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**Regional Conference on «Migration of unaccompanied minors:
acting in the best interests of the child»**

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**THE SITUATION OF THE UNACCOMPANIED MINORS
MIGRANTS IN THE UK**

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1. Migration cycle of unaccompanied minors in the UK

In a decade or so, the largely invisible previously component of the irregular migration flows, have attracted much public attention and concern: children who embark to cross borders alone or accompanied by 'agents' to be later exploited in the host country, either for prostitution, domestic servitude or other forms of labour exploitation. Children are sometimes even sold by their poverty stricken parents but the majority are sent away with the hope that they will have better life. Often families may not be able to pay for the parents' travel costs and have to make the difficult decision to send a child alone, in some other cases the child might be at risk in the family. Factors that affect separated children becoming part of the irregular migration flows vary. They may involve coercion (trafficking in minors) but they can be voluntary as well with many complex variations of both variables. These include the death of their parents, detention and torture, forced recruitment into the armed forces, persecution due to ethnic group or political activities of the family, abuse and/or abandonment by parents, poverty, lack of opportunity and debt bondage¹

The issue of child trafficking was first noticed in the UK in 1995 by social workers in West Sussex Social Services, after a child went missing. Soon after this case a pattern emerged and it became known that the children, mainly Nigerian girls, were being taken to Europe to be prostituted. Ten years since the first known case of a trafficked minor in the UK, yet very little is known about the actual size of the problem or the operating methods of trafficked channels. ECPAT UK carried out research in 2001 and 2003 respectively into the trafficking of children for sexual purposes².

In the case of Eastern European girls, the evidence from those rescued by the police or in testimonies against the traffickers, becomes evident that the girls often come into the UK accompanied by the trafficker or met the trafficker soon after arriving. Before arriving, a relationship was often started by the trafficker with the girl believing that she is the girlfriend of her soon to be pimp. These relationships were characterised by violence, rape and threats to the girl's family to ensure she does not leave. African children, on the other hand, were found to enter the UK as unaccompanied minors or with adults purporting to be relatives. The ECPAT UK research into child trafficking in 2001 revealed that the main group being trafficked were West African children (mainly Nigerian girls) for prostitution. The pattern appeared to be that they arrive at Gatwick airport as unaccompanied minors and claim asylum at the airport. Because of their age, they were taken into care by the nearest social services, in this case, West Sussex Social Services. Once in care, they followed pre-arranged plans to contact their traffickers and then would go missing from one day to six months after they initially arrived. Evidence from two rescued girls indicated that they were destined to be prostituted in Europe, although some appeared to have been exploited in the UK. The girls were controlled by voodoo and the fear that if they told anyone about their traffickers, they and their families would die. The only way they

The assistance by Ms. Rupal Mistry and Ms. Jelena Djordjevic is greatly acknowledged.

¹ Ayotte, W., 2000. *Separated children coming to Western Europe: Why they travel and how they arrive*. Save the Children.

² Somerset, C., 2001. *What the Professionals Know: The Trafficking of Children into and through the UK for Sexual Purposes*. ECPAT UK; Somerset, C., 2004. *Update on the Trafficking of Children into the UK for Sexual Purposes*. Unpublished, both cited in the Somerset, C., 2004. *Cause for concern? London social services and child trafficking*. ECPAT: UK

could lift the curse was to pay 20-40,000 pounds 'debt' that they owed the trafficker for bringing them in the UK. This research also revealed significant concerns about children coming into the country with adults purporting to be their relatives and disappearing into the unknown. This form of trafficking has become more evident over the last five-six years, and has revealed that children, particularly from Central Africa, are being brought into the UK to be exploited in domestic work or prostitution.

ECPAT UK research provides also evidence of children trafficked into the UK to deal drugs, or bring drugs and other contraband into the country and, are also brought here so that the trafficker can live off their benefits, often to the detriment of the child. Other children are trafficked to commit street crimes or for work in restaurants and sweatshops. Evidence indicate that Chinese and Vietnamese boys are brought here for restaurant work.

In December 2001, ECPAT UK launched a campaign to prevent the trafficking of children into the UK for sexual purposes³.

The UK now has legislation against the trafficking of people for sexual exploitation. It came into force in May 2004, in the Sexual Offences Act 2003 and makes trafficking into, within and out of the UK for a relevant sexual offence a criminal act. It clearly states that the prostitution of a minor is a criminal offence and also carries higher sentences than the equivalent offences relating to adults. There are even age differentials: for example, the sentence is higher for someone paying for sex with a child below 16 than someone paying for sex with a child below 18 years. Overall, the offences recognise a child as someone below the age of 18 and not 16 years as previously stated in the Sexual Offences Act 1956. Additionally, the maximum sentence has been raised to 14 years.

Among the strategies to effectively combat the trafficking and exploitation of unaccompanied minors in the UK is the one targeting child sex tourism. On 13 November 2001, the first UK tour operator, Thomson Holidays, signed up to an International Code of Conduct for the Protection of Children for Sexual Exploitation in Travel and Tourism. Since then ECPAT UK has been working with Thomson (now Tui UK), the largest UK tour operator, to implement the Code. Thomson has focused its work on training of tour representatives in tourist destinations, working in five target countries: Dominican Republic, Cuba, Mexico, Goa and Thailand, developing training manuals and briefing destination managers on how to perform the training⁴.

In the aftermath of the Tsunami in December 2004 and the subsequent media reports relating to potential child abuse in the region, the Metropolitan Police Child Abuse Investigation Command took the national lead in collecting intelligence on child trafficking to the UK and travelling sex offenders. The intelligence unit brought together a number of NGOs, including ECPAT UK and its coalition partners UNICEF UK and World Vision UK, to widen its intelligence gathering resources. In February this year, UK police from the National Criminal Intelligence Service travelled to Thailand to take part in training 50 police from 11 countries on

³ Since the launch of the campaign and up until July 2004, over 6,500 'End Child Trafficking' post cards had been distributed by supporters to their MPs (ECPAT UK Campaigner, July 2004)

⁴ ECPAT UK Campaigner May 2003; For more information on the implementation of the Code, check at www.thecode.org.

investigating sex offenders. The training, in co-operation with FBI and Australian Federal Police, was to help the police better investigate paedophiles and sex tourists, with UK police particularly focusing on interviewing techniques and evidence gathering⁵.

Based on recent and previous research by ECPAT UK, it is evident that children have been trafficked in the UK. Whilst it is recognised that the issue of separated children in general and trafficked children in particular can only be dealt with from a multi-agency approach, incorporating the police, immigration, social services and voluntary organisations, it is the responsibility of those who come into contact with such children, to identify them and for social services to provide the care that is needed. One of the recent positive developments are the plans in some boroughs for Child Asylum Teams to become part of the mainstream children's services. By ensuring that the issue of trafficking becomes part of the mainstream social services, more social workers will become aware of the problem and help with identifying trafficked children.

2. Legal framework for reception and care of unaccompanied minors in the UK

The term "an unaccompanied minor" is most commonly used in the UK, emphasizing the fact that a child travels or flees alone. The Home Office definition on "an unaccompanied minor" is restricted to an unaccompanied asylum-seeking child and, according to it, "an unaccompanied asylum seeking child is a person who, at the time of making an asylum application is, or (if there is no proof) appears to be, under eighteen; is applying for asylum in his or her own right; and has no adult relative or guardian to turn to in this country".

The Immigration and Nationality Directorate (IND) does not consider a child to be unaccompanied if he or she is being cared by an adult prepared to take responsibility for them. IND staff will involve social services in any case where there is concern about the child's relationship with the 'responsible adult'⁶.

The Home Office definition clearly excludes children who are accompanied by an adult who is not their parent or legal/customary carer, and children reaching the UK immigration controls with an adult that subsequently abandons them. For this reason, the term "separated children" was proposed in a joint initiative of the International Save the Children Alliance and the United Nations High Commissioner for Refugees known as the Separated Children in Europe Programme (SCEP). In its Statement of Good Practice, a broader definition is offered that includes not only asylum-seeking children but also children who may not apply for asylum such as children who have been smuggled for exploitation or who have fled conditions of serious poverty and deprivation. The term "separated children" covers the "unaccompanied minors" group as well as the extended group of children that may have been separated from their parents or usual caregivers but still be accompanied by or living with relatives, neighbours or other adults, therefore, not 'truly unaccompanied', and reaffirms their need for protection and assistance.

⁵ ECPAT UK Newsletter, February 2005 (<http://www.ecpat.org.uk/news0206.htm>)

⁶ Home Office Note on Unaccompanied Minors at

http://www.ind.homeoffice.gov.uk/ind/en/home/applying/asylum_applications/unaccompanied_asylum.html?

The Statement of Good Practice defines separated children and young people as:

“children under 18 years of age who are outside their country of origin and separated from both parents or their legal/custody primary caregiver. Some children are totally alone while others who are also the concern of the SCEP may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of

However, the term “separated children” can not be easily applied in the UK where the support systems differ for children who have even nominally some sort of carer. Children in the UK come under the UN Convention on the Rights of the Child 1989 (CRC89), but these rights are not guaranteed for asylum – seeking and non-citizen children. On the ratification of the Child Rights Convention in 1991, the UK government entered a reservation allowing it to operate its immigration controls without regard to the Convention. The reservation states: “The United Kingdom reserves the right to apply such legislation, in so far it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time”. The current government maintains the reservation to the CRC, which certifies of a long-standing conflict between immigration law and children’s best interest. In 1999, the Government submitted its second report to the UN Committee on the Rights of the Child, the body which oversees the implementation of the Convention. The report asserts that UK immigration and asylum policies are in general consistent with the UN Convention on the Rights of the Child. However, research and practice have shown the position in the report to be untenable. There are no moves for the incorporation of the CRC89 into the UK law which could mean that the rights contained therein could be enforceable in UK courts⁷. A year ago, the Mayor of London joined forces with charities and groups campaigning for the rights of children, such as Save the Children, Children’s Rights Alliance and the Refugee Children’s Consortium, in an attempt to urge the government to remove its reservation on applying the CRC89 to asylum-seeking and non-citizen children⁸.

During the mid 1990s there were a number of policy developments, which sought to ensure the best interest of separated children. For example, since 1994, the Home Office has funded the Refugee Council’s Panel of Advisors, a non-statutory service that provides assistance and advocacy for separated children.

Even at EU level, there is still little evidence of a strong rights-based approach to children as immigration control and security considerations appear to take precedence over the ‘best interest’ of the child principle in the CRC. Although the EU adopted a Resolution on ‘unaccompanied minors who are nationals of third countries’ in 1997 it is relatively weak and does not provide a framework for improved protection and care. Moreover, some aspects of the

7 Russell, S., 1999. “Unaccompanied Refugee Children in the United Kingdom”. International Journal of Refugee Law, vol.11 (1); Ayotte, W. and L. Williamson, 2001. Separated Children in the UK: An overview of the current situation. Save the Children.

8 Mayor of London, 2004. Offering more than they borrow: Refugee Children in London. Greater London Authority.

Resolutions are quite unsatisfactory. For example, while the Resolution makes it clear that the CRC applies to separated children, it also allows for the refusal of admission and detention of separated children⁹.

The UK Human Rights Act 1998 is a significant piece of legislation that incorporates the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR50) into UK law. The principle of *non-refoulement* in European Convention Law is extremely important for those facing a serious risk of torture if removed. The incorporation has a particular significance for children; most of its articles are relevant to them. Some articles are of potential benefit to separated children, such as Article 2 on the right to life and Article 3 on torture and degrading treatment, Article 5 on deprivation of liberty (children in immigration detention) and Article 8 on the right to family life (family tracing, contact and reunification)¹⁰.

The care of separated children in the UK is primarily regulated by children's law. The Children Act 1989 (CA), provides a basic definition of a 'child in need' and separated children fall within this category. The CA89 also specifies the duties owed by a local authority to 'a child in need' in its borough. Once social services have established that a child is 'in need', they then determine the level of care and support to be provided either under Section 17 or Section 20 of CA. Section 17 outlines a local authority's duty to care for children in need and provide a service appropriate to the child's needs. Section 20 is explicit about the local authorities' duty to provide accommodation. All unaccompanied children should be cared for under this section as it applies to children who are without a parent or guardian who is able to care for them. In the past, most unaccompanied children, including asylum seeking children, received the less protective level of support under Section 17 of the CA.

The majority of separated young people will be entitled to leaving care services under the Children (Leaving Care) Act 2000 when they reach 18 years of age. This Act came into force in October 2001 and builds on and amends the CA89. It imposes duties on the local authorities in respect of children who have been 'looked after' by them. It sought to improve support to care leavers in a number of ways, including: to ensure that young people do not leave care until they are ready and, to ensure that they receive more effective support once they have left. Young people in education and training can be supported until the end of the programme, even if this means they will be over 21¹¹.

Over the past couple of years there have been a number of legal and policy developments, which provided clarity on the social services protection and support entitlements of separated children and young people. In June 2003, the Department of Health issued a Local Authority Circular, LAC (2003) 13 following an amendment to the CA89. LAC 13 stated that support should be based on a needs assessment and that the majority of separated young people are likely

9 Sutton, D. and T. Smith, 2005. "Is Europe failing separated children?". Forced Migration Review, issue 23, May (<http://www.fmreview.org/mags1.htm>); Ayotte, W. and L. Williamson, 2001. Separated Children in the UK: An overview of the current situation. Save the Children

10 Russell, S., 1999. "Unaccompanied Refugee Children in the United Kingdom". International Journal of Refugee Law, vol.11 (1); Ayotte, W. and L. Williamson, 2001. Separated Children in the UK: An overview of the current situation. Save the Children.

11 Save the Children, 2005. Young refugees: A guide to the rights and entitlements of separated refugee children. Published by Save the Children England Programme.

to be assessed as requiring Section 20 support under the CA89. Additionally, in August 2003, the High Court reviewed the use of Section 17 (rather than Section 20) to support unaccompanied children. The judgement is commonly referred to as the Hillingdon judgement as it relates to the case of four young people supported by the London Borough of Hillingdon. In this case, the judge found that whether a child had been accommodated determined whether they were entitled to leaving care services. Until the Hillingdon case, the distinction between whether a child is supported under Section 17 or Section 20 of the Children Act had a major impact when they turned 18. Prior to this case, only unaccompanied children supported under Section 20 were considered to be eligible for leaving care services. This judgement therefore brought clarity to this previously confused area of policy. Services provided to unaccompanied children seeking asylum would largely be delivered through Section 20 of the CA (such as taking them into public care), thus increasing the responsibilities of local authorities to this group¹².

Local education authorities have a duty to provide full-time education for all children of compulsory school age (5-16 year-olds) resident in that area and irrespective of the child's immigration status, as outlined in Section 14 of the Education Act 1996 and in the Home Office note on unaccompanied minors. There is no obligation for local authorities to provide school places for 16-18 year-olds. Between 16 and 19 years, a young person is only accepted at school at the discretion of the headteacher. However, decisions on school places must comply with race-relations legislation. "They are entirely supported under the Children Act 1989, which is maintained by the Department of Health."¹³The Local Authority in all its functions has a corporate parenting responsibility for them". Schooling is free for asylum seekers, those with leave to remain and refugee status.

Unaccompanied asylum-seeking children are entitled to medical treatment on the NHS. Despite having full entitlement to healthcare, separated children may have to overcome considerable barriers when seeking medical treatment, including access to a GP, interpreting support and mental health services.

The UK childcare legislation provides children with opportunities to express their wishes and views about the provision of substitute care. Review procedures under the legislation enables separated children who are 'looked after' to express their views at review meeting. However, it is quite unlikely that the views and wishes of separated children will be taken into account if there is a language barrier and where no proper assessments are carried out.

A young person will need to find a legal representative to make his or her case for asylum to the Home Office. Even though, there is no requirement under the current asylum legislation that claimants have legal representatives, it is strongly advised, given the complexity of legal issues, particularly in dealing with claims by separated children¹⁴. In contrast to many other European countries, separated children applying for asylum have access to legal aid to pay for the

12 Refugee Council, 2005. Ringing the changes: The impact of the guidance on the use of Section 17 and 20 of the Children Act 1989 to support unaccompanied asylum-seeking children. January 2005.

13 Home Office note on unaccompanied minors (20.1)

14 Save the Children, 2005. Young refugees: A guide to the rights and entitlements of separated refugee children. Published by Save the Children England Programme: London.

services of legal representatives. Good legal representation is essential in assisting the child to articulate their reasons for applying for asylum¹⁵.

The right to family life is stated in the Article 8 of the ECHR50, incorporated in the UK law. Despite the crucial importance of this issue, there is little information available about family tracing and reunification activities carried out by UK agencies. The British Red Cross, International Social Service, Refugee Community Organisations and UK Consulates Abroad deal with establishing family contact and conduct tracing. The British Red Cross uses two methods for family tracing and contact: the message service whereby the individuals can send messages out and tracing requests. Assistance with family tracing is one of the mandatory services offered by the local branches of the British Red Cross. The Red Cross always ensures that the child has consented to the tracing before proceeding. International Social Service can assist with making contacts with family members in another country and in obtaining a social report abroad in regard to family reunification. Separated children have no clear entitlements to family reunification in the UK, regardless of their immigration status, because the official policy is based on bringing spouses and children into the UK. In special cases, separated children may apply to bring their parents to the UK but this is outside the family reunification policy and it is entirely based on compelling compassionate considerations. Even though, it may happen that applications for family reunion made by separated children are granted, this is exceptional and outside the migration rules.¹⁶

3. Arrangements for reception and care of unaccompanied minors in the UK

Initial contact with services

It is claimed that every month, over 200 children enter the UK on their own and claim asylum. However, it is possible that many more separated children arrive but do not come to the attention of the authorities. And, by definition, these children will almost certainly have experienced situations where their safety and welfare were at extreme risk. They become then responsibility of the local authority where they arrive or where they first present their needs as unaccompanied asylum seeking children.

There is a growing awareness amongst specialist agencies that many children and young people are brought to the UK for the purposes of exploitation in the various niches of the black economy, including the sex industry. Most of these children will never claim asylum or come to the attention of the authorities at all. Their presence in the UK is illegal and they form one of the most vulnerable groups of children and young people.

15 Ayotte, W. and L. Williamson, 2001. Separated Children in the UK: An overview of the current situation. Save the Children.

16 Ibid.

Save the Children did a research on the experiences of the unaccompanied asylum-seeking children on arrival in the UK. The main problems the unaccompanied children shared were: delays at ports when the young people sometimes had to sleep on the concourse overnight alone; incorrectly recorded personal details, including name and date of birth, causing further difficulties when accessing services or filing asylum claims; people were not believing what they were saying and, feeling confused by the unfamiliar environment and unsure about what was going to happen next¹⁷.

Save the Children in the UK has designed a guide to assist immigration officers working with unaccompanied children at ports of entry. Particular attention in it is given to the situation of the young children upon arrival. They are usually tired, scared and confused. They may have even been instructed by an 'agent' what exactly to say and how to behave with the authorities when they arrive. For example, they may have been told to hide in the toilets for sometime before presenting themselves to the immigration officers thus confusing the authorities about the flight the young person has been on and ensuring the agent's route could not be tracked. The young person or their family back home may be threatened by the agent if they divulge flight details or other information that may expose the routes and mechanisms of entry into the UK. The guide provides important tips for the immigration officials who are the first to interact and establish contact with separated children on their arrival in the UK. The first recommendation is for the immigration officials to be friendly as children are usually frightened and unsure about what will happen to them next. Officials are advised to use body language like smile, eye contact, positioning at their level rather than standing over them. Then, the basic needs of the children should be met. It is reminded that children will often wait to be asked what they need rather than asking themselves. Simple and descriptive language is recommended for use by the immigration officers as children may not know the English language at all or they may have a very poor knowledge of it, not being familiar with words like wc or sandwich. Once their basic needs are satisfied, children may feel more ready to answer questions.

As noted by Save the Children, UK, in their October 2002 campaign¹⁸ against child trafficking, the only option that most unaccompanied children have to stay in the UK is by applying for asylum. This has not changed much since then. Applying for an asylum by a child can be stressful and even unnecessary as their claims are often rejected.

However, if minors are allowed to apply for a short-term permit (known as reflection delay) instead of applying for an asylum, they will have enough time to receive the appropriate services and at the end of the six-month period they can apply either for asylum or exceptional/indefinite leave to remain. It would also allow the child to decide whether they want to return home and how safe it would be for them to do so¹⁹.

Unaccompanied asylum –seeking children are the responsibility of the social services and should be referred to the relevant social services team as soon as possible after arrival. However, it may take a while until the social services arrive. Immigration officers are often in the difficult

17 Stanley, K., 2001. Cold Comfort: Young Separated refugees in England, Save the Children.

18 Save the Children, 2002. The Campaigner. October 2002.

19 Ibid.

position of finding a place for the young people to sleep and lack of facilities and regulations have often meant that young people were left on the concourse overnight. Therefore, timely refers to social services avoid the need for young people to sleep at ports overnight²⁰.

All unaccompanied asylum-seeking children (including those whose age is being disputed) should also be referred by an immigration officer to the Panel of Advisors at the Refugee Council. An Advisor can listen to the child's problems, help them with finding a legal representative to assist with their asylum application, make sure that they are protected and cared for as well as help the child make a contact with their family back home if they want. Needless to say, an Advisor would not make a child do or say anything that they do not want to.

Identification of unaccompanied minors: methods of determining age

At ports, the process of identification of an unaccompanied child is crucial for whether a child will be referred to the social services or not. Some unaccompanied children may attach themselves to another family and pass unnoticed. In other cases, children may come with other brothers or sisters who are not able to care for them. If in doubt about the child's relationship to a person, the immigration officer refers to social services and let them make the decision.

Many young people have been trafficked from countries in West Africa and Eastern Europe, and from South Africa, China and Vietnam²¹. Some of these children have been told by the traffickers to claim asylum on arrival in the UK. Others may come in on false passports and claiming to be adults seeking for an asylum. Some other young people may come together with an adult that is the trafficker. They are all very vulnerable and need the immediate protection and support of the authorities. A profile of people at risk of being trafficked has been put together at some ports in the UK, including Gatwick and Heathrow airports. Protocols for dealing with trafficked people have also been established at some ports, which is to help immigration officials identify people who are potentially being trafficked and refer them to social services, the police, or a specialist branch, such as the Human Smuggling Unit at Heathrow Airport.²²

The assessment of the age of a young person claiming to be a separated child is a very crucial issue particularly in relation to immigration detention, the provision of social services and, whether an individual's application for an asylum will be treated as minor's. As the first priority in ensuring that the rights set out in CRC89 are respected, it is to identify the child as a child and that the child is unaccompanied in ensuring their survival and protection²³

It is generally recognised, however, that the assessment of age is a very complex task and not an exact science. Even when based on medical evidence, it is impossible to identify a child's exact age and the margin of error can be five years either way²⁴. It is further complicated by the fact that many unaccompanied minors arrive in the UK without any identification documentation.

20 Save the Children, 2005. Young refugees: working with unaccompanied asylum-seeking children at ports.

21 ECPAT What the Professionals Know, Nov. 2001 (cited in Save the Children, 2005. Young refugees: working with unaccompanied asylum-seeking children at ports)

22 Save the Children, 2005. Young refugees: working with unaccompanied asylum-seeking children at ports.

23 Russell, S., 1999. "Unaccompanied refugee children in the United Kingdom". International Journal of Refugee Law, vol. 11 (1).

24 Kings Fund, 1999. The Health of Refugee Children: Guidelines for paediatricians.

Sometimes, they may not even know their age or have been instructed by their ‘agent’ to lie about their age and say a certain age. In some places, dates of birth are not important and birthdays are not celebrated. In some places, calendars are not even used or different calendars are used and converting from one calendar to the other can be difficult and produce wrong dates.

Some children may look older because of the experiences they went through to get to the UK or because of their experiences in their country of origin. Also, boys in some parts of the world grow facial hair earlier than boys in Europe. For example, in some parts of Afghanistan it is common to grow a beard at the age of 13 or 14²⁵.

Often, it is the Immigration or Home Office official who makes the assessment of a minor’s age on arrival even though it is the social worker who should make this assessment. If the Home Office has any doubt it is required to refer to social services for a detailed age assessment. Social services have the right to override a decision made by Immigration officers. This is valid in both cases: a) when the Immigration and Nationality Directorate (IND) of the Home Office, has referred an applicant to the social services department for care as a minor but the social services believe the applicant is an adult. Then, the social services department contacts IND and IND amends the case record to show that the applicant is an adult. b) and, when the IND has decided to treat the applicant as an adult (and referred to NASS as appropriate) but the social services department assesses the applicant as a minor. The social services then inform IND who amend the case record to show that the applicant is to be treated as an Unaccompanied Asylum Seeking Child²⁶.

“Age assessment is a process, not a single event”²⁷. A judgement on the age group of a child can only be made through direct work with the young person or the child over time and an holistic assessment of their experience, skills and needs.

Some social services departments investigate the age of separated asylum-seekers by making enquiries in their countries of origin. While age determination is a complex process and social services do need to protect the children in their care from adults claiming to be younger than they are, this practice is of serious concern as argued in a report by Save the Children of 2005. If a person claims asylum, it means that they are claiming to have fled from persecution from state actors, or persecution by non-state actors from which the state in the origin country has failed to protect them. There is concern that when social services make enquires about a particular child they are quite likely to divulge information, such as the whereabouts or even their name or the fact that they are claiming asylum, which may endanger the child or any of their family members. Therefore, this method of age assessment should be applied with extreme caution especially when enquires are made in the country of origin, particularly, though not exclusively, in relation to state actors.

The age of a young person affects most of all the level and type of social support they receive and determines whether it should be from social services or the National Asylum Support Service (NASS). The Home Office’s policy “where an applicant claims to be a child but his/her

25 Save the Children, 2005. Young refugees: working with unaccompanied asylum-seeking children at ports.

26 Home Office Note on Unaccompanied Minors, July 2002 www.ind.homeoffice.gov.uk.

27 Ibid.

appearance suggests that he/she is over 18”, is to “treat the applicant as an adult and offer NASS support (if applicable) until there is credible documentary or medical evidence to demonstrate the age claimed”. Young people whose age is disputed by the Home Office are issued with a letter confirming that she or he is being treated as an adult for asylum purposes and is referred to NASS, if they need support. If the applicant can verify their age as being under 18 at a later date, NASS should refer them back to the local authority where they first presented. Many of these young people are fast tracked through the system and risk being returned before being found to be children.

In the UK, the identification of the unaccompanied refugee child involves a referral not only to the local social services but also to the Children’s Panel at the Refugee Council. The Children’s Panel acts as a liaison for the child in the first stages of the determination procedure. “Details of all applicants who are unaccompanied minors, including those whose claim to be under 18 IND disputes (and who were therefore treat as adults) are passed to the Children’s Panel of the Refugee Council within 24 hours of the claim being lodged. However, the details provided by the Home Office are often insufficient for the Panel to make contact with the child and for this reason, other agencies are also encouraged to refer young people to the Panel. The Panel is a Home Office funded body administered by the Refugee Council. Its role is to provide independent guidance and support to ensure that the child is aware of his/her rights and the services to which he/she is entitled throughout the asylum process. The Panel does not offer legal advice”²⁸. Its primary role though is to assist the child in accessing quality legal representation and guide them through the complexities of the asylum procedures. The Children’s Panel consists of about 20 advisors that travel all over the country to support unaccompanied minors. By law, an asylum application can be made at any UK port to an Immigration Officer. As soon as the Immigration and Nationality Directorate (IND) receives an application, the Home Office obtains the following details about the child: name, nationality, date of birth and family details as well as information about how the applicant travelled to the UK. The home Office also “fingerprint and photograph the child in the presence of a responsible adult (not IND staff)” This is done either on the day the application is made or on a later date. Children under 5 are not fingerprinted. Following this, the child is given “a questionnaire – the Statement of Evidence Form (Minor); a Human Rights Form; and, a letter asking the applicant to return to the Asylum Screening Unit in one month with the completed questionnaire and form”. At this stage, an Application Registration Card is produced, confirming that the application has been made.

Detention of unaccompanied minors

Current government policy is to detain separated young people only in the most exceptional cases. If, for example, they arrive in the UK ‘out of hours’ then the only option that the Immigration Service may have is to keep them overnight until they can be collected by a social worker in the morning. Applicants who claim to be children but whom IND are treating as adults (the age-dispute cases) are subject to detention in the same way as any other adult²⁹.

28 Ibid.

29 Ibid.

Since 22 September 2004, it is a criminal offence under Section 2 of the Asylum and Immigration Act 2004 for someone not to have proper immigration documents on arrival (i.e., a passport). A person convicted of this crime can be fined and/or imprisoned for a maximum of two years. Separated children over the age of ten are not excluded from being charged under Section 2. However, the Home Office guidelines on Section 2 acknowledge that special consideration should be given to the age and maturity of separated children in assessing their case and that children may not understand that need a passport or the consequences from destroying it. In particular, the guideline says that consideration should be given as to whether the child could be expected not to comply with instructions given by an 'agent' who may have told them to destroy their documents. Other vulnerable people to whom special consideration should be given include women and victims of trafficking. There have been instances where separated young people have been charged and detained under Section 2 and for this reason it is important that advocates support a young person in this situation.

In a report by Save the Children of 2001, concerns are expressed about the detention of separated children in immigration detention, young offender and prison facilities. It is argued that the detention of separated children because of their immigration status or entry into the UK is incompatible with the principles of the Children Act, with the 1984 Police and Criminal Evidence Act and, in particular with Articles 3(3) and 37 of the UNCRC (the deprivation of liberty). Since 1994, when the Panel of Advisors started its service, and up until the time this report was written, the Panel had seen over 220 children who were in detention. Young people were detained in a number of centres such as Campsfield (Oxfordshire), Oakington Reception Centre (Cambridgeshire), Tinsley House (Gatwick), in Haslar and Rochester prisons and Feltham young offender facility. In most cases children were detained on the assumption that they were adults. This was caused by the fact that children were travelling on false documents certifying them to be of an adult age. Many children who were smuggled for exploitation were told by the traffickers that they had to stick to the stories they had been given and threatened with dire consequences if they did not. Often children would eventually confide in a detention visitor that they were in fact under 18. With the child's permission, the visitor would contact the Panel who would work with the young person. If a young person appeared to be under 18 and had good legal representation, they would normally be released within a few weeks or less. If not, a medical assessment was required and the Immigration Service would normally give credibility to reports from the Medical Foundation pediatricians who were not always available. Furthermore, the Immigration Service would not in any event release a child on the strength of a positive medical assessment so, the case had to go before an adjudicator. If the medical report strongly favoured the view that the person was under 18, then she/he would be released but it was more difficult if the medical report only stated that she/he could be under 18. Some young people did not know their exact age due to lack of birth certificates or cultural differences in celebrating birthdays. One boy had lived in a refugee camp since the age of six without any family members to tell him his age. Thus, separated children could be kept in detention for as long as three months or more, which, for a child is a very long period. The reception detained children received on release depended very much on the attitudes of the local authority where the detention centre was located.

Recent research by Save the Children provided evidence that the number of age-disputed cases among asylum seekers have increased, and that a significant proportion of the detainees were found to be children who were separated from their parents/carers³⁰. This report raised significant concerns about the detention of the unaccompanied minors, including mental health problems, lack of access to education and child protection issues. The research also found that the Home Office did not always take social services age assessments into account, contrary to state policies.

Another report by Save the Children expresses concern about young people who have turned 18 and who have been refused asylum or any other form of legal status in the country, and have exhausted their appeals process, there is an increased likelihood that they will be detained prior to removal given that the UK Government has increased the number of immigration removal centres. Failure to report regularly, which the Home Office considers 'absconding', is one of the main reasons for detention³¹.

Immigration detainees have the right to apply for bail if they have been in the UK for more than seven days. While in detention, they also have the right to receive visitors, make and receive phone calls and send, and receive faxes.

Placement in an institution

The responsibility for caring for unaccompanied children, including unaccompanied asylum-seeking children, is of the local authority in whose geographical area they seek help. There is a statutory duty placed on the local authority under the Children Act 1989 to assist 'children in need' and to provide accommodation for certain groups of 'children in need'.

Among the various care options for separated children, is the placement of children in different types of residential homes or centres where it is not possible to arrange for a family-based care. In the Action for the Rights of Children (ARC) Resource Pack, it is argued that institutional forms of care should be avoided where possible as they may not necessarily work in the best interest of the child. They may not work towards returning children to their families, even if this is considered in the child's best interest, they may not behave in a responsible or protective way towards the children and thus causing them emotional or physical harm.

The unaccompanied children in the UK fall in two categories: asylum-seeking and non-asylum seeking. Non-asylum seeking children are looked after or supported by mainstream social services teams, such as Children in Need teams, whilst asylum-seeking children are often supported by specialised teams. Most of the available information is on the latter group. This may be due to the fact that non-asylum seeking unaccompanied children are often staying with families that they have either come into the country with, or have later joined. These families are

30 Save the Children, 2005. No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards.

31 Save the Children, 2005. Young Refugees: A guide to the rights and entitlements of separated refugee children, second edition.

not the child's nuclear family. However, although many of the children are being looked after by these families, they are not always registered with social services and are sometimes not in contact with other authorities or schools. These children are therefore in the UK without the knowledge of anyone and are potentially at risk of exploitation and abuse³².

A research by Save the Children and the Refugee Council in the UK, in 2001, identified six main ways that unaccompanied children come to the attention of social services. These include: referral from a third party, such as the Asylum Screening Unit, the Refugee Council, police, school, doctors or neighbours; self referral; child brought in by an agent and then 'abandoned'; child brought in by a 'stranger' who found the child, has been accommodating them and now asks for financial support by a stranger; child brought in by a 'stranger'; and, child found to be in a unsuitable/questionable foster arrangements. How a social worker comes into contact with a separated child depends very much on the team they work in.

All separated children, once with the social services, should receive a full needs assessment, in line with the Department of Health's national framework for assessment³³. This provides a systematic approach to establishing the needs of a child and stresses that particular care and attention is required in the assessment of separated refugee and asylum-seeking children. Services should be then provided in line with needs identified using Section 17 and Section 20 of the Children Act 1989. The section of the Children Act that the separated child is supported under is very important as it determines the level of support they are provided with as a child but also affects whether they are entitled to leaving care support from social services once they are 18.

Support provided under Section 20

Often, unaccompanied asylum-seeking children who are under 16 and supported under Section 20 will be placed in foster care or sometimes, in residential accommodation. For older children, some form of semi-independent accommodation may be used. While many social services departments would prefer to provide foster care, they often find it in short supply, particularly in London, and especially culturally appropriate care. Many social services have no other option but to use private fostering agencies, which considerably increases the cost.

In general, refugee children are not placed in residential homes, as their needs are very different to those of other children placed in care. One alternative is a residential home exclusively for refugee children. Save the Children found that children interviewed in one Borough who were accommodated in a residential home exclusively for refugee children while waiting to be fostered expressed a high level of satisfaction. Their main concern was about the eventual transition to semi-independent living. Children supported under this section are also entitled to leaving care services when they turn 18.

Trafficked children are entitled to support under Section 20 of the Children Act 1989, as children in need of accommodation and without an adult in the UK with parental responsibility to them., and should be provided with safe accommodation. If there is a risk that they will suffer

32 Somerset, C., 2004. Cause for concern? London social services and child trafficking. ECPAT: UK.

33 Department of Health, 2000. Framework for the Assessment of Children in Need and their Families. The Stationary Office.

significant harm if recaptured by the trafficker, they should be taken into care under Section 31 of the Children Act 1989.

Support provided under Section 17

Generally, unaccompanied asylum-seeking children who are 16 or 17 years old on arrival in the UK are supported under Section 17. They are often accommodated in an unsuitable bed and breakfast or hostel type accommodation or private shared housing with very poor quality accommodation. Results from a survey by the Audit Commission suggested that 50 percent of the unaccompanied asylum-seeking children over 16 years of age and 12 percent of those under 16 were in bed and breakfast, hostel and hotel accommodation in October 1999³⁴. Save the Children found that children placed in bed and breakfast hostels or private rented accommodation received a considerably lower standard of care than those placed in foster care or residential accommodation³⁵.

In a survey of local authority services to separated children in July 2000, conducted by Barnardos and cited in the Report by Save the Children and the Refugee Council, 63 percent of local authorities in England and Wales responded while Scottish authorities replied that they did not have any separated children in their care. Some of the key findings of the report can be summarised as follows: approximately 70-80 percent of the separated children in the UK receiving services from local authorities are aged 16 and 17, although poor data keeping means that this figure can not be definitive; the vast majority of 16-17 olds are receiving services under section 17 of the Children Act, consisting mainly of housing and payments in cash, kind and vouchers. They are not therefore 'looked after' children like those who are accommodated under section 20 of the CA and benefit from a number of safeguards and provisions; a considerable number of 16 and 17 year old separated young people are placed in unsupported Bed and Breakfast housing and may or may not be visited by a social worker.

Separated children are also expected to budget without help and it is very difficult for them to maintain a proper diet on the limited sums on offer, particularly when vouchers have been issued to the young person by the local authority. No change can be given when the cost of the purchased items is less than the amount of the voucher. Also, access to culturally specific foods is likely to be very limited or non-existent since only some retailers will accept the vouchers. Using vouchers identifies the separated children as asylum seekers and may expose children to prejudice on the part of the shop personnel. Issuing vouchers is claimed to be discriminatory in terms of Children Act provision by Save the Children and the Refugee Council. Thus a significant number of 16 and 17 year olds are living alone in unsupported housing conditions without the care of a responsible adult. They are facing the hard adaptation to a strange culture and new language and, the pain of being alone, away from family without any adult support. Many of the young people in this situation are not getting access to education and are quite vulnerable to exploitation, especially in the sex industry³⁶.

34 Audit Commission, 2000. Another Country: implementing dispersal under the Immigration and Asylum Act 1999, cited in Mayor of London, 2004. Offering more than they borrow: Refugee Children in London. Greater London Authority.

35 Stanley, K., 2001. Cold Comfort: Young Separated refugees in England, Save the Children.

36 Ayotte, W. and L. Williamson, 2001. Separated Children in the UK: An overview of the current situation. Save the Children.

Agencies working with separated children have reported quite disturbing instances of children under 16 being housed in bed and breakfast or hostel accommodation. And, under these inappropriate housing conditions where the child is in contact with unknown adults who may place the child at risk of abuse or exploitation, it is impossible for a local authority to act as a good parent.

At the same time, local authorities, particularly where the housing costs are high have complained about the inadequate levels of funding for accommodation for unaccompanied asylum-seeking children. The Home Office special grant paid to local authorities for the care of these children has also encouraged this division in the provision of accommodation. Local authorities have been able to claim more money for children under 16 than for those aged 16 and 17. The Home Office restructured its special grant in 2002 and local authorities can now make claims based on the unit costs of the previous year rather than being based on limits set by the Home Office³⁷. However, it is not expected to immediately improve the provisions of services to children 16 and 17 years of age.

'Out of Boroughs' Placements

The housing of children in local authorities other than the one, which has responsibility for them, has been causing particular concern. This is the result of arrangements with private rental agencies and inter-borough housing agreements concerning the accommodation of separated children, including asylum-seekers. Most of the local authorities do retain responsibility for the child and continue to provide appropriate follow-up and support following the transfer. In many instances however problems such as protection issues and poor quality of accommodation are further exacerbated. One consequence of this placement is the lack of planning for school admissions that leaves some children out of education. Separated children housed out of the borough may be isolated in a community where they have no contacts, friends or relevant community organisations.

A number of local authorities in the south-east make placements out-of-borough, often long distance placements with private companies and as far away as Manchester and Hull. A scheme transferring the responsibility of care for the young person to the local authority they are placed in is about to be piloted and is known as 'safe case transfer'. It is expected that this pilot will involve transferring young people from the care of the Department of Social Services in Kent to Manchester, Bolton and Bury. All young people transferred under this safe scheme will be supported under Section 20 of the Children Act 1989, and be assigned a social worker and have access to independent advocacy support³⁸

The Mayor of London, in a report on *Offering more than they borrow: Refugee Children in London*, March 2004, emphasised that the UK government should be reminded of the principals governing the Children Act of the putting the wishes and best interest of the child first when considering case transfer outside a borough.

37 Home Office, Local Authority Letter INDLAL02/04, 13 June 2002

38 Save the Children, 2005. *Young Refugees: A guide to the rights and entitlements of separated refugee children*, second edition.

Despite the EU Directive requiring that “a guardian for each of the unaccompanied minor is appointed who shall ensure that the minor’s needs are duly met in the implementation of the provisions of this Directive”³⁹ and the recommendations of the UN Committee on the rights of the Child to the UK government that they consider a system of independent guardians, most refugee children have limited or no access to an independent advisor or a guardian.

While some children may manage to contact a social worker for help with accessing services and resolving problems, the absence of this system of independent visitors or guardians raises concerns about their access to a meaningful complaints procedure. It is therefore highly recommended that all separated children including unaccompanied asylum-seeking children and children who are accompanied but not with parents or their customary carer are secured access to an independent guardian.

Dispersal and After Care Provision

Under the Asylum and Immigration Act 1999, the Government introduced a new system for the reception of asylum seekers involving their dispersal throughout the country including areas where previously few or no asylum seekers had gone. The new system is administered by the National Asylum Support System (NASS) within the Home Office. As a result of lobbying during the passage of the Act, separated children aged 16-17 were exempt from the provisions of the scheme and it was re-emphasised that they should remain being subject to the provisions of child care legislation. However, in practice, many separated children assessed as being in need under the Children Act are dealt with not child care teams within the Social Services Departments but usually teams working with adult asylum – seekers. They may end up being dispersed along with adults even if their costs are covered by a different budget. Thus dispersal may be wrongly described by local authorities as ‘out of borough’ placements.

Safe accommodation

In a recent research by Save the Children, a serious concern was raised about the lack of appropriate accommodation for separated children, victims of trafficking. In the cases that the child was under 16, it was generally felt that trafficked victims should be placed in foster care, and with foster carers who have been trained to deal with vulnerable children. However, the research found that they had not been trained to care for children who have been trafficked. In relation to over 16 year olds, it was found that safer and more appropriate accommodation was needed than was available. In one case of a trafficked girl found in prostitution, it was reported by social workers that she was placed in a residential home, as there was no other accommodation available. It was an inappropriate accommodation as the staff had not been trained to deal with the specific issues around trafficking and the girl was put together with younger children than her who would not understand her situation. However, there were cases of under 16 year olds and victims of trafficking who were placed in carefully selected foster homes. However, not all social workers interviewed for the research agreed that there was a need for safe houses, i.e. a house just

39 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (cited in Mayor of London, 2004. Offering more than they borrow: Refugee Children in London. Greater London Authority).

for trafficked children with specific security features. Those who had dealt with cases where they were responsible about the child's safety, supported the need for safe houses. In some cases, the lack of designated accommodation has meant that the social workers had spent a disproportionate amount of time trying to find appropriate accommodation⁴⁰.

4. The way ahead

Local authorities together with the Government should join efforts to consider how the duties contained in the Children Act can be implemented into services for the unaccompanied minors, mainly, a thorough assessment of need for every child and, support under Section 20 of the Children Act unless there are exceptional circumstances or the young person requests or requires alternative support.

The Government should ensure that any scheme for care and support of unaccompanied minors is sufficiently resourced. Last but not least, the government should be reminded of governing principles of the Children Act namely of putting the wishes and best interest of the child first when considering care options and 'out-of-the-borough' case transfers.

40 Somerset, C., 2004. Cause for concern? London social services and child trafficking. ECPAT: UK