

'Put Yourself In Our Shoes:

Considering Children's Best Interests in the Asylum System'

Executive Summary



Principles to Practice Project's ambition is to improve the asylum process and decision-making for children by bringing child-centred principles and an understanding of child development into the process. For some time, lawyers and others concerned for the welfare of separated children seeking international protection have expressed concern that principles enshrined in other spheres of work with children are seemingly misunderstood or disregarded in the asylum arena.

The project recorded and analysed the experiences of 60 unaccompanied children who had applied for asylum over a one-year period, and those of their lawyers. It has found varying levels of understanding of children's rights across all those working with them and on their behalf. This variable quality led to children's voice and agency being lost in the asylum process, which effectively mainly paid lip service to child rights. On that basis, we recommend procedural improvements to the UK asylum process and training and skills frameworks for those working with children, to ensure that their best interests are well and truly paramount.

APPROACH

The Law Centres Network led the project as the co-ordinating body for Law Centres across the country. Law Centres routinely provide skilled, nuanced and determined representation for separated children in their asylum applications and appeals – crucial for their protection and future life chances. The project was also extensively informed by the experiences of children seeking protection within the current asylum process in the UK.

Clarifying child-centred principles: To inform the examination of current practice in the UK, preliminary research work was carried out by Allen & Overy trainees and associates in London, Italy, Germany, Australia and the USA, investigating the inclusion of child-centred principles or child-adapted practices in relevant national and international jurisdictions. The findings were reviewed to ensure that any identified principles were reflected in the survey questions within the audit tools.

Creating audit tools: Participating lawyers were equipped with audit tools with which to collect information on current practice and challenges for Law Centres and for children in the asylum process. These have included a caseworker participation survey, indicating existing practice; a set of case-specific questions relating to children's individual cases; an additional set of questions for age-disputed cases; and a further set of questions for appeals.

Data collection: Throughout 2014, 11 participating Law Centres uploaded anonymised data on 60 cases which met these selection criteria:

1. The child's claimed age was under 18 years old at the point they claimed asylum
2. The Home Office treated the child as under 18 years old, even if local authority disputed this
3. The child was unaccompanied or separated
4. The child was seeking asylum alone, i.e. they were not a dependent on any adult's asylum claim
5. The child's substantive asylum interview took place between 1 December 2013 and 31 December 2014.

For each case over 600 questions were asked. In addition to this, the Project ran two focus groups to obtain the views of young people who had recent experience of the asylum process in the UK.

Data analysis: This focused on ascertaining a clear picture of the related experiences of children and their legal representatives as they work together through the complex process of claiming international protection. This was set against existing national and international law and custom, highlighted throughout the report, which provides a frame of reference for lawyers seeking to promote their child clients' best interests. Along with identifying areas of good practice by lawyers, immigration officials, statutory and voluntary care givers and other advocates, the analysis also suggested areas for improvement for those seeking to offer these children fair processes which will ensure their safety and long term security.

RECOMMENDATIONS

The authors are aware of discussions of the limitations of the current system in the UK for deciding the future of children who arrive here on their own, and have deliberately restricted their recommendations to issues arising from information collected by lawyers working within the current systems and that are evidenced by the data collected.

For the Home Office:

- The Home Office and Department for Education must develop reliable and relevant statistical data concerning unaccompanied child asylum applicants, including where they are living, and when and by whom ages are disputed and accepted.
- The Home Office must immediately cease conducting 'visual age assessments' of young people.
- Separated children seeking asylum should be referred to an immigration lawyer as soon as possible after their arrival and/or identification, so they are represented by their assigned lawyer at the time of the screening interview.
- Home Office caseworkers should be trained to be supportive of the role of the Responsible Adult in interviews.
- The Home Office should establish a system of training and accreditation for interpreters working with children within the asylum/immigration system in the UK.
- All unaccompanied and separated children should be appointed an independent guardian.
- All professionals making life changing decisions on children should be provided with best interests' training.

For the Legal Aid Agency:

- The Legal Aid Agency (LAA) must provide clear and accessible guidance on the funding and special measures in children's cases.
- Guidance on legal aid available to children and those representing them should be publicly available in accessible form so that those assisting the child, including local authorities and other advocates, understand the legal aid regime.
- The LAA should set up a system for considering urgent applications for case funding for unaccompanied children.

- An order should be made under section 9(2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to reinstate legal aid for all immigration related legal matters involving separated children.

For HM Courts and Tribunals Service:

- A working party including legal aid lawyers should be set up to work with the Upper Tribunal to develop an appropriate legal representation model or arrangements for these children's cases.

For local authorities:

- Young people must not be placed in adult or bed and breakfast accommodation pending an assessment of their disputed age assessment and need.
- Local authorities should take full account of the immigration processes that a child or young person faces when deciding to move separated children from one placement to another.

For lawyers:

- All legal representatives must attend asylum screening and interviews with their child clients.
- All immigration lawyers representing children should be required to have specialist training, and should be rewarded accordingly.
- Lawyers must proactively work to obtain relevant information from the child and from other professionals involved with him/her about the child's past life, their experiences before, during and after flight, their current hopes and fears, and their mental, emotional and physical health.

NEXT STEPS

- The Law Centres Network will make the report widely available and promote it with lawyers and to other professionals working to represent and protect children, and to all those with responsibility for making critical decisions about individual children's lives.
- We will provide masterclasses and support to Law Centre lawyers, for example on the special status and protections available to children and required for them; child-specific trafficking training; considering the best interests of a child; and the impact of child psychology and memory on child asylum claims.
- The Project looks to continue work over the coming months and to produce a second report with additional analysis of the data. The current report covers cases up to the point of first decision on applications for international protection. Further work is required to distinguish factors that led to those decisions; levels of mis/understanding applied; skills and knowledge utilised about children and the law; and opportunities missed to understand each child and their complex life.

TOWARD A SHARED UNDERSTANDING

Principles to Practice project seeks to enrich professionals' understanding of the lives and experiences of separated children seeking asylum. It highlights the importance of lawyers taking into account the child's whole life, and of the child understanding the processes through which they are being channelled. It outlines the rigour and expertise needed by all parties for the children to benefit from the child-centred provisions afforded by national and international law. It is only through this shared understanding that lawyers and others can arrive at a full and proper assessment of a child's best interests.