kingdom 2007*

There are also consequences for children in relation to decisions taken on adult claims, for example where they are detained due to adverse decisions in their parents' cases. The next section examines the particular issue of disputes about children's age which can have severe implications for the decision and for their future. If the Government is serious about protecting children, then it must urgently address the gap between the aspiration of its own Code to change the culture of disbelief, and the reality of the experience of children.

3. Children are treated as adults, not children – the problem of disputed age

Key Fact: In addition to the 3,525 children recorded to have claimed asylum, there were 1915 'age disputed' applications¹⁴, where the UKBA refused to believe the asylum seekers were children. Age disputes are notoriously hard to judge, but the two pieces of independent research examining these cases, found that at least half of these "adults" were eventually found to be children¹⁵.

When a child claims asylum they are asked to prove their age. If they cannot do this, or if the evidence they produce is not believed, then a judgment must be made so that their claim can be determined against the right criteria. However, our experience, and the findings of many other organizations, indicates that the UKBA's initial age assessment decisions are routinely incorrect. Every year between 41% and 45% of all applicants presenting as minors in the system are classified as 'age-disputed'¹⁶; that is, they are judged to be lying about their age. And yet an extraordinary number of these disputes are eventually resolved in the child's favour. A study in 2006 of age disputed cases sent to Oakington (an adult detention centre) found that 60% of these "adults" were in fact children¹⁷. The Refugee Council's Children's Panel found that between March 2005 and May 2006, in 49% of all age dispute cases in which it was involved, the "adult" in question was, in fact, a child¹⁸. Notwithstanding these damning findings, the UKBA still does not publish statistics of the outcome of age disputes. We are unaware of any recent evidence that things have improved since these reports.

Age disputes take a long time to resolve; over 55% of all age disputes cases where the initial claim was made in 2007 had remained unresolved by May 2008¹⁹.

The UKBA Code has no clause covering age disputes and age assessments. The provisions in the Code to safeguard children mean little if children are not recognised as such. Given the overwhelming evidence of poor age assessment and the resulting problems, this represents a huge oversight. A refusal to accept an incorrect age assessment will place a child at significant risk of harm.

Case study: Our client, J, is a 16 year old boy. When he arrived, he claimed asylum. However, his first legal representative from another organisation made numerous errors in his statement of claim and it even included things our client did not say. Most worryingly, it stated that his age was 26. He had never been asked his age by his representative or the UKBA and yet he quite clearly appeared to be a boy. He was unaware that he was considered to be an adult. His claim for asylum failed, and he was detained as an adult for 6 months. He was severely depressed. When he became RMJ's client, we commissioned an independent age assessment by a paediatrician, which found that he was 16. We submitted this evidence to the UKBA, but still they refused to release him. This continued even after the UKBA Code came into force, and even after the

14 Figures taken from *Home Office Statistical Bulletin 11/08: Asylum Statistics United Kingdom 2007*

15 Crawley, Heaven, *When is a child not a child? Asylum, age disputes and the process of age assessment*, ILPA Research Report, May 2007

16 Figures taken from *Home Office Statistical Bulletin 11/08: Asylum Statistics United Kingdom 2007*; *Home Office Statistical Bulletin 14/07: Asylum Statistics United Kingdom 2006*; *Home Office Statistical Bulletin 14/06: Asylum Statistics United Kingdom 2005*

17 Crawley, Heaven, *When is a child not a child? Asylum, age disputes and the process of age assessment*, ILPA Research Report, May 2007

18 Crawley, Heaven, *When is a child not a child? Asylum, age disputes and the process of age assessment*, ILPA Research Report, May 2007

19 Figures taken from *Home Office Statistical Bulletin 11/08: Asylum Statistics United Kingdom 2007*

Social Services department who initially assessed his age agreed to reassess him because their own assessment did not take into account the opinion of the independent paediatrician. He was released, after a claim for Judicial Review of the original decision to detain him was lodged but the age dispute is ongoing, and he is currently living unsupported as an adult in temporary emergency accommodation miles away from where he initially made his claim.

Children treated as adults are denied safeguards which are vital for their protection. The harm resulting from these poor decisions represents one of the worst failings of the system. Many children whose age is disputed are placed at risk by being detained unsupervised in adult detention centres. Alternatively they may be dispersed to live unsupervised with adults in asylum support accommodation. If a child is age disputed, their case is decided as though they were an adult. No account is taken of their level of maturity, the time it may take for them to articulate their fears, their particular vulnerability or the support they might need as a child. They will not benefit from the liberal application of the benefit of the doubt prescribed by the UKBA guidelines. If the dispute is subsequently resolved in the child's favour, one would expect the UKBA to review a decision to refuse asylum along these lines. But they do not.

Perhaps the most disturbing study was of age dispute cases of detainees in Oakington Reception Centre. The detainee was eventually found to be a child in 60 per cent of these cases, but not until after the child had been detained for some days²⁰. This represented a very worrying failure of protection, not only because children were detained unsupervised with adults, but also because their claims were assessed in a fast track decision-making process only considered appropriate for some adults. Asylum seekers in Oakington are usually interviewed and receive a decision on their claim for asylum within a week of arrival, a process clearly not appropriate for children.

4. Children's special needs are disregarded

Children have different needs to adults. They should not be held in detention facilities for adults. As documented, they have an even more acute need for proper representation; and they can be particularly vulnerable to the emotional and physical trauma of making an asylum claim.

The Government recognises this. The UKBA Codes specifies the intention that "children...[be] seen first, foremost and fully as children rather than simply as migrants subject to immigration control".

Case study: One of our clients, S, was taken to the Asylum Screening Unit in Croydon with her caseworker, a social worker and an interpreter. This client, who fled forced marriage and abuse, and is alone in the UK, suffers from chronic health problems, and is traumatized by her experiences. Prior to her interview, her ARC card, which would have enabled her to register with a GP, was created, and her fingerprints taken. However, when it was time for the interview, the Immigration Officer objected to the number of people in the room. Our caseworker asked if he could speak to her senior officer who was extremely aggressive, shouting at the caseworker and the social worker, and distressing the child. We had to leave without the ARC card, so the client could not access a GP. Complaints were made by the social worker and our caseworker, but no response has been received as yet.

In relation to facilities for interviewing children, the Code states that "the area that is to be used by children must be as friendly as possible to them...in order to ensure that the child feels safe and protected".

²⁰ Report on a short follow-up inspection of Oakington Reception Centre by HM Chief Inspector of Prisons (5-7 June 2006) p.26. See also the Children's Legal Centre briefing *Home Office Policy Change – 'disputed minors' no longer deemed suitable for 'fast track' processing in detention* February 2006 at <http://www.childrenslegalcentre.com/OneStopCMS/Core/CrawlerResourceServer.aspx?resource=7860F7B7-8C92-45B8-993E-4F1A3D225B7F&mode=link&guid=e09a7546d59e47189630bb42be8d09c3>

However our evidence shows that once more the practice is often at odds with the principles:

Even after the Code came into force, screening interviews for unaccompanied asylum seeking children in Peterborough sometimes take place in a police station. Vulnerable children, alone in the UK, are taken into a small room with no windows in a setting that suggests punishment for a crime to make their first interview for asylum.

Case study: We attended the screening interview of P, an unaccompanied child client, in February 2009 in the immigration office in Harwich International Station. The facilities and processes there were completely inadequate for the purposes of effectively interviewing a minor. The interview took place in an area normally used for the detention of adults. Our caseworker and the client's social worker were searched in front of the client and our caseworker's telephone and bag were confiscated until the end of the interview. The interview room itself was effectively a large cell, with barred windows. The client was not offered any water throughout his interview. There were no tables for the caseworker or the immigration officer to lean on to take notes.

Although the Government recognises the different needs children have, it is clear that they have not yet found ways of ensuring that this recognition translates into appropriate practice.

Unaccompanied asylum seeking children also suffer from a particular kind of deprivation. As they have no parents in the UK, they are made the responsibility of a Local Authority. The Children's Commissioner has commented that unaccompanied asylum seeking children fall between 'child' and 'adult', and therefore have difficulty accessing the right kind of support²¹. They often rely on friends to house them. Services for unaccompanied asylum seeking children are unevenly provided across the UK²², and there have been complaints from local authorities about the restricted budgets they must use to look after these children²³. Some local authorities have a policy they call 'de-accommodation' (they mean "eviction") for unaccompanied asylum seeking children when they reach 16, which, given the trauma they have faced, is inhumane²⁴.

5. Children are locked up though no fault of their own

Key Facts: The UKBA does not reveal how many children it detains each year. It only produces snapshot data of how many children it is detaining on any one day. 35 children were in detention on 29 December 2007²⁵, of whom 29% (10 children) had been in detention for over a month and 14% (5 children) had been in detention for over two months.²⁶ Independent reports, such as that of HM Inspector of Prisons, have found that in 2008, some children had been cumulatively detained for over 200 days, although they were recorded as being held for 7-14 days. Between May and September 2007, she found that over 450 children had been detained at Yarl's Wood.²⁷ This obviously presents an even more damning picture of children in detention than the Government's own appalling numbers.

It is estimated that around 2,000 children are detained each year.²⁸ There is no time limit on their detention and there are no provisions to ensure their detention is sanctioned by a Court.

21 See UK Children's Commissioners' Report to the UN Committee on the Rights of the Child, pp. 30 – 32 particularly; also, *Promoting the emotional wellbeing and mental health of unaccompanied young people seeking asylum in the UK*, Thomas Coram Research Unit.

22 UK Children's Commissioners' Report to the UN Committee on the Rights of the Child, pp.30-32

23 See UK Children's Commissioners' Report to the UN Committee on the Rights of the Child, pp. 30 – 32 particularly; also, *Promoting the emotional wellbeing and mental health of unaccompanied young people seeking asylum in the UK*, Thomas Coram Research Unit. Also, *Memorandum by Commissioner Hammarberg, Commissioner for Human Rights of the Council of Europe. Following his visits to the United Kingdom on 5-8 February and 31 March-2 April 2008. Issues reviewed: Asylum and Immigration*

24 *Evidence from the Office of the Children's Commissioner on the de-accommodation policy and practice of the London Borough of Hillingdon* and See UK Children's Commissioners' Report to the UN Committee on the Rights of the Child, pp. 30 – 32 particularly

25 Figures taken from *Home Office Statistical Bulletin 11/08: Asylum Statistics United Kingdom 2007*

26 Figures taken from *Home Office Statistical Bulletin 11/08: Asylum Statistics United Kingdom 2007*

27 *Report on an announced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons (4-8 February 2008)*

28 Crawley, H "No Place for a Child", Save the Children

The detention of accompanied asylum seeking children is inhumane and unfair. The fact that these children have done nothing wrong apart from being related to parents whose asylum claims have failed only underlines the injustice of detention. A groundswell of protest has built up against the practice of detaining children, with many now convinced of the damage caused by putting them in such traumatic situations. Families should never be detained. The Children's Society and Bail for Immigration Detainees, supported by the Diana, Princess of Wales Memorial Fund, recently launched a campaign which seeks to end the detention of children within three years. It is sad reflection of Government policy that such a campaign is necessary and the three year time scale is an indication of the intransigence it expects to meet from the UKBA.²⁹

The UKBA Code does not seek to end the detention of families with children. Although it asserts that "there must be a realistic prospect of removing the family from the United Kingdom within a reasonable period of time", it worryingly envisages circumstances where children may be detained for over 28 days. The fact that almost a third of children detained on 29th December were held for over a month suggests the exception has become routine.³⁰ Families are held in some cases for much longer periods cumulatively.³¹ Documentation about how long children are detained for is often incomplete, indicating an astonishing lack of interest in these children's welfare.³²

The Code does place an obligation on the UKBA to ensure that children have access to facilities suitable for children.

Anne Owers, HM Chief Inspector of Prisons, giving evidence to the Joint Committee on Human Rights in 2006, said, "...the child becomes invisible...and there is no consideration of whether the welfare of a child in a family will be adversely affected by the process of detention...The effect of detention on a child is inevitably going to be negative, it cannot be otherwise..."

The circumstances of detention are inhumane; families are often taken in 'dawn raids', with little time to gather their belongings, no time to contact their friends in the area, and taken on long journeys without comfort breaks, then detained.³³ In the 2008 report into conditions at Yarl's Wood, it was found that some families were taken to detention in caged vans.³⁴ Reports, such as that of HM Inspectorate of Prisons, have condemned the lack of educational and recreational facilities available for children, as well as poor healthcare provision.³⁵ Whilst detention is not 'prison', these children often feel that detention is a punitive measure, and feel like they are in jail.³⁶

The New Statesman recently published eleven year old Bethlehem Abate's moving account of her arrest and detention in Yarl's Wood: "Once we got inside, it felt as if we were in prison for doing an awful crime. I still feel like that today and I hope God will get rid of all this worries and all this guilt inside because I know that with all my heart both and my mum are not bad persons."³⁷

29 http://www.childrenssociety.org.uk/all_about_us/how_we_do_it/campaigning2/15011.htm

30 Figures taken from *Home Office Statistical Bulletin 11/08: Asylum Statistics United Kingdom 2007*

31 *Report on an announced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons (4-8 February 2008)* pp. 17-18

32 *Ibid.*, pp.31-32

33 *Ibid.*, pp.31-32

34 *Ibid.*, pp.17-18

35 *Ibid.*, pp. 39-46 and 50-52

36 Please see case studies collated for the *New Statesman* 'No Place for Children' campaign at <http://www.newstatesman.com/subjects/no-place-for-children>, as well as *Report on an announced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons (4-8 February 2008)* p. 32

37 Published on September 30th 2008. The article can be found at <http://www.newstatesman.com/africa/2008/09/pack-ethiopia-mum-office>

The UKBA Code states that "There must always be a presumption in favour of not detaining a family and each family's case must be considered on its individual merits" and that "steps must be taken to ensure that children are not in the position of putting their lives on hold for [the time they are in detention]". However, in 2008, welfare assessments were only carried out at Yarl's Wood 3 weeks after the children were taken into detention.³⁸ It is clear to us from the evidence we have seen and cases we have encountered that too often welfare and human rights considerations are ignored due to the practicalities of the immigration control processes.

The Government does not keep comprehensive meaningful data on children in detention. When asked to provide statistics, the standard response is often to refuse, citing 'disproportionate cost', allowing them to sidestep questions of accountability for these children.³⁹ The Government even cite disproportionate cost as a reason for not counting the number of children it detains each year. The lack of reliable statistics on these important issues is worryingly indicative of the Government's wider attitudes towards immigrant and asylum seeking children, placing immigration control above their rights and needs as children. Given the Government's total lack of progress in this area despite such widespread criticism, it is increasingly hard to avoid the conclusion that the true numbers of children suffering due to asylum and immigration policy are being actively hidden from stakeholders, the media and the public.

6. Children are condemned to poverty

The Government has been widely praised for its commitment to ending child poverty. Its vision is that "Every child deserves the best start in life, free from financial poverty and material deprivation."⁴⁰ It has set a target to halve the number of children in poverty by 2010-11, on the way to eradicating child poverty by 2020. This is clearly something that the Prime Minister and his Cabinet are deeply concerned about and they have been very active in this policy arena. They see it as one of the tests of the success of their government. However, asylum seeker children are not included in the poverty statistics.⁴¹ We are told that every child matters. In this case the depressing truth is they don't.

Asylum seekers are normally prohibited from working, even if they are supporting children. They are excluded from mainstream benefits and are expected to live on something called "Section 95" support. The level of Section 95 support is substantially less than Income Support. Although children do receive the full amount of income support, the adults who support them only receive 70%, consigning the family as a whole to poverty.⁴²

Families whose claims are refused are even worse off while they await return to their country. If a woman has a child after her claim has failed and she cannot return to her country she will receive "Section 4" support. This support does not give asylum seekers any money. It provides somewhere to live and vouchers which can be used to buy only 'essential' items such as food and toiletries. Other items are not included, for example travel for journeys under 3 miles, even for families with young children. The voucher system severely restricts what families can and cannot purchase. In some cases these families may be given housing where meals are provided. This level of support is set even further below standard welfare benefits for British children. Section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 gives the UKBA power to stop all money and accommodation provided to a family where they believe the family are not taking reasonable steps to leave the country after their claim has been turned down. The children of such a family would be forced onto the streets, or into Local Authority care, separated from their destitute parents. Fortunately, the Government has no plans to implement this provision.

38 *Report on an announced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons (4-8 February 2008)* p.33

39 For example, see Hansard 9th July 2007: Column 1352W at <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070709/text/70709w0036.htm>, or Hansard 23rd October 2008: Column WA 125 at <http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81023w0002.htm>

40 *PSA Delivery Target 9: Halve the number of children in poverty by 2010-11, on the way to eradicating child poverty by 2020*, HM Government, October 2007

41 *PSA Delivery Agreement 9*, Footnote 3, *ibid*

42 The UKBA claims this is because asylum seekers in asylum support accommodation do not pay utility bills, although many are not placed in such accommodation

This amounts to a policy of enforcing poverty and deprivation on asylum seekers who cannot be returned to their country of origin through no fault of their own.

Some asylum seekers entitled to support slip through net and are made destitute, often as a result of a bureaucratic dispute, commonly about whether the family or child was entitled to support and whether had the right papers to prove it.⁴³ A 2008 Children's Society report looked at snapshot figures for destitute asylum seekers in Birmingham in June 2007, and found that of 107 destitute asylum seekers who approached agencies for help, 14 had children – there were 21 destitute children and young people in total. Many of these families were refused help outright by Children's Services.⁴⁴

Further problems were highlighted in a recent report by Barnardos, *Like Any Other Child?* In particular it noted the huge 'backlog' of unresolved cases and identified it as a major cause of poverty amongst asylum seeking families, because of the lengthy period they were forced to live at income levels below income support.⁴⁵ While the Government has put significant resources into tackling this backlog, there are currently 280 000 asylum cases remaining unresolved and it is expected that they won't be cleared until 2011.⁴⁶

7. Children grow up without stability, left in uncertainty sometimes for years

Key Fact: 45% of unaccompanied asylum seeking children had experienced combat in their home country, and 38% had experienced torture. Numbers of accompanied asylum seeking children who suffered psychological stress was also high: 14% of accompanied male children and 35% of accompanied female children suffered from post-traumatic stress.⁴⁷

Children in the asylum system face uncertainty, which can sometimes last years. The Government acknowledges this and in its Code says that they should "have their applications dealt with in a timely way that they can understand and that minimises the uncertainty that they may experience." However, one of the biggest problems for both unaccompanied and accompanied asylum seeking children is the delay they face in having their claim processed. The causes for these delays are often unexplained. Children often have to wait for long periods without any decision, often with interviews being set up and then cancelled at short notice.

Case study: Our client, R, is a 15 year old boy who fled his own country. His previous representatives failed to represent him properly, so we took his case on. After meeting the client, our caseworker was informed that the boy's UKBA interview was scheduled for three days later. We requested a postponement to be able to prepare the case properly, and after repeatedly failing to get a response, we reached a 'work-flow manager', who informed us that the cost to the public purse of rescheduling the interview could not be justified. After informing the manager that under the UKBA Code, they had a responsibility to put the interests of the child first, our caseworker was told that this made no difference, and that the interview would go ahead. We prepared the case as best we could and attended the interview. After waiting for almost three hours, our caseworker and client were informed that the interview had been cancelled.

43 Clarke, Nicola and Nandy, Lisa, *Child Destitution Report: Living on the Edge of Despair: Destitution amongst asylum seeking and refugee children*, The Children's Society, 2008

44 Clarke, Nicola and Nandy, Lisa, *Ibid.*

45 Reacroft, John *Like Any Other Child? Children and Families in the Asylum Process*, Barnardo's, 2008

46 Reacroft, John, *Ibid.*

47 Hodes, Matthew, 'Risk and resilience for psychological distress amongst unaccompanied asylum seeking adolescents', published in *Journal of Child Psychology and Psychiatry*, vol. 49, issue 7, pp. 723-732

Case study: One of our clients, F, a 16 year old, had to flee his country after his father was killed and many members of his family imprisoned and tortured for their involvement in an indigenous rights movement in that country. He himself was imprisoned and interrogated at the age of 15. Whilst in prison, he was slashed by a knife and beaten; he was also beaten unconscious at an indigenous rights demonstration. His uncle helped him to flee the country. He arrived in the UK in early September 2008. When his case was taken on by RMJ, we were given only 13 days to file his claim. However, despite repeated requests the UKBA delayed setting a date for his substantive interview, finally setting one in December 2008. The day before the interview, the UKBA cancelled without any explanation. Over six months after the asylum claim they still have not yet set a new date for the interview. These delays are contrary to the Code's promise to deal with children's claims in a timely manner to minimise 'uncertainty' for asylum seeking children, and have increased the distress felt by an already traumatised child.

Case study: Another client, K, is a child who was forced to flee his country after his abusive father pressured him to join a militant organisation, as he had pressured his older brother. As a young child, our client had not been allowed to communicate with other children in the neighbourhood or attend school. His father had had him arrested and taken to jail in an effort to coerce him into joining the organisation. His mother and uncle helped him to escape. He arrived in the UK in May 2008 and claimed asylum. Despite pressure from RMJ, the UKBA failed to set a date for his substantive interview, finally scheduling it in February 2009 for May 2009, a full year after he made his claim. Once more, this illustrates the apparent unwillingness of the UKBA to deal with vulnerable and traumatised minors' asylum claims in a timely manner, contrary to the Code. This behaviour has obviously not changed with the introduction of the Code.

Not only can children wait for very long periods to know what their future holds, they are often the victims of a halfway house policy by being given "Discretionary Leave", which allows them to stay for a period but without any long term certainty. "Uncertainty concerning their immigration status causes extreme anxiety and distress for young people, particularly those who are in their late teens and nearing the end of their discretionary leave ...many young people expressed acute anxieties about where they could return to if they were deported from the UK".⁴⁸ Many of these children have had traumatic earlier lives and this uncertainty can deepen that trauma when they would have been given a more durable status had their claim been properly considered in the first place.

Discretionary Leave is only appropriate for a child who does not qualify for a more durable grant of leave. However, we believe, it is used as a substitute for a good decision making. We see many cases where children are given Discretionary Leave when they should be granted asylum. The majority of these children are granted Discretionary Leave until they reach 17.5 years. They are forced to appeal against the decision not to give them full refugee status either when they are granted discretionary leave, and/or when they are subsequently threatened with removal when they are still not 18. This represents a further trauma for these children, as the tentative links they have made in their new lives and the steps that they are making towards recovery are disrupted. The uncertainty hits them at a key time in their education. For those fortunate enough to gain a university place, they are unable to take up the offer, except as overseas students with the higher fees that come with that, until they have refugee status, leaving them in limbo.

This uncertainty and the threat of removal also damages the relationships they have worked so hard to build in the UK, and causes extra stress and trauma to them.⁴⁹

⁴⁸*Promoting the emotional wellbeing and mental health of unaccompanied young people seeking asylum in the UK*, Thomas Coram Research Unit

⁴⁹ *Ibid.*

This aspect of decision making for children has not been widely researched, but we believe that Discretionary Leave simply prolongs the uncertainty for these vulnerable children when they should have been granted asylum in the first place. Discretionary leave should still have its place, but only if the child is found not to have protection needs after a fair process.

While the Code makes reference to reducing uncertainty, it is clear that this is a wider issue for the Government. Children of asylum seekers need to be afforded the same consistency of care and protection from harm that they are proud to give to all other children.

8. Children established in this country are then removed

Key Fact: 905 children were removed from the UK in 2007. 755 were under 14. Around 105 of these children appear to have been unaccompanied, and 45 of those were under 14.⁵⁰

Like the issue of detention, the removal of children arouses strong public emotion. This is particularly the case when the child has spent their formative years in this country, making bonds and links of friendship, language and culture which they will not have formed in their own country.

The Government do not maintain accurate figures on removal. Although it is reasonable to assume that nearly all the 105 children under the age of 18 who were removed in 2007 as "principal asylum applicants" were unaccompanied, it cannot confirm this. Most of them were probably removed to countries in the EU to make the claim there. However, some may have been returned to their home countries. The UKBA's statistics do not make this important distinction. They do not specify the country to which these children were removed. This last fact is particularly worrying given that the children were from countries such as Iran, Iraq and Afghanistan, all of which were listed as "Countries of Concern" in the Foreign and Commonwealth Office's Human Rights Annual Report for 2007.⁵¹ There is less information about the removal of accompanied children. We know 800 were removed, but the UKBA discloses neither their nationalities nor to where they were removed. Statistics on the removal of asylum seekers do not specify whether removal was forced or voluntary.

The Children's Commissioner recently commented that many of the children the Government currently locks up have been in the UK for a considerable time while their families' asylum claims are being processed: "I speak to these children in places like Yarl's Wood Immigration Removal Centre, and they answer my questions in regional British accents acquired over many years of integration into our communities and schools. It seems positively cruel to rip up the hopes and aspirations of these young people, who have become settled and enjoy close ties with friends, teachers and neighbours, due to the historic problems of managing the asylum system efficiently."⁵²

The actual measures set out in the Code to protect and promote the welfare of children are disappointingly vague, and, as in the case of detention, child welfare seems to come second to immigration control. The Code acknowledges that delays in processing claims contribute to 'uncertainty'. The Code places a duty on the UKBA's staff to '[be] as responsive as possible to the needs of the children...' yet immediately qualifies this duty of care with the proviso '...without over-riding the purpose of their work': that is, immigration control. There are, throughout the document, very few practical and measurable targets for improving the welfare of children.

⁵⁰ Figures taken from Home Office Statistical Bulletin 11/08: Asylum Statistics United Kingdom 2007

⁵¹ The Foreign and Commonwealth Office Human Rights Annual Report 2007 can be found at www.fco.gov.uk/resources/en/pdf/human-rights-report-2007

⁵² New Statesman, 4th September 2008; <http://www.newstatesman.com/law-and-reform/2008/09/children-detention-immigration>

9. The Government fails to keep accurate statistics of how it is treating children

If the Government is to meet its objective of “*safeguarding children from harm*” it must keep accurate data on how it is treating them. Throughout this report we have highlighted Government failings to collate even the most basic statistics about children in the asylum system:

- Despite damning evidence of poor UKBA decision making on age assessments, it does not publish statistics on the outcome of age disputes.
- No statistics are published on how many children are detained each year. The UKBA defends this by saying that it would cost too much.
- No statistics are published on the outcome of appeals against refusal of asylum in children’s cases.
- It does not publish how long it takes to undertake welfare assessments on children in detention
- Children seeking asylum are excluded from national statistics on poverty.
- There are no comprehensive statistics on the removal of children.

Chapter 2: Alternative Models

The experiences of children in the asylum system do not need to be so painful and disturbing. There are viable alternatives to most of the problems that children face, from new ways of thinking about age disputes to alternatives to detention and recommendations to ameliorate poverty amongst asylum seekers.

The Code is certainly a useful starting point, as it sets out what we believe is a genuine aspiration. However, in each of the problem areas outlined in *Chapter 1* there is significant scope for the Government to do more – either by improving practice that is covered by the Code but not being delivered, or by introducing new processes and principles, and ensuring these are effectively covered by the Code or other regulation.

Decision making

All of our evidence shows that decision making in children's cases is often flawed, leading to hardship for vulnerable asylum seeking children, whether as a result of a decision about their parent's claim, or a decision about their own claim. The cause of flawed decision making is the system itself: the way claims are treated, the legal support that is offered to asylum seekers, the confrontational way interviews are conducted, and the over-reliance on matters of consistency and detail when assessing the child's evidence.

The Government has begun to recognise this, and its recent Early Legal Advice Pilot, based in Solihull in the English West Midlands, piloted a new way of dealing with asylum seekers. Everyone in the pilot was guaranteed access to a legal representative before the first critical interview with the UKBA and the same legal representative carried the case through all its stages. The pilot helped break through the confrontational "culture of disbelief" by ensuring that the legal representative and the UKBA case-owner conferred before and after the interview to focus on what specific facts of the case needed testing and what was agreed. The result was that claimants *got a fairer hearing, cases were determined more speedily, with a correct decision being taken at an earlier point*. Clients also had more trust in the system. An important feature of the pilot was its focus on the individual needs of the claimant, helping not just to ensure better, less confrontational decision-making but also to humanise the process.

We strongly believe that such a model would be especially beneficial to unaccompanied asylum seeking children and propose that the Government extends the pilot to children's claims.

In all cases, children should be guaranteed access to a legal representative from the beginning of their case and they should always be present, even at screening interviews.

Discretionary Leave

We believe the adaptation of the Solihull model of decision making for children will result in an improvement in the quality of decision making. More children will be granted protection and there will be fewer occasions when the UKBA has recourse to a temporary grant of Discretionary Leave. Children will therefore be given far greater certainty and stability in their lives. Discretionary Leave should still have its place, but only if the child is found not to have protection needs after a fair process.

Guardianship

Children who are here without their parents lack an independent adult to support them and help them negotiate their future with a multitude of different authorities. Whilst they are sometimes provided a "responsible adult" by social services, they are in no position to carry out this wider role, not least because they have a conflict of interest.

A "guardian" for an unaccompanied asylum seeking child would be an independent named individual who would represent the child's best interests, help instruct their legal representative and ensure that the many services seeking to help the child take joined up decisions. Many children experience distress due to a lack of connection between agencies such as the UKBA, Social Services, educational services and NGOs. A guardian for unaccompanied asylum seeking children would be easy to incorporate into an Early Legal Advice model, and could provide a supportive, holistic and cohesive model for dealing with their asylum claims.

Guardianship for unaccompanied asylum seeking children is an idea that has received support from, amongst others, the Council of Europe Commissioner for Human Rights and the Children's Commissioners for the UK. The Independent Asylum Commission has said "We believe that a corporate body...cannot perform the function of guardianship in the way that can and should be done by a named individual. Just as named individuals have the responsibility of safeguarding the best interests of a UK child who would otherwise be without such support, we believe the same should apply for unaccompanied asylum seeking minors." The lack of this kind of figure means that the care of vulnerable unaccompanied asylum seeking children is often fractured and incohesive, with little communication between the different agencies in a child's life.

Detention

The Government has recognized the need to look at alternatives to detention and recently piloted a programme to accommodate families who had been refused asylum in a centre in Ashford, Kent, instead of detaining them (The Millbank pilot). Support workers in the form of an independent charity, Migrant Helpline were there to help each family explore how they would return home. The evaluation of the pilot has not been published, but the verdict disappointingly seems to have been that it had failed. The Deputy Chief Executive of Migrant Helpline, the agency tasked with running the project by the UKBA, commented that "...the model was not adequately tested."⁵³ Most families in the pilot were told to go there or have their benefits stopped – it was never fully explained to them what was happening. Some had less than a week to prepare; legal representatives were equally unprepared and unbriefed.⁵⁴ The Solihull pilot demonstrates the importance of gaining the asylum seeker's trust in the process and it appears that the Millbank pilot failed because insufficient attention was given to this aspect at the outset.

The Millbank pilot need not have failed. The Hotham Mission in Australia⁵⁵ is a good example of a non-coercive method of housing asylum seeking families in the community with good support. The key to the Hotham Mission's work is the quality of the support each family has with an independent worker. In a study of 200 cases, 85% of those refused asylum were not detained and went home voluntarily and none absconded.⁵⁶

These examples indicate that there are alternatives to detention which the Government has a duty to do more to develop them in this country.

⁵³ Please see 'Immigrants' centre set up to keep children out of detention to shut' in *The Guardian* 11 September 2008 at <http://www.guardian.co.uk/uk/2008/sep/11/immigration.immigrationandpublicservices>

⁵⁴ Ibid.

⁵⁵ For more details, please see <http://www.hothammission.org.au/>

⁵⁶ Ibid

Age Disputes

The Immigration Law Practitioners' Association's report *When is a Child not a Child?*⁵⁷ examined the age assessment process in detail. It found that age disputes are very damaging to already traumatized unaccompanied asylum seeking children. Accepting that age assessments can sometimes be necessary, the report puts forward a number of recommendations including the establishment of a series of regional age assessment centres. It recommended that the centres should be independent of the UKBA and should use social workers who are independent of the local authority who would take responsibility for the asylum seeker if they were found to be a child. This new way of thinking about age assessments would help children caught in such disputes, as well as supporting better decision making across the process in general.

Poverty

Families with children should be included in the child poverty measure. As with British children, asylum seeker children deserve "the best start in life, free from financial poverty and material deprivation." Their parents should be allowed to work so they can support their children properly. They should be entitled to the same level of support including, tax credits and additional benefits as other families in recognition that there are children involved. Section 9 should be abolished.

⁵⁷ Crawley, Heaven, *When is a child not a child? Asylum, age disputes and the process of age assessment*, ILPA Research Report, May 2007

Chapter 3:

Conclusion and Recommendations

The way we treat children is a litmus test of our society and its humanity. Asylum seekers comprise many groups that are particularly vulnerable, but children are the most vulnerable of them all. It is particularly hard for them to gain a voice when, as we have shown, they are specifically excluded from government child poverty strategies and endure different treatment and support to all other children in the UK. This report tries to tell their story and it makes grim reading. Children need fair decisions, humane treatment, and support to stop them falling through the net.

Fairer decisions, with proper representation

Children are especially damaged by a culture of poor decision making and disbelief that pervades the UKBA. It is particularly hard that they are often judged by adult standards, expected to give consistent and coherent accounts of their past, whilst often having no independent adult to support them and sometimes without a legal representative. As unaccompanied children, they often have to contend with a culture of disbelief as they make their claims, and many are even forced to repeat the process at the age of 17 and a half, damaging the new lives they have managed to build in a foreign country.

The UKBA Code, whilst recognising the needs of these children, offers no specific pathways to improving their situation. RMJ wants to see changes to the way decisions are made, with proper legal representation, access to a guardian from the outset, and timely, binding decisions which enable them to settle and lead stable lives.

More humane treatment of asylum seekers and migrants going through the system

All asylum seekers and migrants have a right to make a claim of asylum and to have their human rights respected, just like any other child. Children who are seeking asylum normally live in poverty: their parents are given benefits substantially below mainstream benefit levels. Sometimes they can end up destitute without access to healthcare, education and basic help. Often traumatized before they come here, unaccompanied children can be traumatised by the decision making process here and spend periods unsupported. Children can end up in detention with their parents, sometimes for long periods. Although the UKBA Code recognises 'the rights of the child', it is made clear that these rights are subject to the primary purpose of the UKBA: immigration control. RMJ wants the UKBA to clearly and unequivocally state their commitment to the rights of these children above the requirements of immigration control, and to act upon it in an accountable and appropriate way.

Protection for vulnerable people who currently "fall through the net"

Children who are wrongly classified as adults fall through the net of protection and are forced to make their claim in inappropriate ways, sometimes in detention. Other children fall through the net: children who are trafficked for domestic labour and prostitution, children who receive no help for mental and emotional ill-health: all of these children receive minimal amounts of protection, and are often hidden from the public because of poor statistics. The UKBA Code only tackles the problems of these children in the most limited and vague ways. RMJ wants to see clear and workable systems, incorporating the expertise of NGOs, to support these children.

Recommendations

We call for a clear commitment by Gordon Brown to put children first and foremost: to apply the same standards for asylum seeker children as other children, and extend the leadership he has shown for the welfare of British children to children in the asylum and immigration system. The UKBA Code is a good start, but needs to be much more specific, cover a wider set of responsibilities, and be properly monitored and enforced. The arrival of the new Chief Inspector of Immigration during 2009 will present an opportunity to formalize these mechanisms.

Specifically, we recommend:

1. Fair decision-making with proper representation:

- There must be an adult voice for children: an independent guardian for unaccompanied children.
- A guarantee of access to legal representation in all cases before UKBA interviews that are held with children.
- Improved quality of the UKBA's decision making on children's asylum claims. We call on the Government to pilot a new process based on the Solihull Early Legal Advice Pilot.
- Improved decision making will mean that more children should be granted protection. Discretionary Leave should still have its place, but only if a child is found not to have protection needs after a fair process.
- The UKBA code should be amended to cover representation and age disputes.

2. More humane treatment of children, with their needs put first and foremost:

- The Government must re-invigorate efforts to find alternatives to detention.
- In the short term the UKBA should set and enforce targets to reduce the maximum time spent in detention for children
- In the medium term, we urge a commitment to halt the detention of children. Last year, the Australian Prime Minister announced that children would no longer be detained there. We call on the Prime Minister to do the same here.
- There must be mandatory training on welfare issues for all the UKBA staff dealing with children.
- The UKBA Code should contain stricter protocols on the process for removals (eg an end to dawn raids).
- Government should keep and publish records of all children in detention, including for how long they are detained and whether they are alone or with their family. Records on children subject to removal should also be kept and published, making clear whether children were alone or accompanied.

3. Stopping children falling through the "protection net"

- The Government should adopt a protocol on age dispute resolution in line with the principles laid out by ILPA.
- As part of the wider commitment to ending child poverty, asylum seeking children should be included in Government targets, and families seeking asylum should be entitled to the same level of benefits as British families.

Bibliography

Research

Crawley, Heaven, *No Place for a Child*, Save the Children, 2005

Crawley, Heaven, *When is a child not a child? Asylum, age disputes and the process of age assessment*, ILPA Research Report, May 2007

Reacroft, John
Like Any Other Child? Children and Families in the Asylum Process
Barnardo's
January 2008

Chase, Elaine, Knight, Abigail and Statham, June, *Promoting the emotional wellbeing and mental health of unaccompanied young people seeking asylum in the UK*, Thomas Coram Research Unit, (IOE London)
July 2008

Hodes, Matthew, 'Risk and resilience for psychological distress in unaccompanied asylum seeking adolescents' published in *Journal of Child Psychology and Psychiatry*, vol. 49, issue 7, pp. 723-732
2008

Nandy, Lisa and Shaw, Samantha, *Give me a life: Reporting Children seeking Asylum in the UK: A Practical Guide for Journalists*, The Society of Editors and the Children's Society
2008

Parliamentary Evidence and Questions

House of Lords, House of Commons Joint Committee on Human Rights: The Treatment of Asylum Seekers: Tenth Report of Session 2006-7: Volume I – Report and Formal Minutes

For example, see Hansard 9th July 2007: Column 1352W at <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070709/text/70709w0036.htm>, or Hansard 23rd October 2008: Column WA 125 at <http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81023w0002.htm>

Government papers

The UKBA Code of practice for keeping children safe from harm
January 6th 2009

PSA Delivery Target 9: Halve the number of children in poverty by 2010-11, on the way to eradicating child poverty by 2020

October 2007

"Processing Asylum Applications From Children", the UKBA
2007

Home Office Statistical Bulletin 11/08: Asylum Statistics United Kingdom 2007

Home Office Statistical Bulletin 14/07: Asylum Statistics United Kingdom 2006

Home Office Statistical Bulletin 14/06: Asylum Statistics United Kingdom 2005

The Foreign and Commonwealth Office Human Rights Annual Report 2007

Reports

Report on an announced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons (4-8 February 2008)
2008

Report on a short follow-up inspection of Oakington Reception Centre by HM Chief Inspector of Prisons (5-7 June 2006)
2006

Hamilton, Carolyn, and Matthews, Adrian, Evidence from the Office of the Children's Commissioner on the de-accommodation policy and practice of the London Borough of Hillingdon
January 2007

Aynsley-Green, Sir Al, Lewsley, Patricia, Marshall, Kathleen and Towler, Keith
UK Children's Commissioners' Report to the UN Committee on the Rights of the Child
June 2008

Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe. Following his visits to the United Kingdom on 5-8 February and 31 March-2 April 2008. Issues Reviewed: Asylum and Immigration
Council of Europe
18th September 2008

Independent Asylum Commission, *Fit for Purpose Yet? Interim Findings of the Independent Asylum Commission*
March 2008

Independent Asylum Commission, *Saving Sanctuary, The First Report of Conclusions and Recommendations of the Independent Asylum Commission*
March 2008

Independent Asylum Commission, *Deserving Dignity, The Third Report of Conclusions and Recommendations of the Independent Asylum Commission*
July 2008

Articles

New Statesman: 'My dreams are not important to anyone'

04 September 2008

Found at: <http://www.newstatesman.com/uk-politics/2008/09/yarl-wood-mum-cameroon-trying>

New Statesman: 'No Place for Children'

04 September 2008

<http://www.newstatesman.com/law-and-reform/2008/09/children-detention-immigration>

New Statesman: 'Bethlehem's Testimony'

30 September 2008.

Found at: <http://www.newstatesman.com/africa/2008/09/pack-ethiopia-mum-office>

The Guardian: 'Immigrant's centre set up to keep children out of detention to shut'

11 September 2008

Found at: <http://www.guardian.co.uk/uk/2008/sep/11/immigration.immigrationandpublicservices>

Briefings

Children's Legal Centre: Home Office Policy Change – 'disputed minors' no longer deemed suitable for 'fast track' processing in detention:

February 2006

Found at: <http://www.childrenslegalcentre.com/OneStopCMS/Core/CrawlerResourceServer.aspx?resource=7860F7B7-8C92-45B8-993E-4F1A3D225B7F&mode=link&guid=e09a7546d59e47189630bb42be8d09c3>



Refugee and Migrant Justice

Nelson House
153-157 Commercial Road
London
E1 2DA
Tel: 0207 780 3200
Fax: 0207 780 3201
www.rmj.org.uk

Registered Charity Number: 1012804
OISC number: 200100009
Company number: 2710867



*Community
Legal Service*

