Key Findings

A. TRAINING AND GUIDANCE ON BEST INTERESTS AND CHILD WELFARE

Before undertaking its audit, UNHCR reviewed the content of the training and guidance that is directed at decision-makers who handle family asylum claims. This review highlighted that, while it is positive to observe that Home Office training and guidance on the concepts of child welfare and the best interests principle exists, it is primarily aimed at staff who handle the claims of unaccompanied asylum-seeking children. As such, at the time of the audit, not all decision-makers who were required to assess and determine the best interests of children in families had received the full training on the principle of best interests.

B. BEST INTERESTS ASSESSMENTS AS THE FAMILY MOVES THROUGH THE ASYLUM PROCESS

POSITIVE FINDINGS

The audit findings provided clear examples of individual Home Office staff actively identifying issues relevant to the welfare and best interests of children in asylum-seeking families as those families moved through the asylum procedure and, as a result of this identification, undertaking actions with these interests mind. For example by making relevant referrals to the Children’s Services departments of Local Authorities.

SHORTCOMINGS

However, the findings also picked up on instances where, despite the pro-activity of Home Office staff in making referrals, the response from the Local Authority was lacking.

The audit demonstrated that some of the more routine ‘actions’ and decisions undertaken by the Home Office at particular stages of the asylum procedure and which directly affect children (for example, the geographical ‘dispersal’ of asylum-seeking families requesting accommodation support to other regions of the UK) do not yet clearly and systematically give primary consideration to the best interests of the children when making these decisions.

UNHCR’s audit of the Home Office’s procedures highlighted that, at present, there is no formal and systematic collection or recording of information that will be necessary and relevant to a quality best interests consideration. This includes a lack of any mechanism to obtain the views of the child and give those views weight in line with age and maturity. Without the necessary information, it is difficult for the Home Office to ensure the best interests of the child are given primacy when undertaking actions or making decisions that affect children.
C. THE BEST INTERESTS DETERMINATION

**POSITIVE FINDINGS**

It was positive to observe that decision-makers are required to set out legal written reasoning to demonstrate how they have considered the best interests of the child and their duties as officers acting on behalf of the Secretary of State under Section 55 B11 Act. This reasoning is found in the same Reasons for Refusal Letter (RFRL) or consideration 'minute' that sets out, in writing, the assessment of the principal asylum-seekers' application for international protection.

UNHCR was also pleased to observe some clear examples of decision-makers' active consideration of relevant and important elements necessary to the consideration of a child's welfare and to the determination of their best interests. Indeed, the audit identified cases in which the best interests of the child were determined and given primary consideration in resulting immigration decisions.

**SHORTCOMINGS**

UNHCR observed, however, that **not all children in the sample had their best interests determined** and that, as a result, asylum and immigration decisions that affected the children were being taken without due consideration to the child's best interests. This was common where it had been recognised that a family member (usually the parent) had international protection needs and, as a result, was being granted a form of immigration leave to remain in the UK. While a family member's circumstances will be an important element to give weight to when determining the child's best interests, those interests must still be considered.

More broadly, the audit highlighted that the **mechanisms for collecting information** relevant and necessary to determining the best interests of a child (including the views of the child as highlighted above) are currently limited to those that exist as part of the asylum procedure; a procedure that focuses primarily on obtaining evidence from and relevant to the principal applicant and to the asylum claim. While there was evidence of some Home Office decision-makers attempting to be pro-active by pursuing information about a child, it was apparent that the existing processes curtailed their ability to know when, where, and from whom they could and should solicit information as well as what sort of information they should pursue. This meant that the amount of relevant information gathered was minimal and was typically only available later in the process.

Shortcomings in the **analysis of information obtained** by decision-makers to determine the best interests of the individual child were identified. The findings showed that, in many cases, the analysis was piecemeal, did not reflect a holistic consideration of the various elements required in order to determine best interests, and was not always specific to the child's individual characteristics or situation.\(^2\) Decision-makers tended to focus their analyses more commonly on some elements (e.g. family and close relationships) while not considering others (e.g. care, protection and safety of the child). Critically, it was observed that the child's views and those of relevant family members or of those close to the child are rarely considered in these analyses. The findings showed that, when performing their analysis, decision-makers do not always take into account all the information available to them about the child and relevant to either the best interests framework or the definition of what constitutes the 'welfare of the child.' Of particular concern, given the countries of origin of many of the families in the sample, was the finding that analysis of the safety of the child was rarely undertaken.

\(^2\) As highlighted in the report, these should include: the child's views, identity, situation of vulnerability, right to health, right to education, preservation of the child's family environment and relationships, as well as the care, protection and safety of the child.
Particularly concerning was identification of instances – highlighted in the report – where immigration control was brought directly into the determination of best interests. The Committee on the Rights of the Child has made clear that the elements that can be considered valid to bring into the balance in order to determine a child’s best interests are those that reflect the rights enshrined in the Convention on the Rights of the Child itself.

UNHCR’s audit highlighted that decision-makers rarely balance each of the elements in light of the particular child’s individual situation in order to reach a resulting best interests determination. Furthermore, decision-makers tended to emphasise those elements that supported an overall best interests determination that favoured the immigration decision resulting from the parent(s)’ asylum claim. While it is not inappropriate for the parents’ circumstances to be considered by the decision-maker (reflecting the element of ‘preservation of the child’s family environment and maintaining relations’) it was concerning to observe that this was often the only element considered or that it was given excessive weight rather than being put ‘into the balance’.

UNHCR observed that, in all cases in which a Best Interests Determination was conducted, the same Home Office decision-maker that assessed and decided the asylum claim of the parent(s) had undertaken the best interests determination for the child(ren) within that family. The findings set out above point to a resulting conflict of interest which can undermine the quality of the best interests assessment, not to mention an additional burden of responsibility and workload upon the asylum decision-maker.

D. GIVING THE BEST INTERESTS DETERMINATION ‘PRIMARY CONSIDERATION’ IN THE RESULTING IMMIGRATION DECISION

Both international and UK law require that, once a child’s best interests have been determined, they must be given “primary consideration” when making a decision that affects the child. UNHCR, therefore, examined if and how the determination of the best interests of a child within an asylum-seeking family was given ‘primary consideration’ when deciding whether to grant or refuse immigration leave to the family.

**POSITIVE FINDINGS**

Good practice was observed in some cases within the audit sample which reflected the decision-maker acknowledging and demonstrating the need to give the child’s best interests primary consideration when making the broader decision on immigration leave that arose out of the consideration of the principal applicant’s asylum claim.

**SHORTCOMINGS**

However, the findings also showed that decision-makers are unclear about where and how the consideration of a child’s best interests should fit and be factored into their wider decision-making. When reviewing the written decisions, UNHCR observed mixed practice in respect of how decision-makers reasoned their grant of immigration leave on a best interests basis, what immigration status they granted as a result of their reasoning, and to whom. In addition, the method of recording this information on the Home Office’s Case Information Database varied, potentially leading to inaccurate or incomplete data collection.

Finally, UNHCR’s findings indicate that the incorporation of forms of immigration leave based on family life with a child in the new Immigration Rules at paragraph EX1 of Appendix FM may be negatively impacting upon asylum decision-makers’ understanding of what factors should be taken into account when considering the Section 55 duty and the determination of the best interests of a child in the context of an asylum-seeking family’s protection claim.
Based on the findings of its audit, UNHCR recommends:

A) The Home Office in close consultation with other relevant government departments including the Department for Education, the Ministry of Justice, Local Authorities and the Association of Directors of Children’s Services:

1. Create new (and strengthen existing) mechanisms to ensure that assessments and determinations of an individual child’s best interests:
   - are undertaken objectively, independently of the asylum process, and in coordination with other relevant government bodies responsible for child protection
   - respect confidentiality and data protection arrangements
   - allow for the collection of an increased amount of information relevant and specific to each individual child. Depending on the specific factual context, the information collected should:
     - go beyond that obtained from the principal applicant’s asylum claim;
     - be obtained from, inter alia, family members, people close to the child, as well as appropriate experts and professionals;
     - provide for the fullest consideration of each of the elements necessary to a best interests consideration and in compliance with the definition of safeguarding and promoting the welfare of children as reflected in the UK statutory guidance; and
     - be collected in a systematic fashion from the moment the child is identified as a child for whom the Home Office will need to make decisions that must consider his or her best interests.

2. Introduce mechanisms through which children in asylum-seeking families can express their views and have those views taken into account and given weight in line with their age and maturity in decisions that affect them.
   - These mechanisms should be designed with a view to:
     - allowing the child to decide whether to be heard and how to be heard;
     - giving the child the opportunity to be heard directly;
     - and, where the child chooses to be heard through a representative:
       - mitigating any potential conflicts of interest, and
       - ensuring that the representative has sufficient knowledge and understanding of the various aspects of the decision-making process, experience in working with children, and an awareness that his or her role is to represent exclusively the interests of the child.
   - The Home Office could benefit from consulting, in particular, with the Ministry of Justice to learn from their experience of developing practice and guidance in both the criminal and civil family law jurisdictions.

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3. The relevant elements reflected in paragraphs 52 – 79 of the UN Committee on the Rights of the Child (CRC), General Comment No. 14 (2013), the child’s views, identity, situation of vulnerability, right to health, right to education, preservation of the child’s family environment and maintenance of relations, and the child’s care, protection and safety.

3 Make use of existing **inter-agency working relationships and fora** to share best practice and identify areas for improvement in respect of best interests considerations for children in asylum-seeking families. This could be achieved, for example, through:

- participation in Local Safeguarding Children Board (LSCB) meetings in areas where asylum-seeking families with children are dispersed, and;
- improved record-keeping by all parties to ensure that good and poor practice in respect of referrals and communication between agencies are collected and can be addressed where relevant.

B) The Home Office:

1 Facilitate the necessary conditions for children in asylum-seeking families to express their views by creating and providing information to children, their families and caregivers in a language and format they can understand. Information could be conveyed via leaflets, booklets, videos or other means of communication and should be aimed at - and made available to - all children, no matter their stage in the asylum procedure. The information should explain, **inter alia**:

- the asylum process;
- the child’s right to express his or her views in matters that affect him or her;
- the option of communicating directly or through a representative; and
- the impact that his or her views will have on the outcome of the decision-making process.

2 Review all **guidance and training** for Home Office staff on best interests to ensure that they are aimed at and accessible to all decision-makers that make decisions that affect children, whether unaccompanied, separated or with families.

- Addressing the issues highlighted in this report, the guidance and training should:
  - emphasise the need for any decision affecting a child to be justified and explained in order to demonstrate how the child’s best interests:
    - have been assessed or determined; and
    - have been taken as a primary consideration when reaching the decision;
    - guide decision-makers on how the best interests determination should be factored into the written asylum decision reasoning and how it should impact upon the granting or refusing of immigration leave on a specific legal basis;
    - clarify how and when to record information relevant to best interests on the physical file and / or on CID;
    - increase the understanding and awareness of all the elements necessary to reach a balanced determination of a child’s best interests; and
    - explain how the provisions of the immigration rules at Paragraph EX1 of Appendix FM should be put into the context of the wider necessary consideration of a child’s best interests.

3 Strengthen mechanisms and procedures to ensure that any **decision relating to support** (including decisions to disperse) include an evaluation of its possible impact on the child concerned. The justification for the support decision taken must then show that the best interests of the child have been given primary consideration.
Develop best interests / section 55 duty specific **quality assurance mechanisms** to help ensure that appropriate standards are being met.

Strengthen **data collection and statistical** output (for example, using CID) that examines and reports on the application of Section 55 and the best interests principle.

C) **The Department for Education and The Association of Directors of Children’s Services (ADCS):**

1. Ensure awareness amongst Local Authority staff of their duties to children within families seeking **international protection**.

2. Ensure that referrals received from the Home Office are acted upon promptly and in accordance with duties reflecting the welfare and best interests of the child.

3. Ensure that Local Authorities receive the necessary support, economic or otherwise, to facilitate the satisfaction of their own duties in respect of children in asylum-seeking families.

D) **All relevant legal professional and regulatory bodies:**

Encourage and support relevant legal services and advice providers to ensure that those representing asylum-seeking families with children have the relevant knowledge and skills in respect of the duties and principles that pertain to the welfare and best interests of children.

**UNHCR OFFERS ITS FULL SUPPORT FOR THE IMPLEMENTATION OF THESE RECOMMENDATIONS.**