UNHCR’s submission to the Joint Committee on Human Rights’ call for evidence on the United Kingdom’s record on Children’s Rights

1) UNHCR has been entrusted with the responsibility for providing international protection to refugees and, together with governments, seeking permanent solutions to their plight. As set out in the 1950 Statute of the Office of UNHCR (UNHCR’s Statute) (paragraph 8(a)), UNHCR fulfils its mandate by, *inter alia*, “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto’. UNHCR’s supervisory responsibility over the implementation of international instruments is also reflected in Article 35 of the 1951 Convention relating to the Status of Refugees (*1951 Refugee Convention*) and Article II of its 1967 Protocol, obliging State Parties to cooperate with UNHCR in the exercise of its functions; and is further found in EU law.¹ UNHCR has also been formally mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people.²

2) In line with UNHCR’s mandate and in accordance with the Joint Committee on Human Rights’ (JCHR) evidence call, UNHCR’s submission relates to children in search of international protection in the UK, especially unaccompanied and separated children (UASC). UNHCR has focused its submissions on:

- What we consider to be the most significant human rights issues for children of concern to UNHCR in the UK;
- How the Government should respond to the UN Committee on the Rights of the Child’s (UNCRC) recommendations (or any of them in particular);³ and
- Which of the UNCRC’s recommendations should be treated as priorities for parliamentary follow-up.

3) In general, UNHCR would welcome priority consideration given to those recommendations relating to:

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the principle of the best interests of the child;\textsuperscript{4}  
child rights impact assessment;\textsuperscript{5}  
respect for the views of the child;\textsuperscript{6} and  
asylum-seeking, refugee and migrant children.\textsuperscript{7}  

UNHCR wishes to focus on the following issues concerning refugee and asylum-seeking children in the UK:

Best Interests of the Child and Durable Solutions

4) Despite the welcome introduction of the statutory duty under Section 55 of the Borders, Citizenship and Immigration Act 2009, the extent to which a child’s best interests are being considered, analysed, and given weight both during the asylum process and when identifying a durable solution remains problematic. This is addressed in UNHCR’s 2015 submission to the JCHR\textsuperscript{8} and also recent written submission to the House of Lord’s inquiry on the situation of unaccompanied children in Europe (House of Lords Inquiry).\textsuperscript{9} UNHCR concerns include the poor application of the best interests principle during the asylum decision-making stage as well as when identifying durable solutions. UNHCR notes that the UK does not have a formal Best Interests Determination mechanism that informs durable solutions decisions.

5) In October 2014 UNHCR and Unicef jointly issued a document entitled Safe and Sound, What States can do to ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe (Safe and Sound)\textsuperscript{10} as well as a UK specific briefing on what the UK can do to ensure respect for the best interests of UASC.\textsuperscript{11} These documents aim to support States in applying the best interests

\textsuperscript{4} ibid. Please see recommendations at Paragraph 27 of the UNCRC’s Concluding Observations.  
\textsuperscript{5} ibid. Please see recommendations at Paragraph 10 of the UNCRC’s Concluding Observations.  
\textsuperscript{6} ibid. Please see recommendations at Paragraph 31 of the UNCRC’s Concluding Observations.  
\textsuperscript{7} ibid. Please see recommendations at Paragraph 77 of the UNCRC’s Concluding Observations.  
\textsuperscript{8} UNHCR, Submission to the UK Parliamentary Joint Committee on Human Rights Inquiry into the UK’s compliance with the UN Convention on the Rights of the Child, 26 February 2015, available at: http://www.unhcr.org/uk/protection/basic/5756e9dc7/unhcr-submission-to-the-uk-parliamentary-joint-committee-on-human-rights.html  
\textsuperscript{11} UNHCR and UNICEF, What the UK can do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children, 2016 (hereinafter “Safe and Sound UK Briefing”), available at: http://www.unhcr.org/uk/protection/basic/5756e8c07/what-the-united-kingdom-can-do-to-ensure-respect-for-the-best-interests.html
principle when dealing with UASC in their territory and are consistent with the UNCRC’s recommendations.

6) UNHCR supports the observation and recommendations of the UNCRC raised at paragraphs 26, 27(a) and (b), and 77(h) and would welcome parliamentary follow-up on its recommendations relating to the right of the child to have their best interests taken as a primary consideration. UNHCR additionally recommends that the UK Government implement the recommendations made by Unicef and UNHCR in the abovementioned UK specific briefing on ‘Safe and Sound’.

Family Reunion

7) A child who has been granted refugee status or humanitarian protection in the UK does not have a right to be a sponsor for family reunification purposes within the UK Immigration Rules. A recent decision of the Court of Appeal ruled that ‘[…] a refusal to permit the family members of such child to enter and remain in the United Kingdom may constitute a disproportionate breach of the right to respect for family life enjoyed by all family members under Article 8 ECHR’.

8) UNHCR is additionally concerned that children who claim to have family members in the UK face extensive difficulties in exercising their rights to family unity under the Dublin III Regulation. This includes challenges and delays related to whether or not a State (including the UK) would take charge of their case. The recent case before the Court of Appeal of ZAT demonstrated the need for States to have effective and efficient systems for the purpose of family tracing and reunion and confirmed the right of children to family unity in such cases.

9) UNHCR supports the recommendations of the UNCRC raised at paragraph 77(e) of their Concluding Observations and additionally recommends that the UK Government implements UNHCR’s recommendations as outlined in its 2016 policy briefing paper on Family Reunion.

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Age Assessment

10) The outcomes of age assessment have a significant impact in determining how an individual is treated both in the immigration and asylum process and also in the care and support they receive. UNHCR recently outlined its concerns in this regard in its written submission to the House of Lords Inquiry.17

11) In particular UNHCR raised as a concern that, contrary to the principle as applied in the trafficking context,18 in its Asylum Instruction the UK Home Office states (emphasis added): ‘the applicant should be treated as an adult if their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age.’19

12) In June 2016 the policy outlined above was found to be unlawful by the High Court,20 who considered that someone’s age is a matter of ‘objective fact’ and cannot be based on physical appearance or demeanour. However, despite this ruling the Home Office guidance on this issue remains unchanged. One serious consequence of age assessment is that a child who is otherwise considered an adult may find themselves subject to detention. The Refugee Council have stated that between 2010 and March 2016 they have helped to secure the release of over 140 wrongly detained unaccompanied children from detention in the UK.21

13) UNHCR supports the recommendations raised at paragraph 77(a), (c) and (d) of the UNCRC’s concluding observations and additionally recommends the UK Government:

- Updates its policy on ‘assessing age’, to reflect the findings of the abovementioned High Court decision;
- Introduce within asylum legislation the aforementioned trafficking standard, so as to ensure that all age-disputed individuals are given the ‘benefit of the doubt’ until an assessment by a qualified professional has been made.

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18 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA provides in Article 13.2 that where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0036&from=en


Detention

14) As part of its mandate, UNHCR has a direct interest in the situation of asylum-seekers, refugees and stateless persons in detention. UNHCR recently launched a 5-year Global Strategy\(^{22}\) to end the detention of asylum-seekers and refugees, of which the UK is a participant.

15) UNHCR notes that despite declining numbers, 128 children were still detained in the UK in 2015. UNHCR is also concerned with the UK’s recent decision to close Cedars Pre-departure Accommodation and move the facility for families with children into an Immigration Removal Centre. This is despite the facility being considered by Her Majesty’s Inspectorate of Prisons and the Shaw Review into the Welfare in Detention of Vulnerable Persons to be ‘exceptional’ and an example of best practice in caring for vulnerable people, including children.\(^{23}\)

16) UNHCR supports the recommendations raised at paragraphs 10(a) and (b), 77(a) and (d) of the UNCRC Committee’s concluding observations and additionally recommends the UK Government conducts a child rights impact assessment on the decision to move the pre-departure into or next to an Immigration Reception Centre.

Child Focused Procedures

17) Matters concerning UASC fall under the mandate of different government departments, with multiple public authorities and services involved in their implementation. In the UK, the Home Office and Department for Education\(^{24}\) are responsible for immigration decisions and the child protection system respectively. Local authorities undertake assessments for children in need and are governed by statutory safeguarding guidance and care planning frameworks.\(^{25}\) Whilst the UK has a strong legislative framework,\(^{26}\) UNHCR has previously raised concerns with regards to inter-agency


\(^{24}\) Department for Education in England; Department of Education in Northern Ireland; Department of Education and Lifelong Learning in Scotland; Department of Communities and Tackling Poverty in Wales.

\(^{25}\) Safe and Sound

\(^{26}\) Safe and Sound UK Briefing
coordination, as well as the need for adequate safeguards, including independent guardians, in order to ensure sufficiently child focused procedures are in place.

18) Prior to the Commencement of the Immigration Act 2016, UNHCR outlined its views on a number of issues including transfers of unaccompanied children and the provisions for children in families whose protection applications had been refused by the Home Office. UNHCR welcomes the UNCRC Committee’s recommendation to review the Immigration Act 2016 in order to ensure its compatibility with the Convention on the Rights of the Child.

19) UNHCR supports the recommendations raised at paragraphs 10(a) and (b), 27(a) and (b), 77 (b), (f) and (g) of the UNCRC’s concluding observations and additionally recommends that the UK Government implement UNHCR’s previous recommendations as outlined in its 2013 audits and its UK specific briefing.

UNHCR in the UK
October 2016

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