



UNHCR
The UN Refugee Agency



SUMMARY

PUTTING THE CHILD AT THE CENTRE

An Analysis of the Application of the Best Interests Principle for Unaccompanied and Separated Children in the UK



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EXECUTIVE SUMMARY

When unaccompanied and separated children arrive in the UK, procedures need to be in place to ensure that the responsible child protection authorities are on hand to meet their immediate needs, and, in time, to plan for their futures. At every stage, actions taken on behalf of and with respect to these children must take into account their best interests as a primary consideration.¹

Article 3(1) of the Convention on the Rights of the Child (CRC)² gives every child the right to have his or her best interests assessed and taken into account as a primary consideration *in all actions or decisions* that concern him or her. Known as the best interests principle, it should inform both substantive decisions made about a child as well as the procedures and processes with which the child interacts. It should be understood and applied by all public or private institutions involved with children without discrimination.

In 2014, UNHCR and UNICEF published *Safe & Sound*,³ a report providing guidance to governments across Europe on strengthening their approach to assessing and determining the best interests of unaccompanied and separated children. Building upon *Safe & Sound*, this report aims to operationalise the principles it sets out, with a specific focus on the UK context. It was funded by the European Commission's Directorate General for Justice and Consumer Affairs and was undertaken by UNHCR, with support

from Unicef UK. The document provides concrete proposals for how the best interests principle for unaccompanied and separated children could be strengthened and implemented comprehensively within and across UK systems and procedures.

The UK context

In 2008, the UK Government lifted its reservation⁴ to the CRC, which it previously held with respect to children subject to immigration control. As a result, Section 55 of the Borders, Citizenship and Immigration Act 2009 was introduced, which places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to *"the need to safeguard and promote the welfare of children who are in the United Kingdom."*

Despite this positive development, multiple research studies have indicated that the consideration of best interests for refugee and migrant children, who are within the immigration system at least, do not always take place, or where they do take place they do not always reflect a holistic consideration of the required elements.⁵ Furthermore, the UK lacks a systematic, formal and unifying approach to the collection, recording or sharing of information that is necessary and relevant to achieving a holistic, quality

¹ UNHCR and UNICEF What the United Kingdom can do to ensure respect for the best interests of unaccompanied and separated children, 2016 available at: <https://bit.ly/2NkXLJF>.

² UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: www.unhcr.org/refworld/docid/3ae6b38f0.html.

³ UNHCR and UNICEF, *Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, available at: www.refworld.org/docid/5423da264.html.

⁴ A reservation allows the state to be a party to the treaty, while excluding the legal effect of that specific provision in the treaty to which it objects.

⁵ See for example, *Greater Manchester Immigration Aid Unit; Children's best Interests a primary Consideration*, 2013, available at: <https://bit.ly/2xm2eki>; Kent Law Clinic; *How children become 'failed asylum-seekers'*, 2014 available at: <https://bit.ly/YysJiU>; Law Centres Network, *Put Yourself in our Shoes*, 2015, pp139-140 available at: <https://bit.ly/2XC0F0C>; The Children's Society, *Not just a temporary fix: The search for durable solutions for separated migrant children*, 2015 available at: <https://bit.ly/2NoRjkZ>; Coram Children's Legal Centre, *This is My Home*, 2017 available at: <http://www.childrenslegalcentre.com/this-is-my-home/>; Independent Chief Inspector of Borders and Immigration Report: *An inspection of how the Home Office considers the 'best interests' of unaccompanied asylum seeking children*. August-December 2017 available at: <https://bit.ly/2IW1Xex>.

best interests assessment (BIA) or best interests determination (BID).^{vi}

In 2013, addressing similar concerns, an inquiry by the Joint Committee on Human Rights recommended that the UK Government evaluate the case for the establishment of a formal BID process.^{vii} In their response to the inquiry, the Government agreed to consider the case for a BID process through a consultation, however, this is yet to take place.^{viii}

Research objectives and methodology

This report maps the current approach to the consideration of the best interests of unaccompanied and separated children seeking asylum in the UK, with an analysis of the existing children's social care and asylum systems. This has been undertaken with a view to strengthening understanding of these systems and procedures and whether or not they are appropriate and accessible to children falling under UNHCR and Unicef UK's respective mandates. This work has predominantly involved desk-based research and observational visits.

An advisory group of eight experts was also appointed to assist with the research and inform the development of the proposals to strengthen application of the best interests principle reflected in the report. Based on the research findings, a number of proposals were developed which aim to show how the existing system could be strengthened, to put children at the centre, and better determine and make decisions in accordance with their best interests.

DIAGRAM 1 at the end of this summary outlines the existing children's social care and asylum systems (see also Section 4 of the main report).

Key findings

Strengths and existing safeguards

This research mapped the existing system of children's social care case management and best interest procedures within the UK. This found a number of existing frameworks and practices which help strengthen the assessment and application of the best interests principle. These notably include:

➤ Strong domestic statutory duty

In both the children's social care system and in immigration functions there is a statutory duty upon agencies to take account of a child's best interests in all decisions affecting them.

➤ Referrals into the children's social care system

On identification, unaccompanied and separated children are generally referred promptly into the children's social care system where they are accommodated under the care of the local authority.

➤ Children's asylum claims have specific procedural and evidentiary safeguards

Provision is made for a legal representative, a responsible adult, an interpreter and an interviewer specifically trained in handling children's cases to be present at the child's asylum interview.

➤ A comprehensive and multi-agency approach to care planning and safeguarding

Each child under the care of the local authority is given an individual care plan which exists to provide an assessment of a child's immediate needs and ensure that there is a long-term plan for the child to which all relevant parties are working. Statutory guidance also applies a multi-agency approach to the safeguarding of children which aims to put the child at the centre of the care system.

^{vi} UNHCR and UNICEF *What the United Kingdom can do to ensure respect for the best interests of unaccompanied and separated children*, 2016 available at: <https://bit.ly/2FJLfgy>.

^{vii} Joint Committee on Human Rights *Human Rights of unaccompanied migrant children and young people in the UK*, 2013 available at: <https://publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>.

^{viii} *Government's response to the first report from the Joint Committee on Human Rights Session 2013-2014* available at: <https://bit.ly/2IZWSlx>.

Weaknesses and shortcomings

This report identified a number of areas which would benefit from further review or strengthening with regards to the application of the best interests principle in unaccompanied and separated children's cases. These include:

▶ **First contact with authorities requires strengthening**

At the point when unaccompanied and separated children first come into contact with the UK authorities, prior to referral to children's social care services, there appears to be few safeguards or child protection procedures in place. Children at this point, report being held for a period in police custody and may be subject to lengthy questioning.

▶ **Two parallel systems lack a child-centred approach**

Unlike British national or settled children, unaccompanied and separated children are required to access both the children's social care system and the immigration and asylum system, which have distinct objectives, timeframes and funding arrangements. The immigration, asylum and care planning systems are not aligned and this can undermine the application of the best interests principle.

▶ **Limits to effective multi-agency working and information sharing**

Mechanisms to encourage joint working and information sharing between different agencies such as local authorities and the Home Office appear to be limited in scope and occur predominantly as a review of paper documents with case review meetings occurring infrequently.

▶ **Lack of well-informed and impartial best interests considerations informing a grant of leave**

Best interest considerations relevant to a decision on the grant of leave to remain for unaccompanied and separated children are not benefitting from impartial, multi-disciplinary input. Home Office caseworkers alone do not have the required competence and capacity to holistically identify the relevant best interests considerations in coming to a final decision on leave.

▶ **No formal mechanism for arriving at a durable solution in the best interests of each child**

Following on from the above, there is no stage in the process of determining a grant of leave, in which all of the options available to the child are fully explored through a formal mechanism for determining a durable solution that is in the best interests of each child.

Proposed alternative approach to strengthen respect for children's best interests

Principally, UNHCR and Unicef UK recommend that greater multi-disciplinary and expert input is fed into actions and decisions taken at critical points. This would serve to ensure respect for the best interests principle, including by improving the support a child receives, informing immigration decision-making and identifying an appropriate durable solution in every case.

The proposals outlined in this report aim to provide a basis for discussion and collaboration between the Government and relevant stakeholders to better respect Article 3 of the CRC and its application in the UK.

DIAGRAM 2 at the end of this summary outlines an alternative proposal for how the existing UK systems could be adapted and strengthened (see also Section 7 of the main report).

Proposals for reform notably include:

- ➔ A series of **strict procedural safeguards** should be put in place throughout the process including the appointment of an independent legal guardian at the point of identification of the child, the provision of child friendly information and legal advice and representation, effective child participation and written, reasoned decisions at each stage.
- ➔ A **consistent, child friendly and humane approach should be taken when children arrive by all first points of contact** (which might include police, immigration enforcement and health workers) involving in-person training and development of standard operating procedures.
- ➔ A modified process where a claim for **asylum or other form of international protection can be indicated later, after legal advice** allowing the child the chance to recover to some extent, meet their guardian, receive full legal advice and access the necessary child friendly information before making any decisions about their future.
- ➔ **The introduction of a best interests planning meeting** which would replace and build upon the child's first existing Looked After Review (LAC) meeting.
- ➔ The outcome of this meeting would include the production of a **single integrated report with a detailed appraisal of the child's protection situation**. This report would be shared with the Home Office to support child specific/best interests considerations relevant to a child's application for international protection. This information sharing process would seek to enable good quality initial decision-making on a child's asylum application first time.
- ➔ After the asylum decision is made by the Home Office, the outcome of this decision would be communicated to a **multi-disciplinary independent BID Panel** made up of professionals with the necessary competence and expertise. This BID recommendation would be shared with the Home Office to inform a final immigration decision on leave to remain in cases where this is required.

Recommendations

Using the proposals in this report as a potential framework, the Government should develop strengthened mechanisms to ensure that all unaccompanied and separated children have an assessment and determination of their best interests, and that these:

- ➔ are undertaken systematically and objectively in coordination with relevant government bodies responsible for child protection;
- ➔ respect confidentiality and data protection arrangements;
- ➔ ensure a sufficient amount of information is collected, which is relevant and specific to each individual child to enable analysis of each of the elements necessary when considering their best interests; and
- ➔ provide a formal mechanism for arriving at a BID, which should be undertaken using a multidisciplinary approach and which should inform the appropriate durable solution for each child.

This report recommends that work to fulfil the above commitment be undertaken by a **cross-governmental working group** (involving both central government and local authorities), with the benefit of input from independent experts, including UNHCR and Unicef UK.

DIAGRAM 1: Current UK system for unaccompanied and separated children

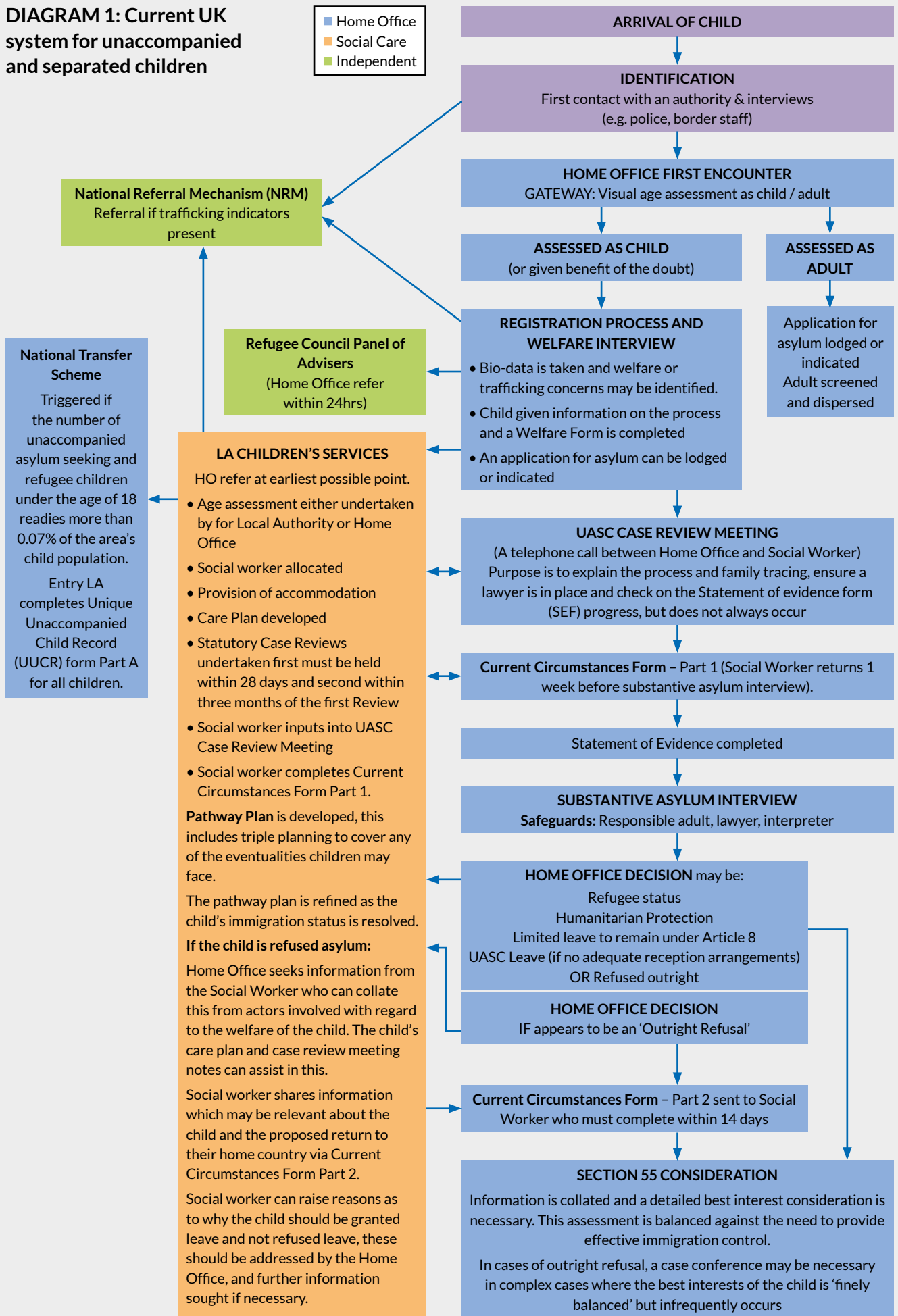


DIAGRAM 2: Proposed alternative approach for strengthening the application of the best interests principle

