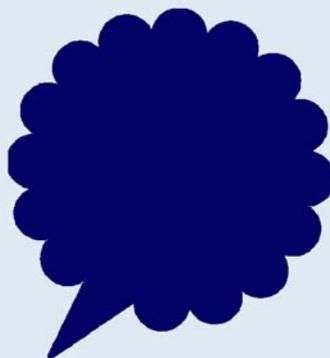
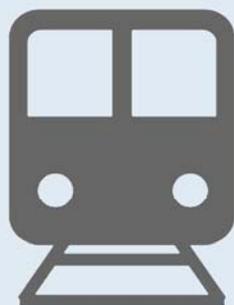
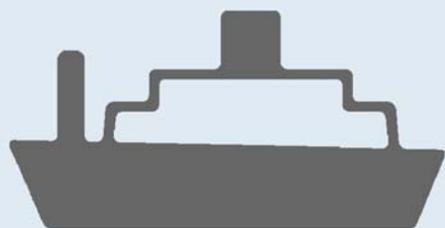


Landing in Dover:

The immigration process undergone by unaccompanied children arriving in Kent.

January 2012



Author: Adrian Matthews

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Finally I would like to thank all of the children and young people who, while seeking asylum, allowed us access to their files and agreed to be interviewed. In providing assistance to a Government agency they took a risk that they would not jeopardise their own 'live' protection claim through airing their views and sharing their experiences. They did so in the knowledge that there was no personal benefit to themselves in cooperating and that the only beneficiaries might be children seeking asylum in the future. My hope is that the decision that they took to help us will be felt to have been worthwhile.

Adrian Matthews
Principal Policy Advisor (Asylum and Immigration)

Addendum

This report could not have been produced without the work of Adrian Matthews. He combines years of expertise with a determination to protect the rights of vulnerable children seeking asylum.

Dr Maggie Atkinson
Children's Commissioner for England

Foreword from the Children's Commissioner

Children arriving unaccompanied in the UK are some of the most vulnerable that my office deals with. Of the relatively small number that enter the country each year ¹, most are seeking asylum whilst others have been trafficked for exploitation .

Article 22 of the United Nations Convention on the Rights of the Child (UNCRC) requires State Parties to take measures to ensure that children seeking asylum receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in the UNCRC and in other international humanitarian instruments to which the State is a party. In addition, these children are entitled to the full enjoyment of their rights under the UNCRC such as not to be discriminated against, to be treated with humanity and respect, to have their voices heard and for the 'best interests of the child' principle to apply to them when decisions are made about their future.

The UK Government did not originally accept that refugee and asylum seeking children should enjoy the same rights as 'citizen' children. On ratifying the UNRC, a 'reservation' to Article 22 was entered which stated: *"The United Kingdom reserves the right to apply such legislation in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under [UK] law to enter and remain in the UK, and to the acquisition and possession of citizenship, as it may deem necessary from time to time."*

However the UK withdrew the reservation on Article 22 in 2008 paving the way for new legislation requiring the Secretary of State to make arrangements to ensure that UK Border Agency (UKBA) functions are carried out having regard to the need to safeguard and promote the welfare of all children in the UK. ²

The précis above shows just how far the Government and in particular UKBA has moved in the last few years. They are to be commended for doing so. Yet 'cultural change' always takes significantly longer to take effect. Border Agency policy makers have had to reassess policies and procedures relating to children and communicate those changes to staff working on the front line of immigration control. Front line staff are required to take ownership of the duty in the exercise of their day to day functions.

This continues to be 'work in progress' for the foreseeable future but no-one should underplay the importance of the changes that are already taking place – notably to the detention regime encountered by children and their parents found to have no legal right to remain in the country.

¹ In 2010 (the last full year where data is available) across the whole of the UK there were 1,717 applications for asylum from unaccompanied children (excluding dependants). (Source: Home Office (2010) *Immigration statistics*).

² Enacted in s.55 of the *Borders, Citizenship and Immigration Act 2009*.

During the course of this investigation we were given a document entitled the 'Gentleman's Agreement' by UKBA staff as part of a pack providing details of the policies and procedures guiding the operations around entry. Further enquiries (with which UKBA cooperated fully) clarified that children who did not register a claim for asylum at the point of entry faced a real risk of being returned immediately to France under the terms of the Agreement. The practice of returning children from the border in this manner conflicts with the duty to safeguard children and promote their welfare. We know of at least seven children who experienced this in 2010 and it is likely that there were others. When I wrote to the Chief Executive of UKBA highlighting this significant failure of child protection he acted swiftly and decisively to end the practice. Our correspondence on the issue is contained as an annex to this report.

It appears to us that the immigration process applied to unaccompanied children arriving at Dover has been structured around the tight timescales codified in the 'Gentleman's Agreement'. Now that children are no longer returned in this way, there appears to be no significant barrier to UKBA changing its procedures at ports such as Dover to bring them into line with their duty to safeguard children and promote their welfare and with their stated policy on the circumstances under which unaccompanied children can be detained.

Of course there are many other aspects of unaccompanied children's experiences that need to be considered against the background of the rights enshrined in the UNCRC. I will continue to advocate for the appointment of legal guardians for all children who arrive without anyone having parental responsibility for them. Many countries in Europe already appoint guardians in recognition that decision making in children's best interest should at least be informed by someone in the role of the child's parent.

Resources are naturally high on everyone's agenda in the current tough economic climate. Local authorities providing support to unaccompanied children repeatedly tell us of the difficulties they face in meeting their needs from the grant provided for their support by UKBA. Excellent local authority run facilities such as the Millbank Reception and Assessment Centre in Kent are constantly under threat. Yet without sufficient resources it is hard to imagine how children who have endured traumatic departures and terrible journeys could begin to recover and come to terms with what has happened to them. There are particular resource and protection gaps as these children approach adulthood and lose their entitlement to support as children. My office will look further into some of these issues over the next few years. In the meantime, if we can get the 'reception' part of the child's journey right, we stand a better chance of helping these children grow into successful adults.



Dr Maggie Atkinson
Children's Commissioner for England

January 2012

Office of the Children's Commissioner: Landing in Dover

January 2012

About the Office of the Children's Commissioner

The Office of the Children's Commissioner is a national organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. The post of Children's Commissioner for England was established by the Children Act 2004. The United Nations Convention on the Rights of the Child (UNCRC) underpins and frames all of our work.

The Children's Commissioner has a duty to promote the views and interests of all children in England, in particular those whose voices are least likely to be heard, to the people who make decisions about their lives. She also has a duty to speak on behalf of all children in the UK on non-devolved issues which include immigration, for the whole of the UK, and youth justice, for England and Wales. One of the Children's Commissioner's key functions is encouraging organisations that provide services for children always to operate from the child's perspective.

Under the Children Act 2004 the Children's Commissioner is required both to publish what she finds from talking and listening to children and young people, and to draw national policymakers' and agencies' attention to the particular circumstances of a child or small group of children which should inform both policy and practice.

As the Office of the Children's Commissioner, it is our statutory duty to highlight where we believe vulnerable children are not being treated appropriately and in line with duties established under international and domestic legislation.

Executive summary

- 0.1** This report follows on from the Children's Commissioner's earlier report *Landing in Kent*.³ It focuses on immigration procedures to which unaccompanied children arriving in Kent are subject between their first encounter with the authorities and the time they are placed in the care of Kent County Council children's social care services.
- 0.2** Unaccompanied children are held under detention powers on, and immediately after, their arrival. Government policy is that unaccompanied children should only be detained in the most exceptional circumstances and only while arrangements for their care and safety are made. This policy is in line with the standard set by Article 37(b) of the United Nations Convention on the Rights of the Child (UNCRC) which requires that children should only be detained as a measure of last resort and for the shortest appropriate period of time.
- 0.3** The report finds that children are in fact not currently being held for the 'shortest appropriate period of time'. Rather they are detained whilst significant interviews that will inevitably bear on their prospects of being granted permission to stay in the UK are conducted. From the cases we have considered in preparation of this report, we find that the local authority is only informed of the child's arrival several hours after initial detention and well into the interviewing process. The report concludes that interviewing children in depth immediately on arrival is unnecessary and not in their best interests and should be reconsidered.
- 0.4** The evidence for this report was gathered by going to the Port of Dover immigration office and being 'walked through' the process an unaccompanied child would encounter on arrival. We were provided with written details of relevant procedures governing the relevant policies, and the working processes that should fulfil them. We then obtained consent from some newly arrived children to consider their 'port files' and were also able to interview some of the children in more detail. In two cases children provided us with their 'reasons for refusal' letter following the initial decision on their asylum claim. These showed how the interviews undergone shortly after arrival could impact on the asylum decision in the child's case. We talked to representatives of the Kent Police Force, and the local authority, as part of our investigation. This report brings these different sources of information together to allow us to take a holistic view of the immigration procedures that unaccompanied children arriving in Dover encounter.
- 0.5** Chapter 3 considers the details of arrival recorded on individual port records, as well as what children told us at interview about how they had reached the UK from France or Belgium. Many young people's first contact with the UK authorities is with the police rather than immigration officials. The report considers Kent police's arrangements for holding them, and the arrangements

³ OCC, (2011), *Landing in Kent: The experience of unaccompanied children arriving in the UK*: http://www.childrenscommissioner.gov.uk/content/publications/content_465

made for transferring them into 'immigration detention'. Children's accounts of their first contact with the UK authorities are reported in their own words.

0.6 Chapter 4 considers what happens once children are transferred (by either customs officers or the police) to the port office at Dover, where they are handed over to immigration officials. Children are first searched and their property, including documents, removed. They are then 'booked in' and wait in a holding area pending interviews. The holding area and its facilities are described. Prior to interviews taking place, a Chief Immigration Officer (CIO) will conduct a preliminary age assessment. Any subject claiming to be a child, who in the view of the CIO is obviously not a child but an adult, will be treated as an adult from this point and will not benefit from the procedural safeguards provided to children.

0.7 Chapter 5 looks at the first two interviews children experience. The first is a short welfare interview to establish whether there are impediments to any further interviewing such as illness, tiredness or hunger. Evidence from both the port files and our interviews with children suggests that the welfare interview process provides immigration staff with considerable discretion to continue with further interviews. This happens even where children are claiming to be tired or ill or say they need to see a doctor immediately.

0.8 The welfare interview is followed immediately by the initial examination interview (IEI). The form used to record this suggests it is used to collect evidence where UKBA is considering prosecuting for the criminal offence of illegal entry. There are mitigating circumstances against prosecution including 'being a child' and 'claiming asylum'. It was unclear from the files we examined whether children were asked if they wished to exercise their right to have a legal representative present at this interview, or whether they were asked and 'waived' this right. For those children who do not articulate an asylum claim at this point there has been provision, captured in a 1995 document named the 'Gentleman's Agreement' to return them *immediately* to France. This is without recourse to social care services and in spite of these subjects being children supposedly afforded the full safeguard of the law. Following interventions in autumn 2011 by the Children's Commissioner for England, and subsequent discussions between the Children's Commissioner and the new Chief Executive of UKBA, the agency has agreed to cease forthwith using this provision in respect of children. It remains in place for adults.

0.9 Following the welfare interview and IEI, a full screening interview is conducted for those who have indicated that they wish to claim asylum. This screening interview is considered in detail in Chapter 6. The interview is designed to obtain details of the child's identity, country of origin, family, history of travel to the UK, details of any previous claims, security related information and details of any accompanying adults. The interview lasts for around an hour. Children may only be asked about the basis for their claim where an independent Responsible Adult⁴ is present. It was not apparent whether this rule was complied with in all

⁴ A 'Responsible Adult' is someone independent of the Secretary of State and has temporary responsibility for a child for the duration of the immigration process being undertaken. Adults who may

the cases we examined. However, in the majority of cases this key question was not asked at all, due to the absence of an independent adult.

0.10 Chapter 7 looks at the disadvantages faced by children under the current processing arrangements at Dover. The elements of this disadvantage are that:

- Children are generally not fit for interview due to illness, hunger, tiredness, fear or a combination of these factors.
- The length of time between being placed into detention and release into care is too long. This is due to both the numbers of interviews routinely undertaken and the waiting times between the interviews.
- Telephone interpreting is generally used at the interviews and is not, in our view, 'fit for purpose'.
- Children are in practice unable to instruct a legal representative or in most cases have an independent Responsible Adult present during interviews and yet the interviews can be relied upon by UKBA in the asylum decision.
- Even in the absence of a legal representative or independent adult, children are required to sign the screening interview record, confirm its contents are correct and confirm that they have understood legal warnings and instructions from the immigration officer.

0.11 The waiting periods prior to the screening interview are excessively lengthy given children's physical and mental state as they arrive, unaccompanied, after undergoing whatever traumas their journeys to the UK may have entailed. Conditions in the holding area are not suited to excessive waiting for children, especially given their likely physical and mental states. First contact with the local authority is generally only made shortly before the start of the screening interview, meaning there is little opportunity for an independent Responsible Adult to attend in support of the children concerned. Children reported considerable difficulties in using the telephone interpreters provided, which in some cases resulted in misunderstandings occurring and incorrect information being recorded on the screening record. The records children were required to sign were not read back to them to check their accuracy.

0.12 Those children who were asked about their 'fear of return' in the absence of a responsible adult were not discouraged from elaborating on their reasons. Policy instructions to immigration staff on the issue of 'elaborating' on the reasons why return is feared are unclear and mean that children are allowed to expand on these without being prevented from doing so, and sometimes in the absence of an independent Responsible Adult as noted above.⁵

fulfil this role include social workers, teachers and doctors. See UK Border Agency (V5 11.08.10) *Processing an Asylum Application from a Child*.

⁵ For the full text of the instruction to staff see Para 7.24 below.

- 0.13** In two cases we were able to consider the impact of the screening interview on the reasons then given for refusing the asylum claim. In both cases, conflicting evidence between what was recorded at screening and in the later substantive asylum interview was used to question the ‘credibility’ of the child’s account of what had happened.
- 0.14** In Chapter 8 we conclude that there is no strong imperative for children to be interviewed immediately on arrival beyond the taking of basic data to establish identity and to enable the correct and speedy placing of the child in the care of the local authority. Our investigation has led to one over-arching recommendation:
- 0.15** *Interviewing, beyond the gathering of basic identity data, should be postponed until after a child has had a period of some days (or longer if deemed necessary by a childcare professional) to recover from their journey, and so that they have the opportunity to instruct a legal representative.*
- 0.16** The aim of the recommendation is to ensure UKBA moves the child into local authority care as quickly as possible, both to allow recovery from their journey, and to ensure they can be made to understand the significance of the interviews they will take part in when they then return to the immigration office. The recommendation has implications for how the Local Immigration Team in Kent organises the processing arrangements for children, and also for the police and the local authority in how they deal with or receive these children. Acceptance of the recommendation will ensure that UKBA is compliant with its legal safeguarding duties, and with the standards set by the relevant international bodies – including the United Nations Committee on the Rights of the Child, the European Commission and Council of Europe - relating to the reception on arrival of unaccompanied and separated children.
- 0.17** In addition to the central recommendation which is directed towards the Local Immigration Team in Kent, we make a number of other recommendations applicable to the screening process in all locations. These are directed to UKBA’s children’s policy makers. The full additional recommendations are set out in Chapter 8. In summary they concern the following areas of practice:
- 0.18** Searching: We ask UKBA to consider whether searches should be video or tape recorded to ensure their accuracy and so that good practice can be verified and to give consideration to whether further searches of vulnerable unaccompanied children are wholly necessary when searches have already been conducted by the police.
- 0.19** Documents in the child’s possession: These should be copied and a copy returned at the earliest possible opportunity to the child or their legal representative.

- 0.20** Welfare interviews: Clear guidance and training should be provided to staff on when it is not appropriate to proceed with further interviews because a child is ill, hungry, tired, or clearly traumatised.
- 0.21** Initial Examination Interviews (IEI): The purpose of the IEI should be clarified with staff and any adults who might represent or support the child. Consideration should be given to whether they are necessary at all. Where the interview is undertaken children should be advised of their right to have a legal representative present.
- 0.22** The Gentleman's Agreement: We acknowledge this will no longer be used in relation to children. However, many cases arise where an entrant's age is disputed. Where an immediate return to France is proposed for such an age disputed young person the local authority should conduct an age assessment before removal directions are set by UKBA. All further removals under the Agreement should be monitored and reported on.
- 0.23** Telephone interpreting: This should not be used for interviews that will lead to any immigration decisions being made.
- 0.24** Screening: Chapter 6 of the process guidance should be rewritten to give effect to recommendations that: children should have legal advice before the screening interview and should be accompanied at the interview by a responsible adult; the record should only be signed in the presence of the responsible adult; the record should be read back to the child before they are required to sign it.

Chapter 1 - Introduction

Background to the Investigation

- 1.1 In July 2010 the Children’s Commissioner and a team from her office visited Millbank Reception & Assessment Centre, a facility run by Kent County Council (KCC) children’s service largely for newly arrived unaccompanied children aged 16 -18. We reported on that visit in our publication *Landing in Kent* in February 2011.
- 1.2 An aspect of the young people’s accounts that we had been unable to explore in as much detail as we would have liked during that visit was their experience of the procedures they had encountered on their arrival and entry to the UK.
- 1.3 A report from the NGO *Refugee and Migrant Justice* (RMJ)⁶ had made us aware of evidence that the Immigration Service interviewed children on arrival without a Responsible Adult present – a practice still currently permitted by the guidance to United Kingdom Border Agency (UKBA) staff⁷. The report documented cases where the information gained through such interviews was later used in asylum decision-making. Subsequent discussions between RMJ and UKBA and ongoing litigation related to such interviews⁸ appeared to have impacted on immigration service practice at Dover by the time we talked to newly arrived children during our visit to Millbank in July 2010.
- 1.4 We devoted a short chapter to the young people’s experience on arrival in *Landing in Kent*. However it was often hard to distinguish whether it was the immigration service or the police that the young people were talking about when they recounted their experiences of contact with officials. Often they appeared not to know the difference between the two agencies or to make a distinction. Not all of the children we spoke to in researching *Landing in Kent* reported a ‘bad’ experience of their arrival. Many of them contrasted their treatment favourably to their reception by the authorities in European countries they had travelled through before coming to the UK. Some however did raise issues of continuing concern. We were left with a desire to get a more thorough understanding of the processes unaccompanied children undergo on arrival in the UK, the law and policy underpinning these processes and the accounts of the experience from young people themselves.

⁶ Refugee & Migrant Justice (2010), *Safe at Last – Children on the front line of UK Border Control*: <http://www.dianamemorial-fund.org/document.asp?id=1449&pageno=3>

⁷ UKBA, Version 5 (11.08.10), *Processing an Asylum Application from a Child – Ch.6* (‘Screening’): <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary>

⁸ AN & FA v SSHD [2011] EWHC (Admin).

Legal Framework

- 1.5** There is a legal framework in place which aims to harmonise standards and conditions for asylum seekers across the European Union. Some of the provisions of the key European Directives – now incorporated into domestic legislation via the Immigration Rules – relate specifically to unaccompanied or separated children who are seeking asylum. In particular, Article 19 of the ‘Reception Directive’⁹ lays down minimum standards for the reception of unaccompanied asylum seeking children in member states. Article 17 of the ‘Procedures Directive’¹⁰ provides guarantees to unaccompanied children regarding legal representation including at the asylum interview.
- 1.6** In addition to the Directives, the UK is a full signatory to both the United Nations Convention relating to the Status of Refugees¹¹ and the UN Convention on the Rights of the Child (UNCRC)¹² both of which contain Articles relevant to processes and procedures relating to the reception and arrival of children. Both the United Nations High Commission for Refugees and the Committee on the Rights of the Child have produced detailed guidance for State Parties on the application of the respective Conventions in relation to unaccompanied and separated children some of which relates specifically to arrangements around arrival and entry into a State.¹³ We have reproduced key parts of this (and other) guidance as an annex to this report as they represent the appropriate ‘benchmark’ for national authorities to consider their processes and procedures against.
- 1.7** Domestic legislation and policy should of course be compatible with the relevant European Directives. Relevant domestic legislation includes the legal framework for entry to the UK, the grounds for permitting or refusing entry, as well as provisions relating to detention, fingerprinting, temporary admission and/or temporary release. Statutory guidance provides a framework for the treatment of children in the exercise of UKBA functions. UKBA published policy must be followed by staff in order for their practice to remain lawful. Breaches of practice and policy can be brought before the courts by way of judicial review.

⁹ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Article 19.

¹⁰ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Article 17.

¹¹ General Assembly of the United Nations (1951), *Convention relating to the Status of Refugees* along with the 1967 Protocol: <http://www.unhcr.org/3b66c2aa10.html>

¹² *The UN Convention on the Rights of the Child* adopted and opened for signature, ratification and accession by UN General Assembly resolution 44/25 of 20 November 1989 and entered into force on 2nd September 1990.

¹³ See for example: UNHCR (1997), *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, and Committee on the Rights of the Child (2005), *General Comment No.6 – Treatment of Unaccompanied and Separated Children Outside of their Country of Origin*.

Detaining unaccompanied children at ports

1.8 The Government has made it clear on a number of occasions that the power to detain must be retained in the interests of maintaining effective immigration control.¹⁴ In addition, the Government has considered the use of the power to detain where this involves children and are on record as saying they would end the detention of children for immigration purposes.¹⁵ This related to children in *families* already in the UK whom the Government wished to remove rather than those families arriving and seeking entry at the UK border while enquiries are made to decide whether or not they can be admitted.

1.9 In the case of *unaccompanied* children arriving in the UK the Government's position was made clear by a Ministerial written answer to a parliamentary question on 8th March 2011.¹⁶

“Special arrangements are also in place for unaccompanied children who arrive in the UK to claim asylum. The children are referred to the nearest local authority immediately on arrival to ensure that they receive the same standard of care and support as any other child in need.”¹⁷

1.10 The statutory guidance for UKBA staff states: *“When unaccompanied or separated children are being escorted from their normal place of residence to a port where removal will take place, they must be subject to detention procedures in the sense of being served with formal notice whilst the supervised escort is taking place. Other than in these situations, unaccompanied or separated children must be detained only in the most exceptional circumstances whilst other arrangements for their care and safety are made”¹⁸* (emphasis added).

1.11 More recently and in response to publicity about the detention of children at ports of entry, a senior UKBA official wrote to stakeholders in the following terms: *“We may need to hold them until alternative accommodation is arranged,*

¹⁴ See for example Home Office (1998), *Fairer, Firmer, and Faster – A Modern Approach to Immigration Control*: <http://www.archive.official-documents.co.uk/document/cm40/4018/4018.htm>

¹⁵ Cabinet Office (2010), *The Coalition: our programme for government*, p17: http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

¹⁶ See also Deputy Prime Minister's speech Dec 2010: <http://www.dpm.cabinetoffice.gov.uk/news/child-detention-speech>

¹⁷ Hansard, (08.03.11): <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110308/text/110308w0001.htm>

¹⁸ UKBA & Department for Children, Families and Schools (2009), “Every Child Matters – Change for Children” Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children” Para 2.19: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/change-for-children.pdf?view=Binary>

*invariably through social services. Releasing unaccompanied children before social workers have arrived to support would put them at great risk”*¹⁹

- 1.12** We agree with the Government’s position that there is a need to ‘hold’ the child for the purpose of safeguarding them while the local authority social services department make arrangements to accommodate them. These children are particularly vulnerable and certainly meet the criteria for being regarded as ‘children in need.’²⁰ As they are without anyone who has parental responsibility for them the duty falls to the local authority children’s services department in the area in which they present themselves to accommodate them, provide appropriate care and safeguard and promote their welfare. Enforcement agencies such as the police and UKBA are under a duty to refer a child in need to the local authority social services department.²¹
- 1.13** In line with Article 37 (b) of the UNCRC, any detention of a child (termed by the Government in this context as ‘holding’) must be in conformity with the law and used *‘only as a measure of last resort and for the shortest appropriate period of time’*. It is the ‘limb’ of Article 37 (b) requiring that detention is ‘for the shortest appropriate period of time’ that has given us most cause for concern during this investigation.²²
- 1.14** In particular we are concerned at the length of time that children are held between the start of ‘sole immigration detention’ (i.e. when the child is being held only under immigration powers) and notification to the local authority that an unaccompanied child in need has been detected and will need to be transferred to their care. We report our detailed findings on what happens to these children while held under immigration powers in the remainder of this report.
- 1.15** We do not accept that it is in the child’s best interests to be interviewed in detail on arrival whilst being held under immigration detention powers. Not only is there no need for interviews to take place at this time and in these circumstances, there are strong arguments why they should not. Standard-setting guidance from the Separated Children in Europe Programme

¹⁹ UKBA (17.10.11), *Media Reports on the Detention of Children*, Letter to Stakeholders from David Wood, Strategic Director, Enforcement and Crime Group.

²⁰ Children Act 1989, s.17.

²¹ The duty in respect of the police is under s11 of the Children Act 2004. Similarly the UKBA have a duty to refer under s55 of the Borders, Citizenship and Immigration Act 2009.

²² It may not always be necessary for the immigration service to use its power to detain when ‘holding’ children in advance of their collection by social services. Children are not detained when they present themselves for screening at the Asylum Screening Unit in Croydon and fingerprinting and photographing take place there outside of the context of detention. Where there is a risk that a child may go missing before reaching the social services placement it will be appropriate to use detention ‘as a measure of last resort’. However, we see no reason for this to be *routine* as it appears to be currently at Dover.

(reproduced as part of Annex 1) makes clear that unaccompanied and separated children should not be detained or interviewed at length on arrival.

Scope of the Report

- 1.16** This report focuses on the processes and procedures encountered by children who arrive into the UK without any lawful immigration status. We did not attempt to find out from the children we interviewed *why* they came to the UK. It would be an incorrect assumption that all children who end up claiming asylum in the UK have the UK as their intended destination when they leave their country of origin. For example Child A whom we interviewed in the course of this investigation told us: *“I was planning to go to Canada. I only realised then [on leaving Calais] that the lorry was heading for England.”*
- 1.17** Other children interviewed clearly *did* have particular reasons for wanting to come to the UK which emerged either as part of the formal interviewing process by the immigration service or were referred to in our interview with them. For example Child E had a relative in the UK who had been granted asylum a few years previously and when his own position in his home country became untenable the UK seemed the natural destination for him to seek protection.
- 1.18** There have been a number of studies that look in detail at the reasons why asylum seekers (including unaccompanied children) ‘choose’ particular destination countries.²³
- 1.19** As children, the young people who are the subject of this report are ‘rights holders’ under the UNCRC as well as under other conventions to which the UK is a signatory. When they first arrive in the UK and at the point of entry, for multiple reasons, they are extremely vulnerable and are entitled to have a process designed with their best interests as a primary consideration in line with Article 3 of the UNCRC.

²³ For example: Crawley H (2010), *Chance or Choice: Understanding why asylum seekers come to the UK*:

<http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/chancechoice.pdf>

Chapter 2 - Evidence gathering and methodology

- 2.1** We had made efforts to contact the Kent Local Immigration Team (LIT) prior to the visit to Millbank in 2010 but had been unsuccessful. Our recommendations in *Landing in Kent* were thus made in the absence of that important dialogue.
- 2.2** Following publication of *Landing in Kent*, UKBA's Office of the Children's Champion facilitated an early visit by staff from our office to the immigration service operation at the Port of Dover. During this visit and thereafter we have received considerable help and cooperation from the Kent LIT and we are very grateful for their frank and open dealings with us over the course of our investigations.
- 2.3** At an early stage we decided that we would aim to 'triangulate' information about the arrival of unaccompanied children at port from different sources and perspectives. In order to obtain an initial understanding of the process we visited the Dover immigration office in April 2011. We asked to be 'walked through' the stages of the process that a child subject to immigration control would follow in sequence from 'detection' until release into the care of the local authority.
- 2.4** Starting in the search bays we had explained to us and we observed in use, some of the technology used to detect contraband and clandestine entrants (those who arrive hidden and without any lawful status to enter) as well as the safeguards employed to ensure their health and safety. We looked at the transport used to transfer children from the search bays to the immigration office and were then taken through the discreet areas where children are searched, held, undergo interviews and are fingerprinted and photographed. We saw the facilities and there was ample opportunity for us to ask questions about the process and the procedures governing each stage of the child's journey through to release. We recorded our observations and took note of the answers to our questions by immigration staff. We reference what we were told by immigration staff during the visit throughout this report.
- 2.5** At the end of the visit we were provided with a large file of documents arranged in sections and covering UKBA's general and specific policies and agreements relating to children, the contractor's policy documents,²⁴ information about interpreting and staff training and the information leaflets provided to children on release. In addition we were given an almost comprehensive set of UKBA (and contractors) forms used during processing and a copy of an agreement with France on the removal of those refused entry (including unaccompanied children) from the UK to the country of embarkation and associated instructions for UKBA staff.
- 2.6** The information provided by UKBA during the visit has been of great help in understanding the legal and policy context in which unaccompanied children entering and arriving into the UK without permission are processed and we refer to many of the documents below. The formal paperwork generated by legal and

²⁴ The Contractor at the time was G4S and it is their procedures we were given copies of. Subsequently the national contract for escorting has been awarded to another company, Reliance.

policy requirements is also referenced throughout the report and in particular in the sections where the process from detection to release into care are considered in more detail.

- 2.7** While the information and observations from the visit to the Port of Dover provided a solid base to understand how the processing of these children occurs, we also wanted to consider how this translated into practice from the perspectives of both UKBA and the child.
- 2.8** We approached Kent Social Services (KSS) - with whom children are placed on release - and asked them to facilitate a discussion between us and some newly arrived child asylum seekers. In setting the parameters of who we wanted to speak to, we indicated that the children should be 'recent arrivals'. We asked that only children who had arrived after October 2010 should be asked to take part as UKBA had told us that there had been a new processing system for children in operation since then.²⁵ We also wanted a mix of nationalities, gender and ages. We agreed with KSS that they would try and facilitate around 10 children to attend an initial meeting at Millbank with staff from our office. In preparation for the initial meeting on 1st June 2011, we provided KSS with a letter explaining who we were and what we wanted to talk to the young people about. The letter also indicated that we would be inviting participants to give written consent for us to obtain copies of their 'port' files from the immigration service at the end of the meeting.
- 2.9** Six boys and three girls attended the initial meeting. Four nationalities were represented with ages assessed by KSS ranging from 15 to 17. Four interpreters were required to translate. A lot of detailed questions were asked by the young people about who we were and what guarantees we could provide in the event of them agreeing to co-operate with us as well as about what we hoped to achieve. We had discussed what safeguards could be put in place with UKBA in anticipation of such questions and had obtained written assurance that participation in the investigation would not in any way affect the outcome of their applications for asylum. In particular, there would be no record on their immigration file of their participation. UKBA decision makers would not be aware of children's involvement and only two named immigration officers would know about, or be involved in, the physical copying and transfer of files for which consent had been obtained.
- 2.10** Despite these assurances and their careful explanation, four of the nine children declined to give their consent at the end of the meeting. Five of the nine children gave us written consent to obtain copies of "*all information held in paper files or electronically by the Immigration service/UKBA relating to my entry to the United Kingdom.*"²⁶ It had been explained to all those attending the

²⁵ All the children who consented to have their files considered arrived between February and May 2011.

²⁶ Extract from OCC consent form provided to children on 01.06.11.

meeting that once we had seen their files and considered the contents, we would like to conduct interviews with them in order to hear their accounts of what happened and obtain their views on the process they had undergone.

- 2.11** Having obtained the files from UKBA, interviews with the young people were arranged for 22nd and 23rd June. Two of the young people informed us just prior to the interviews that they no longer wanted to be interviewed but were happy for us to use (anonymously) the information on their files. While this was a significant set back, we did manage to conduct three full interviews with children of three different nationalities and ages. All the children's identities have been protected where evidence from their port file or interview with us is used.
- 2.12** A final meeting was held with five of the original nine attendees at Millbank on 8th September. The purpose of the meeting was two-fold: We wanted to share a draft of the 'evidence' sections of the report with those who had consented for their information or interviews to be used to ensure the accuracy of this information and reassure them that their identities were not discernable. We also wanted to explain the draft recommendations we were considering and give them an opportunity to comment on or amend these if necessary. A number of changes have resulted from this. It was interesting to note that some of the young people, who had originally not agreed to have their files obtained from immigration, attended this meeting and were very vocal in their views about the entry process and how it could be improved. Their late participation in the research was due to the fact that in two cases they had recently been granted asylum. Their anxieties over whether participating might affect the outcome of their case were therefore resolved.

Chapter 3 – Pre-arrival and first contact with UK authorities

Leaving Mainland Europe

3.1 Many children coming to the UK are detected and turned back before they leave mainland Europe. Stemming the number of clandestine arrivals to the UK has been facilitated by the establishment of juxtaposed controls ²⁷ in France and Belgium. The difficulties encountered in getting to the UK have been confirmed to us by many children who often report that they had previously made several failed attempts. While we do not know in detail what happens to children detected and processed through juxtaposed controls we were told by immigration staff in Dover that British officials hand them over to their French or Belgium counterparts. French officials appear to release these young people and they frequently find themselves back in places such as the ‘jungle’ in Calais before making a further attempt to reach the UK.

Arrival in the UK

3.2 If a child is able to evade detection at juxtaposed controls in France or Belgium, they stand a fair chance of reaching the UK without being discovered during the crossing. Once they arrive at Dover (or sometimes Ramsgate) children may be detected while remaining hidden in vehicles within the port area. We were told by immigration officials that this was less common than being detected once they have left the port area.²⁸ Where found within the port itself, there are arrangements in place for escort contractors to collect them and transport them to the port immigration office for processing. Immigration staff told us that because it is impossible to scan more than a small proportion of the huge volume of lorries entering through Dover, the *majority* of ‘clandestine entrants’ (including unaccompanied children) manage to remain undetected until they have left the port area. The main control in respect of illegal immigration is therefore at juxtaposed controls in France and Belgium rather than at Dover. Where children are able to evade control abroad and arrive in the UK their first contact with the UK authorities is more often with the police than with immigration officials.

Children’s records and accounts of arrival

3.3 Child A’s arrival details are recorded on his port file under a section of a form dealing with ‘reasons for initial arrest/detention’. The immigration office was informed by HM Revenue and Customs that they had discovered seven clandestine entrants in the back of a lorry going through the deep search bay.

²⁷ Arrival to the UK via the Channel Tunnel from France or Belgium or by ferry through selected ports in north-east France is controlled by juxtaposed immigration controls in Britain, France, and Belgium, i.e. travelers clear UK passport control in France or Belgium and those travelling to France or Belgium clear French controls while in the UK. Belgium does not maintain controls in the UK.

²⁸ The management information provided to us for 2010 was that around 63 clandestine entrants had been found in 23 vehicles of around 35,000 searched over the year. None of those found at Dover were children. The small number of clandestine entrants found may reflect the operation of intelligence –led searching primarily intended to detect contraband.

Three immigration officers were dispatched to find that all were claiming to be children. The ship on which the lorry arrived was noted as coming from Calais and arriving at Dover at around 11am.

- 3.4** Child A described his experience to us: *“In Calais we were not spotted. We avoided the inspection. We opened the lorry and we went in ... in a fridge. We went through Calais straight away and we found ourselves on the boat. It was very, very cold. We felt we were going to die. We spent about an hour and a quarter or an hour and a half on the sea. I was hopeful... thinking for someone to come and pick us out of the lorry. Then the lorry left the boat and we found people opening the door of the lorry.”*
- 3.5** Child B was discovered within the load of a drop trailer along with another child of a different nationality in inbound freight at Ramsgate. They were both served with illegal entry papers and transferred to the Dover port office for processing.
- 3.6** Child C was discovered in a lorry with eight others by the police somewhere in North Kent. Dover immigration office was informed at around 12pm. All nine were initially taken to a Kent police station but appear not to have been booked in there. The police telephoned the immigration office and asked if they could be brought directly down to the holding room at Dover.
- 3.7** Child D was first reported to immigration by Kent Police having been found on a carriageway at around 6.40pm. He was taken to a police station where he spent the night. He was transferred to Dover immigration office at 6am the following morning with formal booking in starting at 7.50am.
- 3.8** Child D describes to us how he got to the UK: *“I got into the head of the lorry, I was alone and I came to Dover. All I was thinking at the time was to arrive safely. Altogether I was hungry, scared. It was not pleasant at all. I was extremely tired. When I arrived I did not know anyone. I was walking for a very long time and did not know what to do until after some time I got arrested by police. I had been walking around for three hours. I was searching for the police myself. I was walking by the motorway. The police noticed me and I got arrested.”*
- 3.9** Child E arrived ‘in a container’ along with eight other older boys. He explains how he was unaware of how the container had travelled from France but his port record shows that the container had been on a lorry arriving via the Eurotunnel from France very early in the morning. The group was spotted getting out of the container by a member of the public who appears to have called the police who attended the scene. The police arrested the group and took them directly to the Dover port office.
- 3.10** These case examples illustrate the particular vulnerabilities and risks faced as a result of situations surrounding a child’s arrival in the UK. It must be noted here that unaccompanied and separated children and young people frequently travel under the instructions of agents ²⁹ while others may have been trafficked into

²⁹ Immigration Law Practitioners Association (ILPA) (2004), *Working with children and young people subject to immigration control*:

http://www.ilpa.org.uk/data/resources/13273/ilpa_working_with_children.pdf and

the UK. A child may therefore have little control over what happens to him/her on their journey and up to arrival.

Kent police arrangements for handling children suspected of illegal entry.

- 3.11** Kent police described to us what they do when they come across a child who they suspect has arrived illegally and without any status (a suspected illegal entrant). The person (adult or child - no distinction is made) is arrested and detained on suspicion of illegal entry.³⁰ They are then either detained at a police station or taken directly to the UKBA port office at Dover. If first taken to a police station, basic details may be obtained about their identity (name, nationality and age) using a telephone interpreter. The person is searched.³¹ Any property is taken from them and put into a sealed bag which will travel with the subject when they are collected by the immigration service escort. Each item of property is recorded by the custody officer and a written record is kept. The hand over of property is also videoed or recorded on audio tape. These procedures are standard for anyone arrested and brought into custody and ensure that any later accusations of theft of property by police can be properly dealt with.
- 3.12** UKBA is informed *immediately* by fax that a suspected illegal entrant is being held. It would not appear to matter whether the person's details have been obtained at this stage but a Chief Immigration Officer will decide if there is sufficient information to serve Form IS151A - a notice to a (unnamed) person of their liability to removal either as an illegal entrant or as an overstayer.
- 3.13** Service of the form is normally done by fax without an immigration officer having seen or spoken to the individual. Reports or notes from the police are relied on to make an assessment that there are 'reasonable grounds' for suspicion of illegal entry. We were told by immigration officials that such grounds might be, for example, smelling of wood smoke, being dirty or being in possession of euro currency or tickets indicating recent travel abroad. If there is insufficient information from the police, a 'PACE'³² interview may be required before service of the IS151A can proceed.

ILPA (2011), *Working with refugee children*, p80 and Para 6.7 of p60:
http://www.ilpa.org.uk/data/resources/13326/ilpa_wking_w_refugee_chldrn_May2011.pdf

³⁰ It is a criminal offence under s.24 of the Immigration Act 1971 if a person '*knowingly enters the United Kingdom in breach of a deportation order or without leave*'. A police constable as well as an immigration officer has the authority to arrest someone suspected of committing the offence.

³¹ It is not clear why an unaccompanied child is not referred by the police to a local authority under s11 of the Children Act 1989. We were told that this was how it had always been done.

³² Interviews must be compliant with the Police and Criminal Evidence Act 1984 which contains safeguards such as a caution being given, tape recording and legal advice being given and having a Responsible Adult present.

- 3.14** The incentive for the police to inform UKBA at the earliest opportunity is driven by the fact that until the person is transferred from police detention to immigration detention, the costs are borne by the police themselves. Once the immigration office has been informed and transfer to immigration detention takes place, the further cost of keeping the person in a police cell is transferred to the immigration service.
- 3.15** ‘Transfer to immigration detention’ occurs at the point of service of form IS91 (‘detention authority’) rather than physical transfer of the detainee to an immigration service facility. The detainee remains at the police station, but under immigration detention powers (following service of the IS91) until collection by the immigration service contractor.
- 3.16** We were told by immigration staff that UKBA are able to conduct interviews at the police station once they are detained under immigration powers and would also have an option to bail the detainee from there. However we were also told that immigration officer interviews are normally only conducted at a police station if it is suspected that the person had been in the country for some time already (and therefore a PACE interview would be required). They would then be fingerprinted at the police station. There is provision within immigration legislation to allow a constable to take fingerprints on behalf of UKBA.³³

Children’s accounts of first contact with the authorities

- 3.17** Child A describes his first contact – in his case, with immigration officers following his detection in a refrigerated lorry: *“They took us one by one and they took photographs of us and inspected us. If we had any mobile phones or belongings or loose things then we had to put it in a special bag. Then they took us in a car. I don’t know where. And then I was subjected to questions by several people.”*
- 3.18** Child E’s first encounter was with the police when getting out of the container in which the group had travelled: *“We stopped and I got out and saw the police. I was scared at the beginning and thought they were going to beat us and I turned away from them. The police officer was after me and pointed his gun towards me and I was scared he might shoot me so I stopped running. I just started to run but quickly stopped.”*
- 3.19** Child E described the object he presumed to be a gun as hand held and around 12 inches or so long. Informal discussions with the police have confirmed that ‘Tasers’ are issued to the Force and we conclude that it is likely that what Child E saw was a taser weapon. We have not attempted to confirm with the police whether a taser weapon accompanied officers on this particular operation. Child E continues: *“We were scared and thinking what would happen to us. If they would deport us back or beat us. We haven’t seen the police much so we were scared they might [deport us or beat us]. I was taken by the police in France and they took my fingerprint. There were some boys [in France] who were older*

³³ Immigration and Asylum Act 1999, Section 141.

who they were pushing and kicking. One boy was held from his shoulders and pushed onto a chair.”

3.20 Child D also encountered the police first and had been actively trying to find them: *“I was taken to a police station. I didn’t stay there for a very long time. I was in a cell (overnight) for eight hours approximately. And then a gentleman and a lady came and took me with them. The police searched me but I didn’t have anything at all on me. They did ask me some questions through a phone call which lasted about five minutes. Basic details – who I was, my age, etc. I can say the police were very good.”*

Transportation from the police station to Dover Immigration Office

3.21 A child suspected of illegal entry to the UK will be held at the police station until they can be collected by the immigration escort contractor.³⁴ The length of stay at the police station will vary depending on the time of day or night that the police arrested the child. The police complete the transfer record on the IS91 when they hand the subject to the escort contractor who then becomes the ‘detaining agent’.

3.22 The escort contractors will use a different type of vehicle for moving children than for moving adults reflecting UKBA’s commitment to refrain from using ‘caged vehicles’ for transporting children. A Chief Immigration Officer (CIO) makes the decision on which type of vehicle to use. We were told that the CIO relies on the judgement of the police custody sergeant to determine whether the subject is a child. The sergeant is likely to rely on the self-reported age of the arrested individual (where those details have been obtained).

3.23 We were shown the vehicles used to transport children during our visit to the Dover port office. They resemble ‘people carriers’ with some modification in the form of plastic shields between the front and the back of the vehicle. We were told this was for the protection of staff. The vans are also fitted with video cameras. Children are never transported in vehicles with adults unless they are a family unit in which case the people-carrier type of vehicle is used.

3.24 On occasion, the police will not hold suspects at a police station but will transport them directly from the location of arrest to the Dover port office. Kent Police have the option to contact the Local Immigration Team and refer cases they believe to be newly arrived illegal entrants that they have encountered. If the police can arrange transportation, the port office is open and the CIO is satisfied that to a high degree of probability the evidence from the police suggests illegal entry, this option may be used.

3.25 The process that emerges in Chapter 3 (above) is summarised on the top right hand side and top three boxes on the left hand side of the Process Map reproduced as an annex to this report. The Process Map was given to us by immigration staff during our visit to the port office.

³⁴ At the time of our visit on 19th April 2011, the contractor was G4S but the contract has subsequently been awarded to Reliance.

Chapter 4 – Transfer to the holding room, searching, ‘booking in’ and age-assessment

4.1 Children are detained under immigration powers from the point at which UKBA can serve the IS91 up until they are ‘temporarily released’ – evidenced by service of form IS96. At the point of release they are placed into the care of Kent County Council social services department.

Searching

4.2 On arrival at the port office a child will be searched. A search occurs even if the child has already been searched and their property ‘bagged up’ at a police station. We were told by immigration staff that a second search was necessary in case the child had picked anything up during the course of his or her movement from the police station by the contractor. This seems highly unlikely to us and we question whether a second search is really necessary or whether this simply becomes intrusive.

4.3 Searching is undertaken in a dedicated area by the contractor’s staff rather than by immigration officers. We were shown how and where this was done during our visit. A ‘wand’ is used to detect metal objects but we were told that no intrusive body searches take place. Although any items found are bagged up and stored, unlike at the police station, searches are not video or audio recorded. Children are also photographed at this stage of the process as part of the ‘booking in’ process.

Removal of documents

4.4 One issue concerning searching procedures did arise from the interviews with the children. In several of the files we examined there were un-translated documents including in some cases what looked like telephone numbers or email addresses as well as script in the child’s own language.³⁵

4.5 One child denied that the documents we showed him on the copy of his port file belonged to him even though their presence on the file would suggest that UKBA thought that they did. However, because searches at the port office are not video-recorded – as they are when a subject is arrested and taken to a police station – there is no evidence or even audit trail that the documents attached to his file were in fact his .

4.6 The presence of unrecorded and un-translated documents on the file is of concern. These may influence decision makers yet do not provide a basis for being able to question the alleged owner with evidence of any suspicions or give them the opportunity to rebut such suspicions. Documents may also contain information that supports the claim being made. Good practice would simply

³⁵ This issue had also been raised with us by children at Millbank during our visit there in 2010. On that occasion a child was distressed that a document that had been brought with him had been lost

require that documents allegedly belonging to a child should be photocopied and copies provided to the child or their legal representative.

Booking in

4.7 It is unclear from the minors 'booking in sheet' whether booking in is conducted by the contractor or by an immigration officer (IO). A 'booking in sheet' should be completed in full and is kept near the front of the port file. The sheet contains basic information about the child including the allocated 'port reference number', location of apprehension or referring police station, date and time of sole immigration service detention (i.e. time of service of the IS91), date and time of arrival at the Dover port office, details of the IO conducting the welfare questionnaire and child pro-forma, details of any appropriate adult present, details of the interpreter used and whether present or by telephone, and the start time of the booking in process. A section entitled 'personal details' is then completed using information from the 'child pro-forma', PACE interview notes or observation. The details collected include family name, forename, date of birth, nationality, language, eye colour, hair colour and type, height and 'visible marks'. There is a box to tick entitled 'welfare considered', space to note the port references of dependants and finally a space to note 'any medical conditions' with the instruction to 'inform CIO and complete 'Medical in Confidence form' if any are noted.

The holding area

4.8 While the child is waiting to be booked in and thereafter they will wait for interviews or other procedures to take place in the 'holding area'. The holding area reminded us of a rather stark hospital waiting room containing rows of bolted down chairs, neon lighting and a large flat screen television in one corner. The lighting and TV were on all the time during our visit. There was a glass screen at the end of the area where detainees can be observed by UKBA contractor staff who are uniformed. Children and adults are held together and there is no separate area for those identified as children. There was a small room (about 7ft X 7ft) coming off the main area where people could sit separately and pray.

4.9 On the wall at the back of the main room there were copies of complaints procedures in different languages. Whether this is an effective mechanism for children to complain is doubtful. Certainly some of the children and young people who arrive into the UK are illiterate but perhaps more importantly children told us that they were scared during their initial processing. This might put them off from complaining in our view. As far as we understand the complaints process is not explained orally to children and they may therefore not know that they have a right to complain if they are aggrieved.

4.10 The holding room facilities were not extensively commented on by the children we interviewed. They all appeared to remember the room and were able to describe features that stood out for them:

"It was a very large room. There were lots of chairs. I was alone myself, sitting there. There was a TV, those sort of things. There was some biscuits. They brought us tea and coffee." (Child D)

"It was a big room with chairs and a TV. There was a telephone as well. There was glass at one end of the room so you could be observed." (Child E)

"It's like this room [indicates size]. There is a TV, there is a Koran and opposite there were people. I think they were staff. Whoever wants to eat and whoever wants to drink, they can. There were toilet facilities as well." (Child A)

4.11 The food available in the holding room can be described as 'snacks' including, on our visit, fresh fruit. Child B did mention that he was very hungry and although he helped himself to some of the available snacks, he had not eaten anything other than snack food for around two days prior to his screening interview. His first meal was after being placed in care.

4.12 It should be mentioned that while some thought has clearly gone into the range of snacks available in the holding area to ensure that they meet Muslim dietary requirements, children may still be unsure about which items were OK for them to eat in line with their religious requirements due to an absence of adequate labelling. This may be a barrier to some children eating the snacks on offer.

4.13 Child E described how, even with a wait of several hours before his screening interview, the hardness of the chairs had prevented him from sleeping:

"I couldn't sleep. The chairs were too uncomfortable."

4.14 When we spoke to children as a group in the 'wrap up' session on 8th September, the consensus seemed to be that facilities in the holding area could be considered adequate *if* waiting times were reduced and *if* they hadn't felt so tired. No one was strongly opposed to the idea of waiting in the holding area after returning there following proper rest and recuperation away from the immigration office for a few days.

Age assessment

4.15 Prior to any interview taking place, a Chief Immigration Officer will conduct an age- assessment in line with the asylum process guidance '*Assessing Age*'. The age assessment takes place at this stage to screen out those claiming to be children but whom, in the view of the CIO, are *clearly* not.

4.16 While the CIO may or may not harbour doubts about the age of a person claiming to be a child the subject should be processed and routed onwards in accordance with the guidance in '*Processing an Asylum Application from a Child*' unless the CIO decides that their '*appearance or demeanour very*

*strongly suggests that they are significantly over 18*³⁶ (emphasis in the original). In such cases the subject will be processed as an adult and no referral would be made to Kent Social Services.

4.17 We do not consider the issue of age assessment further in this report. In the files we obtained consent to look at, most of the children were claiming to be 16 or 17 and may therefore have been thought to be on the cusp of being adults. In all the cases reviewed Chief Immigration Officers appear to have correctly applied the policy and given ‘the benefit of the doubt’ to the young person. If at a later stage any of them had been assessed by the local authority as adults, it would have been open to the CIO to accept the local authority view and thereafter treat the young person as an adult in any further processing of their asylum application.

³⁶ UKBA (2011), *Assessing Age, (Version 6)*:
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view=Binary>

Chapter 5 - Initial interviews

5.1 The two interviews described in this section are the ‘welfare interview’ and the ‘initial entry interview’. We discuss each in the order that they take place. Following these two interviews, children identified as asylum applicants will undergo a full screening interview. The screening interview is discussed in Chapter 6.

The welfare interview

5.2 After searching, booking in and a CIO age assessment (see above), the child’s first interview with an immigration officer will be a *welfare interview*. The questions are designed to establish if the child is ‘ready to be interviewed’ or whether there are impediments such as hunger, tiredness or illness which might mean further interviews can not be conducted immediately. These interviews are conducted *without* an independent Responsible Adult present. This is in line with current guidance.

5.3 Form ASL. 4261 entitled ‘*Unaccompanied Child Welfare Pro-forma – Questions on First Contact*’ is a universal form devised by the Asylum policy section of UKBA. It could be expected to be found in use in all UKBA locations where unaccompanied children are first encountered. Its purpose is explained at the top of the form:

“Before any immigration interview, the following questions should be asked on first contact with the child and the answers recorded to ensure the child is fit to be interviewed.

If an initial examination interview is conducted after the welfare questions below (i.e. where the child is not a de-facto illegal entrant³⁷), it will only serve to establish why the child has come to the United Kingdom.”

5.4 The Pro-forma contains the following questions:

- Are you feeling OK to answer some questions?
- Do you understand me/the interpreter?
- Do you feel unwell?
- Do you feel hot/cold?
- When did you last sleep?
- How long did you sleep for?
- Do you feel tired?

³⁷ We understand the term ‘de-facto illegal entrant’ to refer to those subjects whose illegal entry can be confirmed by the circumstances of arrival – e.g. being found in a lorry that has just come off a ship.

- Do you feel hungry or thirsty?
- Do you need to see a doctor for any reason?
- Please tell me if you need to go to the toilet or need to take arrest at any time?

5.5 The date, time and location of the interview are noted. Staff are instructed:

“Once the above questions have been completed and the child is fit to be interviewed, proceed to the initial examination interview if the child is not a de-facto illegal entrant.”

5.6 Kent local immigration team have produced their own version of the welfare form. The questions are mostly the same as on the ASL 4261 with the only difference being that the question ‘Do you feel unwell?’ is replaced with ‘Are you in any pain?’ The instruction below the questions on the Kent version of the form reads:

“Once completed the above questioning, proceed to the initial examination interview to establish the reason why the child has come to the UK.

If the child indicates at any time they are claiming asylum, the initial examination interview should be followed by an asylum screening interview. However care must be exercised to ensure that the child is considered sufficiently fit and well to be asked further questions and consideration should be given to a ‘rest break’ where appropriate.

Screening interviews can proceed without a Responsible Adult with the exception of Question 4.2 which should only be asked in the presence of an RA.”³⁸

Children’s records and accounts of the welfare interview

5.7 All of the five files examined had a completed Welfare Pro-forma. All five children responded ‘yes’, ‘fine’ or ‘OK’ to feeling ‘OK to answer some questions’ (question 1). Likewise, when asked ‘Do you understand me/the interpreter’ (question 2), all answered a simple ‘yes’.³⁹ What the children told us about the interpreters used in all interviews at Dover was much more nuanced than the answers recorded for question 2 of the Welfare Pro- forma. We return to this issue later in this report.

Illness and pain

5.8 The question ‘Are you in any pain’ (question 3) was answered in the affirmative by Child B, Child C and Child E,

³⁸ See Para 7.24.

³⁹ An interesting observation provided by one of the children in the ‘wash up’ session in September was that the question ‘Can you understand the interpreter?’ is always asked before any conversation of substance has taken place. She mentioned that she had said ‘yes’ but later on felt that difficulties were emerging.

5.9 Child E's form records him as having a 'Burning right palm'. When asked if he needs to see a doctor now for any reason (question 7), the answer is recorded as 'Blister, right palm'. However Child E remembers giving a fuller explanation about the pain in his right palm:

"I told them I had a problem with my hand getting out of the container. When I got out of the container, another big boy jumped off behind me and landed on me so my hand went on the ground."

5.10 It is concerning that an Immigration Officer is effectively making a medical diagnosis which sounds quite trivial (a blister) when the origin of the pain in Child E's hand was in fact a recent injury which should have been examined to see if anything was sprained or broken.

5.11 A more serious example of an Immigration Officer apparently making a medical judgement occurred in the case of Child B. Child B's 'booking in sheet' notes under the section 'any medical conditions':

"Little finger on left hand in a splint. Obtained in hospital in St Joseph's, Ostend. Was prescribed Petadine (sic). Subject was not able to understand the doctors in Belgium."

5.12 When asked in the Welfare Pro-forma 'Are you in any pain?' he is recorded as answering: 'A little discomfort in finger, pain in colon'. When asked if he needs to see a doctor now for any reason (question 7) he is recorded as saying 'yes please'. Child B is not seen by a doctor at this point. Rather the request for immediate attention is ignored and an initial examination interview is then conducted followed by a full screening interview. It is only after these have concluded that Child B is sent for medical attention to the accident and emergency department of a local hospital.

5.13 Child B's 'pain in colon' appears to be related to what is recorded in the initial examination interview: '(subject) passes blood from back passage'.

5.14 The note on Child B's booking in sheet records that he 'was prescribed petadine' (sic). Pethidine is an opioid based treatment for moderate to severe pain. It is regularly used in the UK to control pain for women in childbirth. Pethidine is known to be associated with "euphoria, difficulty concentrating, confusion and impaired psychomotor and cognitive performance when administered to healthy volunteers."⁴⁰

5.15 It is understandable that immigration officers do not have the medical knowledge to appreciate the effects of pain killing drugs. However, an adequate medical diagnosis would have most likely suggested that a subject who may have been under the influence of Pethidine was not 'fit to be interviewed' due to

⁴⁰ Walker D. et al (1999), *Subjective, Psychomotor and Physiological Effects of Cumulative Doses of Opioid Agonists in Healthy Volunteers*, Journal of Pharmacology and Experimental Therapeutics, 289, pp1454-1464.

its known effects. This is particularly the case where the answers are later to be relied on by UKBA.

- 5.16** Child B's case provides a powerful argument as to why children's immediate welfare needs should be administered to prior to any interviewing on which the decision making authority may later rely.

Tiredness

- 5.17** The clutch of questions '*When did you last sleep?*', '*How long did you sleep for?*' and '*Do you feel tired?*' also rely on an immigration officer's discretion to decide whether the subject has had 'sufficient' sleep to be considered fit for interview. The children we interviewed frequently emphasised how tired they were when they were interviewed following arrival:

"I was extremely tired ... There was no need to see a doctor though I was very tired and in need of sleep" (Child D).

- 5.18** Child A's welfare interview took place at 1.15pm and he told the officer that he had last slept '*the night before last*' when he had gone to sleep '*at approximately 2am*'. He is recorded as replying 'yes' to the question 'Do you feel tired?'
- 5.19** Child B's welfare interview was at 3.30pm and he told the officer that he last slept at '*12 noon yesterday*'. He was also recorded as replying 'yes' to the question 'Do you feel tired?'
- 5.20** Child C's welfare interview also took place at 3.30pm and he told the officer that he last slept '*three days ago*'. He replied 'very tired' to the question 'do you feel tired?'
- 5.21** Child D, interviewed at 8am, told the officer that he slept '*last night*' (at the police station) and that he slept for '*7-8 hours*'. He was recorded as saying 'fine' when asked if he was tired. The answers recorded here do not correspond with what he told us in our interview about his state of tiredness.
- 5.22** Child E interviewed at 11.15 am reported that he last slept '*this morning*' (presumably before his departure from France at around 6am) but '*not well – 2 hours*'.
- 5.23** None of the answers given prevented the children remaining in detention, undergoing an initial examination interview and then a full screening interview.

Hunger

- 5.24** None of the children are recorded as stating that they were hungry or thirsty in reply to question 8 in their welfare interview. Three of the children simply

replied 'No'. Child B and Child C both comment that they have just eaten or had been given some food.⁴¹

The initial examination interview

- 5.25** The initial examination interview is referred to in box 7 on the left hand side of the Process Map and in the guidance given to staff on the Welfare Pro-forma. When we examined the five files we came across form IS.126 (E) in each file. The form had been absent from the group of forms initially provided to us by Dover immigration service.
- 5.26** The form is headed 'For the attention of ERCU/RCU'. It is not understood what this means. It seems that the form is used in circumstances where UKBA is considering prosecuting for a criminal offence of illegal entry. There is a checklist in relation to the interview, for example whether a caution is administered, whether the interview is tape recorded and if a legal representative is present. The form also has a section on 'mitigating circumstances'. It seems probable that whatever other purposes the completed form serves it is used as the basis for a further decision by the CIO on whether to treat the subject as an asylum case or not (see box 8 on the left hand side of the Process Map).
- 5.27** The IS.126 (E) is not set out in the form of an interview (as are both the welfare interview and the screening interview). Rather the form is simply entitled 'Submission'. There were no hand written notes on the files examined which would indicate the content of the interview yet the submission contains information that could only have come from some level of questioning the subject. In particular, the submission reports on whether or not the subject wishes to claim asylum. It is of considerable concern that there is no indication of what questions are asked and what replies are received to establish whether the subject wishes to be treated as an asylum claimant or not – particularly as this has potentially very serious consequences and could lead to the immediate removal of the child from the UK (see below).
- 5.28** Section 1 of the form concerns '*circumstances of detection/coming to notice.*' There is a narrative beneath this that summarises the circumstances. None of the narrative appears to require the subject themselves to answer any questions but rather is a factual account of the time and circumstances of where the subject first came to notice as reported by police or another authority with whom the subject had first contact.

⁴¹ It should be remembered that children may be shy and/or scared at this point. Cultural understanding of a child's background is needed. In some countries it is rude for a child to request food and it may also be necessary to explain to a child whether the food that will be given meets their dietary requirements. Qualified child practitioners often assess the demeanour and behaviour of a child in situations surrounding food because they often have had to address the complicated relationship children may have with food - for example eating disorders. Other children may find it difficult to eat for various medical reasons which may not be fully appreciated without proper and competent assessment.

- 5.29** Section 2 of the form is entitled 'Interview Details'. This section has space for noting the date, time and place of interview, whether a caution was administered, whether the interview was taped, the language of the interview, the name of interpreter and whether a legal representative was present and if so, their details.
- 5.30** None of the five files examined indicated that there had been a legal representative present. There is also an instruction to staff in the absence of a legal representative: *"If no, confirm subject agreed to interview without the presence of legal representative"*. It is not recorded clearly on any of the files examined that the child was asked this question, what explanation of the consequences of answering 'yes' or 'no' might be, or indeed what the child's answer (if asked) was. None of the actual interview questions or answers are contained here or on any other part of the form.
- 5.31** Section 3 of the form is entitled *'Illegal entry contention/case for consideration under S.10 of the 1999 Act'*. The instruction reads: *"This section should contain the framework of the case, including: method of entry (where arrived; when; whence; by flight/ship); intentions on arrival; statements to IO on arrival; statements to ECO (Entry Clearance Officer); the conclusion of illegal entry or case for action under S.10, quoting the relevant section of the Act; any judgements relied upon"*.
- 5.32** On examination of the files, it is apparent that there is routine mention of 'breach' of Section 3 (1) (a) of the Immigration Act 1971 (as amended) and reference to the offence under Section 24 (1) (a) of the same Act. Only in two files is it recorded (in this section) that the subject 'has claimed' or 'wishes to claim' asylum. In one case (Child A), the details of the 'sailing' are recorded: *'P&O Pride of Canterbury, 10.30 sailing from Calais and arrival at Dover 11.04'*. For reasons explained below it appears to be important to record details of the sailing and the time of embarkation. In cases where the details of the 'sailing' (or particular train via the tunnel) cannot be established, a case is built on the circumstances around the subject's detection and, through the IEI, their volunteering information about their method of entry. With sufficient evidence (i.e. being seen getting out of a lorry) the subject can be deemed to be a 'de-facto illegal entrant'.
- 5.33** The final Section (Section 4) is entitled 'Mitigating Circumstances' with the question next to it, 'Asylum sought?'. It may be necessary to establish whether a young person is claiming asylum because this will be a defence to any immigration offence committed. The instruction then reads: *'Detail any compelling compassionate or other circumstances which bear on removal. In particular, set out: family circumstances – spouse (legal or common law) - dependant children- pregnancy – aged parents (including whereabouts and immigration status if known) any relevant medical condition; length and quality of residence; any criminal convictions/activities; any dependence on public funds; current accommodation'*.

- 5.34** In all five files examined the question ‘Asylum sought?’ in Section 4 is answered ‘yes’ or this is noted by way of narrative below. The details contained in Section 4 are brief, e.g. ‘subject is claiming to be a minor’. There is also evidence that the form is not fully completed prior to the next stage of the process in some cases. On Child C’s form for example it is noted ‘*sub is now being accommodated by Kent Social Services*’. This must therefore have been completed and submitted *after* temporary release was granted.
- 5.35** It is concerning that there is no contemporaneous record on the files of the questions asked and answers given but instead there is a note of the result of the enquiry typed up by the Immigration Officer conducting the interview. It is not apparent from the form used to record details of the IEI *how* the reason for coming to the UK is established or indeed how extensive the questioning more generally is in the IEI.
- 5.36** If the IEI establishes that the subject is both an illegal entrant/overstayer and does *not* wish to claim asylum they can be removed from the UK immediately in the absence of mitigating circumstances.
- 5.37** As part of the documentation we were provided during our initial visit to the Dover immigration office we were given a copy of a bilateral agreement between the UK and France: ‘the ‘Gentleman’s Agreement’. The most significant part of the Agreement is that when a subject is not an asylum seeker *and* return can be effected within 24 hours of embarkation, the authorities in the State of embarkation must accept the subject back into their territory. The Agreement is ‘blind’ to children and therefore allows children who do not state a wish to claim asylum to be immediately returned to France. Were this to occur this would clearly breach UKBA’s duty to safeguard children and promote their welfare under Section 55 of the *Borders, Citizenship and Immigration Act 2009* as well as the ‘best interests’ test required to be applied to all administrative functions of the State under Article 3 of the UN Convention on the Rights of the Child.
- 5.38** The ‘24 hour clause’ in the Gentleman’s Agreement may be the reason why the IEI is conducted as soon as possible after entry and why, where it can be established, the details of ‘shipping’ are recorded accurately.⁴² As we were very concerned about the potential for using the Gentleman’s Agreement to remove unaccompanied children who do not ask for asylum we raised the issue with UKBA during the course of this investigation. As a result of these conversations UKBA has now ceased to use the Gentleman’s Agreement to remove children to France. This is a very welcome development. The Agreement does however remain in force and there remains a danger that age disputed cases may continue to be removed. The full text of the Gentleman’s Agreement is reproduced as an annex to this report along with correspondence between the Children’s Commissioner and the Chief Executive of UKBA on this matter.

⁴² The details of shipping are also recorded so that if the applicant becomes removable at a later stage in the process, UKBA can apply to the carrier to pay for this and for any associated detention costs.

- 5.39** The IEI submission is referred to a CIO who will decide whether or not the subject is an asylum seeker. If the child has expressed a wish to claim asylum they will return to the holding area pending a full asylum screening interview. If the child has been assessed as over 16, they can be fingerprinted at this point. If they are under 16 the Immigration Officer must await the arrival of a Responsible Adult – usually a social worker.
- 5.40** The lack of notes accompanying the IS.126E means that it is not possible to establish whether consideration has been given to the capacity and understanding of a child when determining whether they wish to make a claim for asylum or not. Not all children will understand the term ‘asylum’ or know of their legal right to claim international protection, including under the Refugee Convention. Some children may have been told to make a claim for asylum by adults, in particular adult people smugglers, whilst others may have been coerced or tricked into coming to the UK for trafficking purposes and for example indicate that they are ‘here to work’ rather than ask for protection.
- 5.41** It may also be necessary to assess the educational attainment and mental capacity of a child to establish whether they understand the processes and questions that are being asked; what information is expected of them and whether they are able to ‘express’ a claim for asylum. At Millbank Reception and Assessment Centre educational assessments are conducted in order to establish the understanding and capacity of a young person.
- 5.42** Moreover, if a child is expected to indicate that they wish to seek asylum and/or express a fear of return to trigger their legal rights, it is hard to understand how this can be done without access to a legal representative. This is especially the case if the consequence of failing to claim protection can lead to the child’s immediate removal from the UK.

Chapter 6 - The screening interview

6.1 The purpose of screening children is set out in the UKBA asylum process guidance document *'Processing an asylum application from a child'*. The general principle is explained as follows:

*"The purpose of the screening process is to register an application for asylum. An application which can be understood as a request for international protection will be presumed to be an application for asylum. **Screening is not the place to explore the claim for asylum.**"*

"The screening process for child applicants is designed to obtain details about: the child's identity, country of origin and family, the history of how they arrived in the UK and their documentation; any previous claims for asylum; their health and any special needs; security-related information; and, the identity of anyone accompanying the child or acting as their Responsible Adult. Additionally, the applicant's photograph and fingerprints are taken"⁴³ (emphasis in the original text).

The introduction to the screening interview

6.2 The introduction to the screening form consists of three pages which are read out to the applicant. In the children's version of the form (as used at Dover), next to the text that is read out, there is a 'suggested explanation' to a child. This is in recognition that complex information is being imparted or is required.

6.3 Although applicants are told that *'You will not be asked at this stage to go into detail about the substantive details of your asylum claim as, if appropriate, this will be done at a later interview'*, this information does not 'translate' into the suggested explanation for children which reads: *"In a few moments, I am going to ask you some questions about you, your family and about your home. I will also ask you about how you came to be in this country – your route/journey and how you travelled."*

6.4 No mention is made in the 'explanation' of not going into detail of the asylum claim. As a result children may be inclined to give fairly extensive accounts of their claim in an attempt to be helpful. Children are not stopped from 'volunteering' information about the reasons for their claim as a matter of policy.⁴⁴ This is discussed further below.

6.5 As the introductory information is imparted or required, the applicant is asked to confirm verbally that they understand and a note confirming this is made. Finally the child is asked to sign the statement: *"I certify that the above details are fully understood and are correct"*

⁴³ UKBA (11.08.10), *Processing an asylum application from a child*, Para 6.2:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary>

⁴⁴ For the full text of the instruction see Para 7.24 below.

Content of the Screening Interview

- 6.6** ‘Part One: Bio-data’ follows the introduction. It consists of 20 questions some of which are sub-divided. At the end of the section the child is required to sign the statement: *“I certify that my personal details (as recorded above) are correct”*
- 6.7** ‘Part Two: Travel History and Documentation’ requires applicants to explain in detail how they travelled to and entered the UK. The note for the interviewing officer suggests 12 separate issues to cover in this one question. There are then 11 further questions about ‘documentation’ (including about fingerprinting before arrival in the UK) after which the following declaration is read out:

“I am aware that it is a criminal offence to fail to provide a document establishing my identity and nationality at a leave or asylum interview and/or seek to obtain leave to remain in the United Kingdom by deception. I understand that my fingerprints will now be taken and examined against existing immigration and police databases. I declare that the information that I have given is correct and complete.” There is a ‘suggested explanation for a child’ following this mandatory statement which reads:

“While we decide your claim, you must obey the UK laws; you will be committing an offence if you do not obey the laws of the UK. It is an offence if you deceive us when you are being interviewed and it is also an offence if you do not provide a document which proves your identity. It will be for legal experts to decide what should happen [to you].”

- 6.8** The child is required to sign this declaration. This may be quite frightening – particularly in the absence of having received any legal advice or having a legal advisor or Responsible Adult present. When we interviewed children at Millbank in 2010, one child was clearly distressed at having handed over a birth certificate (to either the police or immigration) which could not then be located. In view of the threat of prosecution, his distress was understandable.
- 6.9** ‘Part Three – Health’ asks three (sub-divided) questions about illnesses or treatment.
- 6.10** ‘Part Four - Basis of Claim Summary’ contains four questions which we have reproduced in full below (emphasis in the original):

4.1 What was your reason for coming to the UK? (i.e. holiday, with parents to visit family, to claim asylum)

4.2 If you are afraid that something bad would happen to you if you returned home can you tell me IN A FEW WORDS what you think could happen and why you think that? (TO BE ASKED ONLY IF CHILD IS ACCOMPANIED BY A RESPONSIBLE ADULT – AND CHILD TO BE GIVEN THE OPPORTUNITY TO RESPOND TO ANY MATERIAL INFORMATION PROVIDED HERE IN THE COURSE OF THEIR SUBSTANTIVE INTERVIEW.)

4.3 Have you ever claimed asylum or been granted refugee status /leave to remain (permission to stay) in any other country before? (If 'yes' record details)

4.4 If you passed/travelled through or stayed in any other countries before you arrived in the UK, why did you not apply for asylum there?

- 6.11** Of the five files we examined, three children were not asked question 4.2 because of the absence of a Responsible Adult. Child B and Child E were asked the question. In Child E's case, the record is unclear as to whether a Responsible Adult was present. Social workers were present at the end of his interview but Child E cannot remember whether they were present when question 4.2 was asked. Why this cannot be told from the record is a point for Dover immigration service and the children's policy section of UKBA to consider. Child E's provides more significant detail about the basis of his claim than is necessary and is not stopped from doing so.
- 6.12** In Child B's case it appears that no Responsible Adult was present when question 4.2 was asked contrary to the instruction. The answer he gives is fairly general but is consistent with known conditions in his country.
- 6.13** Part Five: Criminality and Security Screening asks seven further questions about arrest or conviction abroad, support for terrorism or engagement in violence and finally working for government or other security related professions.
- 6.14** At the end of Part Five the instruction to staff reads: *"Applicant to sign below to confirm that they have understood all of the questions asked and have received a copy of this interview."*
- 6.15** In the next chapter we consider how the current process at Dover – involving screening of asylum applicants on the day of arrival – seriously disadvantages them, can damage their asylum claim and can not be said to be a process designed with their best interests as a primary consideration.

Chapter 7 – The disadvantage faced by children under the current processing arrangements – a breach of children’s rights?

7.1 Article 3(1) of the UNCRC states that *“in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*.

7.2 The immigration service exercising its entry control functions are an administrative authority. The decisions made about how unaccompanied or separated children are processed on entry require their ‘best interests’ to be a primary consideration. Although the UNCRC is not directly incorporated into domestic legislation, it is clear that s.55 of the Borders, Citizenship and Immigration Act 2009 – which provides that the Secretary of State must make arrangements for ensuring that her functions in relation to immigration decisions are discharged having regard to the need to safeguard and promote the welfare of children in the United Kingdom – embodies the ‘spirit’ of Article 3.⁴⁵

7.3 In our view, the current arrangements for processing children at Dover disadvantage them and are not in their best interests as required.

7.4 The components of the disadvantage faced by children are as follows:

- They are generally not fit to be interviewed immediately on arrival due to illness, hunger, tiredness, fear or a combination of these factors. These issues have been considered earlier in this report.
- The waiting period between being detained and being released is too long due to the current requirement to conduct multiple interviews prior to release. This compounds some of the factors listed in the previous bullet point.
- The requirement to interview on the day of arrival means that in general telephone interpreters are used. Telephone interpreting is inadequate for obtaining detailed information from a child particularly where this is later relied upon by the decision maker.
- The requirement to interview on the day of arrival means that arrangements cannot be made for the child to instruct and be accompanied by a legal representative at interviews where the content is relied on by the decision maker. In respect of the IEI this could result in the immediate expulsion of the child from the territory.
- A Responsible Adult is rarely there to ensure the child’s welfare needs are met.

⁴⁵ ZH (Tanzania) v SSHD [2011], UKSC 4. See Lady Hale at Para 23:
http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0002_Judgment.pdf

- Children are required to sign records that can be and are used in administrative decisions and legal judgements without the benefit of legal advice or the presence of a legal representative. Furthermore they do not benefit from a 'read back' of the information recorded by the immigration officer to check its accuracy.

7.5 The remainder of this chapter considers some of these issues in greater detail.

Waiting period prior to screening

7.6 The files examined show that there is ordinarily a waiting period between the administration of the welfare pro-forma/ initial examination interview (occurring back to back) and the full screening interview. Waiting between these interviews takes place in the holding area. It is possible to ascertain the waiting times between IEI and the screening interview from the file records:

Child A: 4 hours, 35 minutes

Child B: 1 hour, 30 minutes

Child C: 4 hours

Child D: 1 hour 30 minutes

Child E: 3 hours

7.7 The lengthier waits of three to four and a half hours between interviews in the case of Child A, C and E are explained by the fact that these particular children arrived as part of a large group (between seven and nine individuals) some of whom also need to be processed as children. We accept that immigration staff at Dover prioritise children (and females) for processing but the waits are nevertheless excessive for children in the physical condition that they often present themselves in.

7.8 While processing of children is constrained by the policy of conducting the screening interview on the day of arrival, it seems unlikely that waiting times could be significantly reduced.

Timing of first contact with Kent Social Services

7.9 UKBA's position is that unaccompanied children are held at port (on entry) only until other arrangements for their care and safety can be made.⁴⁶ The times recorded on the five files examined call into question whether this is an accurate representation of the situation in respect of processing at Dover. Given that Dover is the port of entry to the UK through which the majority of unaccompanied children seeking asylum arrive this would seem significant.

⁴⁶ See Chapter 1, Para 1.8-1.12, 'Detaining unaccompanied children at ports' for further details.

7.10 The delay prior to contacting social services cannot be explained by the opening hours of the social services duty office. The table below shows the timing of the key events in the five cases we looked at.

| Event | Child A | Child B | Child C | Child D | Child E |
|--|------------------|------------------|------------------|-------------------|------------------|
| Start of 'sole immigration detention' ⁴⁷ | 11.30am | 12.20pm | 2pm | 8.45am | 10.40am |
| Initial entry interview | 1.15pm | 3.30pm | 3.30pm | 8.00am | 11.15am |
| Referral to Kent Social Services | 5.45pm | 5.15pm | 6.50pm | 11.00am | 2pm |
| Start of screening interview | 5.50pm | 5.20pm | 7.30pm | 9.30am | 2.15pm |
| Time between 'sole immigration detention' and referral to Kent Social services | 6 hrs 15 mins | 4 hrs 55 mins | 4 hrs 50 mins | 14 hrs 15 mins | 3 hrs 20 mins |

7.11 The pattern that emerges from looking at these timings is that social services are generally only contacted shortly before the start of the screening interview and several hours after the IEI has taken place. The exception to this was Child D where social services were not contacted until after the screening interview had been completed. Given that the screening interview takes about an hour to conduct (on average), it appears that first notice to social services is generally insufficient for them to send a Responsible Adult to sit in on the screening interview.

Use of telephone interpreting in screening interviews

7.12 The use of telephone interpreters for the screening interview presents a significant barrier to children fully participating in the screening process. Because the screening interview takes place shortly after arrival it is usually conducted through a telephone interpreter. This was the case with all three children we interviewed. Arranging a face to face interpreter would lengthen the initial processing as the interpreter would need to travel to the immigration

⁴⁷ 'Sole immigration detention' is indicated by the service of form IS91 by an Immigration Officer. For further details see paragraph 3.15.

office at Dover. We were told by immigration staff that interpreters in some of the commonest languages would need to travel from London in order to attend. Telephone interpreting may be generally preferred in order to speed up processing a child and in order to remain compliant with UKBA policy which requires that they do not detain unaccompanied children for more than 24 hours.

7.13 It is not clear from the screening record itself whether telephone or face to face interpreting was used. This is an issue both for Dover immigration service and for UKBA children's policy team who are responsible for designing the screening form. All three children interviewed told us that their screening interviews were conducted through telephone interpreters.

7.14 All of the children we interviewed were asked if there were any problems in understanding the telephone interpreter or hearing what they were saying:

"Sometimes he doesn't understand and sometimes he gives you the wrong word. He speaks Arabic but not in the same way as me. I understood his accent 'sort of'." (Child A)

"It would have been different if it was face to face because I suppose I made lots of mistakes through the phone because it wasn't clear". (Child D)

"I had so much problems. I could not understand all of the questions. I was so tired and sleepless and I was just saying things to the questions and wanted some rest, to go to sleep somewhere. The information and questions I was asked, I gave them all the right information but some of them were not put as I told them... Our house is near the river down from the village but they were saying that they couldn't find this name and it didn't exist." (Child E)

7.15 Where a face to face interpreter is used, the spellings of names, places and accuracy of dates could be checked in a way that is far more difficult and time-consuming without direct contact between the child and the interpreter.

7.16 It is not a trivial matter when such details are incorrectly recorded. They are not only part of the child's identity – to which they have a right – but incorrect recording may lead to question marks over the 'credibility' of the child's account of who they are and where they come from. Incorrect recording may also impair UKBA's ability to carry out its family tracing obligations.

7.17 Child E's experience illustrates the issue well. When correct spellings were used it was easy to find on a map (on the internet), his village, the nearby village where his school was, the presence of the river near to his village and the distances between them – all of which corresponded well with the information he gave at his screening interview. Yet in his Refusal Reasons letter, the decision maker states:

"I have searched for your home village ...and not been able to locate it ... It has been confirmed by your Social Worker, however, that your details have been

referred to the International Red Cross... and attempts are being made to locate your family.”

7.18 If interviews of children were to be delayed for a few days, immigration staff would have the opportunity to book a face to face interpreter. Face to face interpreting is likely to produce a better quality interview record which would be of benefit both to the child and UKBA.

Signing the interview record – the children’s experience

7.19 A child is required to sign the screening interview record at various points. By signing the record the child agrees to a number of propositions that may later be relied on in an adversarial legal context – such as if the child appeals against the refusal of the asylum claim. We asked all of the children we interviewed about signing the record.

Interviewer: “You were asked by the Immigration Officer to sign the interview record a few times during the interview. Did the officer tell you that when you were signing that you were confirming that the details that you gave her were correct?”

Child A: “I don’t think so but I can’t remember.”

Interviewer: “After you answered some questions did the officer read back your answers before asking you to sign that it was correct?” (shows signatures on screening interview notes)

Child A: “I don’t think so. I didn’t take notice.”

7.20 Child D does remember being asked to sign the interview record:

Interviewer: “Before being asked to sign, do you remember the officer reading out: “I certify that the above details are fully understood and are correct.”

Child D: “Correct, it was read out to me but I was shattered, I was extremely tired and more to that, I was feeling scared.”

Interviewer: “Did the officer read back your answers to you before you signed that you had understood and that the answers were correct?”

Child D: “No, they didn’t do that.”

7.21 The record was also not read back in Child E's case but he nevertheless signed it. When we read back to Child E what he is alleged to have answered in part of the interview, he disputed the way in which it had been recorded:

Interviewer: "In Part Four of the screening interview you are asked about the basis of your claim. First you are asked: 'What was your reason for coming to the UK?' and you say: 'To see my cousin and to claim asylum'."

Child E: "I didn't mean to see him directly. I meant to explain that I wanted to save my life as my cousin's life had been saved."

7.22 There is an important distinction here. Child E's answer as recorded makes it sound as if the primary reason for him coming to the UK was to see his cousin. It may be that this is what Child E said but it is not what he meant. The presence of a legal representative and Responsible Adult would have helped to avoid this. Such inferences in important answers such as this are likely to influence the decision maker reading the screening record as to the child's motive for coming here.

7.23 There is no problem in principle with asking children to confirm their statements or that what they have said is correct and that they have understood what is being said to them. However, it must be recognised that *confidence* in whether the child has understood or provided full and correct information would be strengthened if the child had a chance for the answers given to be read back and checked in the presence of their legal representative and with a further opportunity for the legal representative to make representations on behalf of the child on the accuracy of the contents after the interview where necessary.⁴⁸

UKBA policy on children elaborating or explaining a fear of return at the screening interview.

7.24 Elaborating on the reasons why return is feared relates particularly to question 4.2 of the children's screening form which is reproduced above. Guidance to interviewing officers on how to approach this question is contained in Part Six of the UKBA process guidance document '*Processing an asylum application from a child*'.

⁴⁸ Recent court judgements have expressed the view that records of screening interviews should be treated with caution - e.g. *KD (Sri Lanka)* [2007] and *YL (China)* see in particular Para 19 of *YL*.

“Where there is no Responsible Adult or legal representative present, particular care is required to ensure that the approach in the screening or other non-substantive interview does not go beyond inviting a response that verifies that asylum is being claimed. So, in the process of registering their asylum application, an interviewer may ask a child “Are you saying that you are afraid to return to your home country?” An initial interview or screening interview without a Responsible Adult or legal representative present should not however involve a child being asked to explain or elaborate on why they are afraid to return to their home country. However, it should be explained to the child that they will have an opportunity to explain these details at a later date.

“It may be that details or information relating to the substance of their asylum claim are nevertheless volunteered by an unaccompanied child in the course of verifying that they are applying for asylum in the UK. Asylum decision makers should not rely on details or information obtained from an interview where no Responsible Adult or legal representative was present unless these details or information have been explored and raised with the applicant during the substantive asylum interview - in the presence of a Responsible Adult or legal representative - and the applicant has been given an opportunity to explain any related issues or inconsistencies. But case owners must always bear in mind that the purpose of the screening interview is not to go into details of the asylum claim itself regardless of whether a Responsible Adult is present or not”⁴⁹
(emphasis added).

7.25 This guidance affirms that it is acceptable for Immigration Officers to let children ‘volunteer’ information that may be damaging to their claim when there is no Responsible Adult or legal representative present as long as the information is put to the child in the presence of a Responsible Adult at the substantive interview. This does not offer a real safeguard to the child as the decision maker is not obliged to accept any explanation given at a later date in the presence of a Responsible Adult or legal representative.

7.26 It should be remembered that children recall and understand fear and persecution differently from adults and therefore any process should account for this. This has been long understood by UKBA and is reflected in their asylum policy instructions.

Reliance on the screening interview record in the substantive asylum decision

7.27 It is emphasised in instructions to staff that the screening interview is not the place to explore the asylum claim. However the record taken in the screening interview was used in reaching the decision in both the ‘Reasons for Refusal Letters’ we considered as part of this investigation. Child D and Child E were

⁴⁹ Op Cit, Para 6.2.

both refused asylum. In their Reasons for Refusal Letters ⁵⁰ the use of the screening interview is made explicit. In Child E's case the letter reads:

"In reaching a decision on your asylum application, consideration has been given to the following documents:

- *Your Screening Interview (hereafter referred to as SI) dated 5 April 2011....."*
(Child E , Extract from 'Reasons for Refusal Letter' 27.05.11)

7.28 In Child D's case the letter reads:

"Throughout this letter, reference will be made to your Screening Interview Record dated 07.04.2011(hereafter referred to as SCR....."

7.29 In Child D's case the use of what was said at the screening interview to discredit the account given later is explicit:

"It is noted that you have demonstrated a lack of consistency between information contained within your Screening Interview Record (SCR) and the information you provided at your substantive asylum interview...." (Child D, Extract from 'Reasons for Refusal Letter, 13.06.11)

7.30 In Child D's case, one of the alleged inconsistencies was over the date of his father's death provided at the screening interview.

Interviewer: "Having talked to your solicitor is there anything you wish you had said differently when answering questions at the screening interview?"

Child D: "Yes. Details about the situation in [country]. Another example is I told them about the death of my father. In the first interview I told them it happened in 2006. When I was interviewed through the solicitor I mentioned that he died in 2008. I can't remember having said that but one of the reasons given after I had my substantive interview [was] pointing out the contradiction between the dates of 2008 and 2006. Basically things got muddled up, confused and mixed up."

⁵⁰ The 'Reasons for Refusal' letter is a detailed letter that explains why the decision making officer has reached the decision that s/he has. The letter will also form the basis of any appeal against the decision to refuse asylum. Some children will not have a right of appeal – for example if granted Discretionary Leave as a child under the Discretionary Leave policy for a period of less than 1 year.

Chapter 8 - Conclusions and recommendation

- 8.1** There appears to be no legal requirement or policy imperative to interview children on their day of arrival. For example, the Asylum Screening Unit (ASU) in Croydon now operates a booking system for conducting screening interviews for children. Where such arrangements are in place the child is able to instruct a legal representative beforehand and a Responsible Adult can be arranged by the local authority sending the child for screening. The Legal Services Commission (LSC) rules state that they will pay the supplier to attend a screening interview with a child. It appears that initial examination interviews (IEIs) are conducted *after* the screening interview at the ASU so the requirement to conduct an IEI *before* screening (as happens at Dover) is not a pre-requisite for a screening interview to be conducted.
- 8.2** In the East of England a protocol has been developed between the local authorities, UKBA and the police relating to the handling of unaccompanied children who appear in the region.⁵¹ The East of England protocol has given serious consideration to how the police may collect bio-data on behalf of UKBA in order that the child can then be placed directly into local authority care rather than having to first attend an immigration office.
- 8.3** There may be an administrative convenience for the immigration service and UKBA in getting the initial entry interview and the screening interview completed on entry so that the child can be 'routed' appropriately. UKBA have a target of producing an initial decision on an asylum claim within six months of the date the claim is lodged. However it would appear to us that there is no fundamental need for a child arriving in Dover to claim asylum at the point of arrival. Were they to return to the immigration office a few days after arrival having rested and received appropriate support and *then* lodge the asylum application, the six month clock would start ticking from the point of claim.
- 8.4** The only advantage of substance (from UKBA's perspective) that we have been able to identify in interviewing children on the day of arrival is that those identified as non-asylum claimants might be returned to France under the bilateral 'Gentleman's Agreement'. This would place the obligation on the French to accept them back if they had embarked within 24 hours of their return. UKBA have however now agreed to cease using the Agreement to return such children (see paragraphs 5.37- 5.38 and Annex 3).
- 8.5** Given that the processing arrangements at Dover are applied to both children and adults, it may be that they have developed historically to facilitate 'Gentleman's Agreement' returns to France. Now that UKBA has given consideration to whether returns of children under the Agreement are lawful and

⁵¹ East of England Regional Authority- Strategic Migration Partnership (2010), *East of England Unaccompanied Asylum Seeking Children (UASC,) Safeguarding Protocol*: <http://www.peterboroughlscb.org.uk/files/Final%20UASC%20protocol.pdf>

decided to abandon them, this should no longer be an impediment to changing the arrangements.⁵²

- 8.6** A final argument that may be put in favour of the current arrangements is that it assists the local authority in relation to the 'grant claim'. The argument goes that it is important to distinguish asylum claimant children from non-asylum claimant children as UKBA will provide 'grant in aid' for the former group but not the latter. However the grant arrangements make clear that a local authority has at least six weeks to ensure that the claim is registered for grant reclaim purposes.⁵³ It is therefore not necessary to know at the start of the care episode whether the child is an asylum claimant or not. Kent County Council may need to consider how they structure the care of unaccompanied children if they make an administrative distinction between asylum and non-asylum seeking cases.
- 8.7** Our investigation into the processing of children at Dover has led to one key recommendation. In making this recommendation we have carefully considered all the information made available to us in the course of our enquiries. We have concluded that it is not in children's best interests to be interviewed immediately on arrival and that their health and welfare needs must be the primary consideration for immigration staff as well as police in making their arrangements.

Recommendation

Interviewing, beyond the gathering of basic identity data, should be postponed until after a child has had a period of some days (or longer if deemed necessary by a childcare professional) to recover from their journey and the opportunity to instruct a legal representative.

Implications for UKBA

8.8 This recommendation is mainly directed to UKBA but also has practical implications for the local authority and the police. The aim of the recommendation is to get the child into the care of the local authority *as quickly as possible* while ensuring that UKBA has sufficient information on the child's identity for its *immediate* purposes (to refer to the local authority, to arrange to interview the child for

⁵² An informal agreement such as the Gentleman's Agreement has no legal effect in domestic law unless it has been *incorporated* which is not the case here. Even though the Agreement has no legal force in itself if the Secretary of State nevertheless chooses to apply it, it must be applied subject to all the requirements of the applicable law. The applicable law in this context includes domestic legislation (including the Immigration Acts and the s.55 duty under the 2009 Act), incorporated treaties such as the ECHR, the common law, applicable EU law and other standard-setting documents of international law. It is our view that the practice of returning children under the terms of the Gentleman's Agreement would almost certainly be in breach of the applicable law.

⁵³ UKBA, (2011) *UK Border Agency Grant: Unaccompanied Asylum Seeking Children (UASC)* - Grant Instructions to Local Authorities - Financial Year 2011/12, Paragraph 4.1 (e): <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/local-authority-grants/>

immigration purposes at a later date and to ensure that they hold relevant information for the child should they later go missing).

8.9 In accepting the recommendation UKBA would need to adjust their arrangement so that at first contact, all they would be required to do is obtain bio-data for the child (fingerprints, photographs and name, nationality, language and date of birth) and try to establish whether the child has any family in the UK before placing them with the local authority. We specifically recommend that neither the IEI nor the screening interview are conducted on arrival as happens presently. The welfare interview would become superfluous if the IEI and screening were postponed for some days.

Implications for the police

8.10 The police should explore with UKBA ways in which they can obtain bio-data on UKBA's behalf enabling them to place the child directly into local authority care rather than delivering them to the immigration office. The charge of an individual - within the PACE holding time frame (24 hours), allows the police to take and record personal details i.e. photographs and finger prints.⁵⁴ Section 141 of the *Immigration and Asylum Act 1999* also allows a constable to take fingerprints on behalf of UKBA. The Act allows a constable to take fingerprints but does not stipulate an age. UKBA policy is only to take fingerprints of those who are aged five years and over.

8.11 If for local or technical reasons it proves impossible for the police to capture data on behalf of UKBA prior to placing them in care, a second best option would be for the police to continue their current arrangement (as described in Chapter 3) with UKBA.

Implications for the local authority

8.12 We believe that immediate referral by UKBA or the police to the local authority is essential in order to give effect to the 'best interests' principle. We appreciate that the recommendation would have a number of practical implications for the local authority. Their initial role would not change substantially as they would collect and assess the child to facilitate a suitable initial placement from either the port office or a police station. They would be required to be present for the fingerprinting of a child under 16. They would not be required to sit in on interviews as part of the arrival process as this would be postponed to a later date. They would need ensure a suitable person returns with the child to the port office to act as the Responsible Adult at a date negotiated with UKBA depending on their assessment of the child's condition and immediate needs. They would also need to facilitate an early interview with a legal representative to allow the child to give instructions and to allow the representative to attend the IEI and screening interview on return to port. The role of a Responsible

⁵⁴ Police can also take DNA samples if consent is given by social services acting as appropriate adult. The DNA samples of the child will be stored by police unless they go missing in which case it can be submitted for entry onto the DNA database.

Adult is important in supporting the child through the interview process, ensuring that their welfare is fully considered, where necessary explaining matters in an age-appropriate manner that the child understands and to ensure that correct recording of the child's name, age and other details are recorded on the Asylum Registration Card.

Article 12 of the UN Convention on the Rights of the Child

8.13 Article 12 of the UNCRC requires State Parties to ensure children's right to free expression. In particular it requires that an opportunity be provided for children to be heard in judicial and administrative proceedings affecting them either directly or through a representative. The administrative process of obtaining information from the child in order to decide on an asylum application or to ascertain their wider protection needs therefore engages with Article 12 rights.

8.14 When we interviewed the children for this investigation, the last question we asked them was: *"What would you like to tell the immigration authorities and the Government about how the arrangements for processing young people like yourself could be improved?"* Their answers speak for themselves.

"Whoever needs a doctor should be seen by a doctor. As soon as you arrive you shouldn't be taken to be interviewed straight away. I have a question. Honestly, I don't know what is the meaning of 'human rights'." (Child A)

"I think they should have given more time as I was tired and hungry. I had had some food but I was tired. They should have given us a day or two days time. If they do it on the first day, they should keep it short and to the minimum. There are so many things happening on that day. As everyone is very tired at that time they just want to say anything. Later when they have rested and have the opportunity to tell the story in detail [the substantive interview] then they find the discrepancies between the two accounts." (Child E)

"First of all they should allow some time for people like myself when they come into the country to rest, to gain their self for a little while. Then they should proceed with the interviews. You should not be in the position where you feel under pressure. They should relax and willingly participate in the interviews so that it doesn't become an obstacle for them in the future. So far, things have been OK. People have been very nice towards me. I feel great about that." (Child D)

8.15 Our central recommendation was explained to the children at the final 'wash-up' meeting in September 2011. It has their full support. It is our sincere hope that the agencies involved in the early stages after these young people's arrival in the UK will listen to their voices, give them the due consideration that they are required to and adjust the current arrangements to give effect to their best interests.

Additional recommendations

8.16 The recommendations that we make below as a result of this investigation are more concerned with the screening process *per se* whether at a port of entry or at the asylum screening unit. They are not specific to the organisation of the service in Kent and are directed to those charged with considering children's policy throughout UKBA.

Searching

8.17 UKBA should consider whether searches by their contractor should be video recorded or tape recorded as is standard practice at a police station.

8.18 Where the police have already undertaken a search of a child, consideration should be given to whether a further search is necessary by immigration staff or their contractor.

Documents obtained after searching children

8.19 Any documents found on a child at the point of arrival or that they provide to the immigration authorities thereafter should be photocopied and a copy provided to them or their legal representative.

Welfare interviews

8.20 Immigration Officers conducting welfare interviews should be subject to clear guidance on when not to proceed with any further interviews due to the welfare considerations identified.

Initial examination interviews

8.21 UKBA should clarify the purpose of this interview in a publicly available document.

8.22 UKBA should consider whether it is appropriate or necessary to conduct an initial entry interview with a child.

8.23 If an IEI is conducted with a view to prosecution or under caution, the child should be advised that it is in their best interests to have a legal representative present and the interview postponed until this can be arranged.

Gentleman's Agreement

8.24 Now that UKBA has ceased removing unaccompanied children to France immediately after arrival, it must ensure that in any 'age disputed' return under

the Agreement, that a 'Merton-compliant' age assessment⁵⁵ is carried out by the local authority prior to removal directions being issued.

- 8.25** All removals under the Gentleman's Agreement should be monitored and recorded and regular data published. Data should be disaggregated to indicate removals of adults, age disputed cases and children as well as the location of the refusal of entry.

Telephone Interpreting

- 8.26** Telephone interpreters should not be used for interviewing children where the interview results in an immigration decision being made. This would at least include initial examination interviews, screening interviews and substantive asylum interviews.

Screening

- 8.27** Part Six of the Process Guidance 'Processing an asylum application from a child' should be re-written to give effect to the following recommendations about the screening interview:
- 8.28** Children should have the benefit of legal advice prior to their screening interview and should be accompanied to the interview both by a legal representative and someone acting as an Responsible Adult.
- 8.29** The screening record should only be signed in the presence of a Responsible Adult and a legal representative.
- 8.30** Where there is a requirement to sign the screening record, the record of the child's answers in the preceding part of the form should be read back, in the presence of the legal representative and Responsible Adult.

⁵⁵ B v London Borough of Merton [2003] EWHC 1689. This judgement gives guidance as to the requirements of a lawful assessment by a local authority of the age of a young asylum seeker claiming to be under the age of 18 years.

Annex 1 – Extracts from international ‘standard setting’ documents relating to the arrival of unaccompanied or separated children.

The United Nations Convention on the Rights of the Child

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, Kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 37

States Parties shall ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Committee on the Rights of the Child - Thirty-ninth session 17 May – 3 June 2005

General Comment No 6 (2005) - Treatment of unaccompanied and separated children outside their country of origin

c) Best interests of the child as a primary consideration in the search for short and long-term solutions (art. 3)

19. Article 3(1) states that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life.

20. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be

carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender sensitive related interviewing techniques.

Office of the United Nations High Commissioner for Refugees

***Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* - February 1997**

4. ACCESS TO THE TERRITORY

4.1 Because of his/her vulnerability, an unaccompanied child seeking asylum should not be refused access to the territory and his/her claim should always be considered under the normal refugee determination procedure.

4.2 Upon arrival, a child should be provided with a legal representative. The claims of unaccompanied children should be examined in a manner which is both fair and age-appropriate.

Separated Children in Europe Programme *Statement of Good Practice* (4th revised edition 2009)

D. GOOD PRACTICE

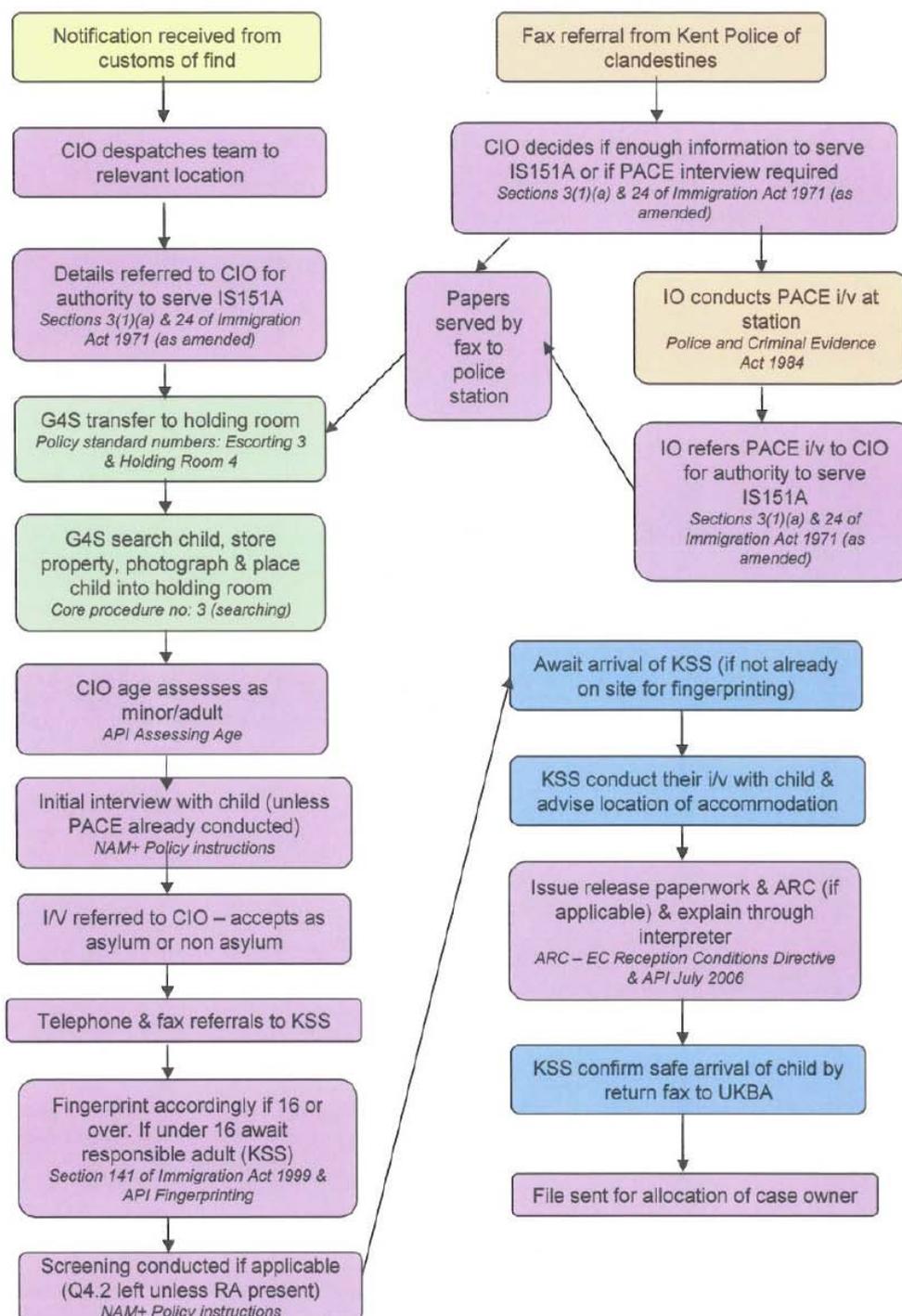
Phase 1 – Arrival, Reception and Interim Care

D1. Access to the Territory

D1.1 Separated children must never be refused entry to a territory or returned at the point of entry before a determination of their best interests and their need for protection has been undertaken by the competent authorities. They must never be detained for reasons of immigration policy and practice. Neither should they be subjected to detailed interviews or age assessment procedures by immigration authorities at the point of entry, see section D5 (below). Separated children should remain at the point of entry for the shortest possible period of time. At the point of entry it is only necessary to provisionally establish their identity and to allow appropriate referrals to be made for their immediate care. If further procedures are needed to establish the child's identity the child must be allowed entry into the State whilst these are undertaken.

Annex 2: UKBA Process Map

PROCESS MAP



Annex 3: The 'Gentleman's Agreement'

AGREEMENT ON THE TAKING BACK OF PASSENGERS WHO ARE REFUSED ADMISSION ON ARRIVAL IN THE STATE OF DESTINATION

1. This agreement relates to passengers travelling between France and the United Kingdom of Great Britain and Northern Ireland via the Channel ports or through the Channel Tunnel. It does not apply to passengers travelling by air and, in relation to asylum seekers, it shall be superseded by the relevant provisions of the Dublin Convention once that Convention has entered into force.

2. Where a passenger who is not a national of either of the two states is refused admission on arrival in the state of destination either because he does not meet the conditions for entry or because he is discovered, not having presented himself to the frontier controls for admission, the frontier authorities of the state of embarkation will accept that passenger back. The term "refused admission" shall be taken to include those passengers who are deemed inadmissible and removed without formally being refused entry to the state of destination. A passenger who has been refused admission should be sent back to the state of embarkation without delay, unless the circumstances described in paragraphs 4 - 8 prevent this

Refusal of admission and removal within 24 hours of departure

3. Once a passenger has been refused admission to the state of destination or when he is discovered, not having presented himself to the frontier controls for admission, the authorities responsible for frontier controls in the state of embarkation may not refuse to take him back. The passenger must be sent back to the state of embarkation within a period of 24 hours of his departure from it.

ARR [signature]

Delays to removal following refusal

In the event of removal following refusal not being practicable within 24 hours of the passenger's departure from the state of embarkation, the frontier authorities of the state of destination shall, within that 24 hour period, submit a formal notification to the frontier authorities of the state of embarkation that the passenger has been refused admission, requesting that the passenger be taken back by the state of embarkation. The official request for a passenger to be taken back shall remain valid for a period of seven days from the date of it being made during which the state of embarkation must agree to take back the passenger. The request to take back must include all the information which will allow identification of the passenger (personal details, nationality, date, time and place of frontier control, type of travel document held and reasons for refusal).

Delay to the decision to refuse admission

5. If the authorities of the state of destination consider that they are not in a position to reach a decision whether to refuse admission to a passenger within 24 hours of departure from the state of embarkation, they shall notify the frontier authorities of the state of embarkation, within that 24 hour period, that examination has not been completed, that the passenger may be refused admission and that a request to the state of embarkation to take him back may follow. This notification shall contain the same information as set out in paragraph 4 above.

6. If the passenger is subsequently refused admission and a formal request to take him back is made by the state of destination, it must be submitted within seven days of the notification made in paragraph 5 above. A request to take back a passenger will remain valid for a period of one calendar month from the date of its being made, during which the state of embarkation must agree to take back the passenger.

ARR KH

Further delays for judicial procedures

7. The central authorities of the two states may agree to extensions of the above timescale in paragraph 6 above if the passenger concerned is entitled to remain in the country of destination pending the outcome of any appeal against refusal of admission or any other related legal proceedings.

Route for sending back the refused passenger:

8. The refused passenger should normally be returned to the point from which he departed. If this is not possible it will be acceptable to send him back to another point so long as prior notification has been given to the authorities at the point from which he departed.

Validity of agreement

9. This agreement shall continue until terminated by either of the central authorities of the two states. Such termination shall require two months' advance notice and shall be notified in writing to the central authority of the other state. Amendments to this agreement may be proposed as necessary by the competent authorities of either state.

10. The text of this agreement is equally acceptable in French and English.

Paris, le 20 AVR. 1995

Pour le Ministre et par
délégation, le directeur des
libertés publiques et des
affaires juridiques

Jean-Benoît HAUGERE

For the Secretary of State
for the Home Department

A.R. Rawsthorne

A.R. RAWSTHORNE
Assistant Under Secretary of
State
Immigration & Nationality
Department

GENTLEMEN'S AGREEMENT
(L'accord franco-britannique du 25 avril 1995)

Re-admission

requests sent to DDCILEC

WHAT TO DO:

WITHIN 24 HOURS of time of departure from the state of embarkation you must do one of three things:

- * send the person back to the place of embarkation, or
- * if the person is refused but cannot be removed within 24 hrs, send ANNEX A to the French Border Control, or
- * if the examination is not complete, send ANNEX B to the French Border Control.

WITHIN SEVEN DAYS of the date of the ANNEX A the person must be removed.

WITHIN SEVEN DAYS of the date of the Annex B you must refuse the person and issue the ANNEX C. If a refusal decision cannot be reached within seven days of the Annex B, a removal back to the French authorities will not be possible.

WITHIN ONE MONTH of the date of the ANNEX C document, you must:

- * remove the passenger, or
- * apply for an extension of the timescale via the central authority.

WHEN THE PASSENGER IS DUE TO BE REMOVED issue ANNEX D.

There will be certain occasion when, although we have reached a decision to refuse, we are unlikely to be able to effect a removal in seven days. In these cases rather than refuse and issue an ANNEX A, we should issue an ANNEX B, refuse, and then issue an ANNEX C. It should also be remembered that if a person is refused entry in Coquelles, we can remove at Carrier's expense only to Coquelles.

| | |
|-----------------------|---------------------------------|
| DDCILEC Boulogne Port | FAX NO: * (00 33) 3 21 33 26 32 |
| DDCILEC Calais Port | FAX NO: * (00 33) 3 21 46 60 11 |
| DDCILEC Coquelles | FAX NO: * (00 33) 3 21 46 46 22 |
| DDCILEC Paris | FAX NO: * (00 33) 1 55 31 53 85 |
| DDCILEC Lille | FAX NO: * (00 33) 3 28 55 12 02 |

* If dialled from Cheriton dial 19 03 21 33 etc

ALWAYS put proof of your successful fax transmission on the port file!

C3

GENTLEMEN'S AGREEMENT

(excerpts from instructions issued by ALU on 1.06.95 + memo by HMI Mr.Rose 16.5.98)

The following procedures should be adopted if a person cannot be returned to France within 24 hours of departure.

ADMISSION REFUSED / ILLEGAL ENTRY BUT RETURN TO FRANCE WITHIN 24 HOURS NOT POSSIBLE.

As soon as possible but certainly with 24 hours of the passenger's departure from France (ie time of departure of Seacat / Train) a letter (Annex A) should be sent to DDCILEC at the port of embarkation stating the removal details if known.

DECISION WITHIN 24 HOURS NOT POSSIBLE INCLUDING ALL ASYLUM CASES.

As soon as possible but certainly within 24 hours of the passenger's departure from France (time of departure of Seacat / Train) a letter (Annex B) should be sent to DDCILEC stating that an immediate decision is not possible.

DECISION MADE WITHIN 7 DAYS.

Following refusal, a letter (Annex C) should be sent to DDCILEC. In asylum cases the removal directions should not be specified as these are liable to change pending appeal. It should be noted that a refusal decision must be made and notified within 7 days, otherwise it is not covered by the agreement. Annexes A and C require brief reasons for refusal: the reasons should be given in general terms, such as "Refused entry as a visitor". Asylum refusal should **NOT** be noted.

THIRD COUNTRY APPEAL AND OTHER CASES SUBJECT TO DELAY

Following despatch of Annex C, files should be almanacked for review in 3 weeks. If not final outcome has been received by then, the port should review the case with the relevant headquarters office (ALU/PCS/IES etc). who will arrange for an agreement to be reached with DILPAJ in Paris as necessary. The port will be advised of the outcome.

FINAL REMOVAL DIRECTIONS

The letter at Annex D should be used to notify DDCILEC of removal directions if this has not already been done. This is particularly important in cases covered by the previous paragraph and where removal is to a port other than the one from which the passenger arrived.

THIRD COUNTRY ASYLUM APPEALS

Copies of all letters sent to DDCILEC should be enclosed with asylum appeals. Adjudicators will wish to see that the terms of the agreement are being met in each case.

Annex 4: Correspondence between Maggie Atkinson, Children's Commissioner for England and Rob Whiteman, Chief Executive of UKBA (this has been declassified)



Rob Whiteman
Chief Executive
UK Border Agency
1st floor Seacole, 2 Marsham Street,
London
SW1P 4DF

17th October 2011

Dear Rob

As you will know the Office of the Children's Commissioner has been working constructively with UKBA for the last six years. Through this we have achieved better outcomes for children which I am sure you will agree is what we both want. With this in mind I said I would write setting out my concerns over the use of the 'Gentleman's Agreement' and the evidence I have for its use in respect of children.

On the issue of the name of the agreement which we discussed you may wish to ask your officials for a copy of the instruction issued by 'ALU' on 01.06.95 and the memo by HMI Mr Rose of 16.05.98. We were given an extract from these instructions/memos by Dover immigration staff on our visit in April this year. Both are clearly entitled 'Gentleman's Agreement' with the 'memo' having the sub-title '(L'accord franco-britannique du 25 avril 1995)'.

My central concern is that unaccompanied children who have arrived in the UK's jurisdiction are being returned to France without a 'best interests' determination or proper assessment of their protection needs. I am particularly concerned as the profile of the Vietnamese children for whom we have written records in particular, suggests they are trafficked into the UK primarily for the purpose of working as 'gardeners' in cannabis factories.

Policy, Law and Guidance

I accept that the European Directives relating to reception, minimum standards and return relate to asylum seekers and hence do not cover the children likely to be returned under this Agreement. However, there are both a number of other legal instruments, and widely endorsed guidance that would in our view apply to children in this situation.

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Article 3 (1) of the United Nations Convention on the Rights of the Child requires that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Interpreting Article 3(1) in relation to unaccompanied and separated children the Committee on the Rights of the Child in the General Comment No. 6 refers to 'best interests of the child as a primary consideration in the search for short and long term solutions' and continues, "In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life".

The Committee concludes: A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process.

The best practice guidance from the Separated Children in Europe Programme (endorsed, as you know, by UNHCR) states the issue even more plainly: "Separated children must never be refused entry to a territory or returned at the point of entry before a determination of their best interests and their need for protection has been undertaken by the competent authorities".

In our conversation you mentioned the assurance given by your officials that all returns under the Agreement are conducted with regard to all health and safeguarding requirements. However given the clarity of these international agreements and standards I would like to examine with you the documented evidence (please see Annex) that it can be proven that there has indeed been a full assessment of best interest in each of the seven cases we have come across (details forwarded to the Office of the Children's Champion). Also included in the Annex are our questions regarding the Agreement.

It would also be useful to consider these cases in light of UKBA's duty to safeguard children and promote their welfare under s.55 of the Border's Citizenship and Immigration Act. We would welcome your view on whether the arrangements for 'bouncing back' children from the border are compliant with the duty.

Given the serious nature of these cases, and the wider issues they raise I would welcome a meeting with you as soon as possible to discuss the information I have requested in the annex to this letter. I appreciate that the information may take some time to be collected, but as the Gentleman's Agreement could be affecting children as we speak I am keen not to lose any momentum. Therefore I would like to suggest that the safeguarding concerns warrants an instruction in the short term, to relevant staff that returns of children under the Agreement cease immediately and that all children should be referred to the relevant local authority in the first instance.



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I appreciate that this would be a significant step, but I would suggest that the evidence we have been given or uncovered to date raises serious concerns. I am therefore making myself and my staff available to meet with you at the earliest possible date in order to ascertain how we can ensure the welfare and best interests of the children that are affected by this Agreement. As both you and I go on leave shortly, I appreciate finding a date could be a challenge, but I am sure you will agree it is one that must be met.

I look forward both to meeting with you on these matters, and to your formal response, particularly as I know from our preliminary conversations that you will be as concerned as me if the issues we are raising prove to have substance.

Yours Sincerely



Maggie Atkinson
Children's Commissioner for England

(Annex to letter)

Annex

Evidence

In case your Office of the Children's Champion has not yet forwarded you these details, we received confirmation that in 2010, 7 Vietnamese children (of a sample of 42 arrivals with DEU Port reference numbers – around 16.6% of all Vietnamese child arrivals at Dover in 2010) were 'returned under the Gentleman's Agreement'. The information was provided to us at our request by CIO Gorgina Iverson under the authority of her manager, Karen Dunning, the LIT lead for Kent and South East region.

The context in which this information was sought from UKBA was that we were first provided with case data on Vietnamese children with DEU Port references (for 2010) by Refugee Council Children's Panel (at our request). We then asked Kent County Council what had happened to these children and whether they remained in their care. Their reply indicated that there were a number of the cases about whom they knew nothing and suggested that we revert to UKBA for information. We did so and UKBA confirmed that many of the cases that Kent County Council had no knowledge of had been returned under the 'Gentleman's Agreement' (of which we had already been given a copy in relation to another piece of work in April 2011).

The details of the confirmed cases of returns under the agreement are as follows:

- 15 year old male – returned on 07.04.10
- 15 year old male – returned on 07.04.10
- 15 year old male – returned on 20.04.10. NB: This subject was encountered again three days later but could not be returned again due to the setting he was found in and an inability to demonstrate an 'audit trail' to the mode of his arrival. His second detection within such a short space would seem to indicate that he was not offered any protection as a child by French authorities after his initial return.
- 08.07.10 - 15 year old male. Removed to Coquilles via the Channel Tunnel on
- 08.07.10 - 16 year old female. Removed to Coquilles via the Channel Tunnel on
- 17 year old male removed on or around 09.07.10
- 17 year old male removed on or around 09.07.10



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These seven cases raise a number of serious questions regarding the wider application of the Gentleman's Agreement and with the detail of the safeguards and arrangements in place for the young people whose returns have been confirmed. In order to have an informed discussion concerning these matters I would appreciate further information on a number of important aspects of this matter, and a timescale of when this information will be made available.

First, in order to ascertain the wider application of the Gentleman's Agreement I would like data on all the returns carried out under the agreement disaggregated by age, gender and nationality and listed separately for each port or point of entry operating the Agreement. I would like the data for each calendar year - or part year - since the s.55 duty came into force. I appreciate that this will be 'management information' and not issued under the quality assurance of published Home Office data.

Second, I would like copies of all instructions and memo's relating to the agreement that have been issued by the Agency and it's forerunners since the Agreement was signed on 25th April 1995.

Please provide a list and details of any other bi-lateral agreements which the UK has entered into where children may be returned from the border. For example, you mentioned during our phone call that a similar arrangement was in place with Belgium.

Finally, I would like to receive copies of all the paperwork that accompanied the seven cases listed above relating to their arrival and return including any communications with the French and any communications with Kent Social Services. Our understanding is that the Agreement itself does not contain any requirement for paperwork to be forwarded where the subject can be returned within 24 hours of embarkation but I accept that there may have been subsequent instructions or agreement about this or custom and practice may have developed.

Thank you for opening up this dialogue on an issue that directly engages the basic rights of some very vulnerable children.

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⁵⁶ Identifying numbers have been redacted to protect young people.

Dr Maggie Atkinson
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November 2011

Dear Maggie,

Thank you for your letter of 17 October regarding the use of "the Gentleman's agreement" with France. I am sorry that our meeting on 8 November was cancelled. I thought I would take this opportunity to set out some of the history and facts around this agreement prior to our rearranged meeting on 17 November.

The 'gentleman's agreement' relates to passengers/illegal entrants travelling between France and the UK via the Channel ports or through the Channel Tunnel, not just those landing in Dover. The Dublin Convention (now Regulation) came in to force on 1st September 1997 and the element of the 'gentleman's agreement' that applied only to asylum seekers was superseded by Dublin. The agreement remained valid for the remaining illegal entrants who did not claim asylum.

The practice of removing illegal entrants has been widely used both by the UK and French authorities since that time. However, it is worth noting that in the vast majority of cases this has only applied to adults. It is not exclusive to Dover and has also been used at ports such as Newhaven and Southampton. The basis of the agreement is that any passenger who is refused admission on arrival at a destination either because they don't meet the requirements of entry, or they have attempted to evade control i.e. illegal entrants, will be returned to the country of embarkation within 24 hours. Notification of the return is by a pro forma.

A return to France for an undocumented person (adult or child) is limited to office hours, Monday to Friday only, to ensure that there is adequate reception on arrival. Local Immigration Team (LIT) staff work closely and have excellent relationships with the French Police and will be notified if there are any difficulties with a return or they are unable to arrange reception. A mutually acceptable return date will be agreed. The LIT will also highlight the age of any person being returned to ensure the local authority are made aware. If there is not a suitable sailing to allow a return before 5pm the child will be referred to the appropriate local authority for overnight accommodation, over a weekend and/or bank holiday prior to the return. The child will then be issued with removal directions and

requested to report back to port for removal. Should a child express their wish to claim asylum to Social Services during their time in their care, their removal would be cancelled and the asylum claim processed in line with current guidelines.

In your letter, you made direct reference to seven cases. I think it is worth noting that in the past twelve months (September 2010 – September 2011) the Kent LIT has dealt with 196 unaccompanied children arriving through the port of Dover. Only three cases (2%) have been returned under the agreement. There have been no removals of unaccompanied children under the agreement since February 2011. Of the cases you mentioned in your letter, two of the persons referred to who were removed under the gentleman's agreement later re-entered the UK and were upheld as potential victims of trafficking when they made a claim for asylum. According to Home Office databases, four of the cases have not re-entered the U.K. since removal. One person is currently detained pending removal having turned 18 since arrival.

Since you have raised this subject with us, we have had a further think about whether the continued operation of this Agreement remains appropriate for children. I am pleased to inform you that we think that the current practice of removing unaccompanied minors to France under the gentleman's agreement should cease immediately. A notification will be sent to all relevant ports.

It is very important to us that we can work constructively with all concerned parties to improve our processes and I very much value your input. We currently have a meeting scheduled for 17 November. In light of this letter, I'd be grateful if you could let me know whether you still think that a meeting between us is necessary.

Yours sincerely



Rob Whiteman
Chief Executive

For more information

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