



## Select Committee on the European Union

### Security and Justice Sub-Committee

#### Corrected oral evidence: Discussion of the Government's draft agreement on the transfer of unaccompanied asylum-seeking children

Tuesday 7 July 2020

10 am

[Watch the meeting](#)

Members present: Lord Ricketts (The Chair); Lord Anderson of Ipswich; Lord Anderson of Swansea; Lord Arbuthnot of Edrom; Lord Dholakia; Baroness Finn; Baroness Goudie; Baroness Hamwee; Lord Kirkhope of Harrogate; Lord Lexden; Lord Polak; Baroness Primarolo; Lord Rowlands.

Evidence Session No. 1

Virtual Proceeding

Questions 1 – 24

#### Witnesses

**I:** Lord Dubs; Professor Ravi KS Kohli, Professor of Child Welfare, University of Bedfordshire; Beth Gardiner-Smith, CEO of Safe Passage.

**II:** Professor Elspeth Guild, Professor of Law, Queen Mary University; Pinar Aksu, Development Officer, Maryhill Integration Network; Daniela Reale, Child Protection & Children on the Move Lead, Save the Children.

#### USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on [www.parliamentlive.tv](http://www.parliamentlive.tv).

## Examination of witnesses

Lord Dubs, Professor Ravi KS Kohli and Beth Gardiner-Smith.

**Q1 The Chair:** A very warm welcome to the Lords EU Justice and Security Sub-Committee. This is a public evidence session and it is being broadcast. Our subject is the Government's draft agreement with the EU on the transfer of unaccompanied asylum-seeking children. We are very fortunate to have two panels, each of three distinguished witnesses. We have an hour for each, so I will ask witnesses to be fairly concise in response to our questions. We have a lot to get through. Witnesses should not feel that they have to respond to each question, so that everyone gets time to talk on their subject of particular specialty. I ask our three witnesses to introduce themselves briefly, and then we will come to the questions.

**Lord Dubs:** Thank you. I have been campaigning on behalf of child refugees for some years, with moderate successes here and there. I am happy to be here this morning.

**Professor Ravi KS Kohli:** Good morning, everybody. I am professor of child welfare at the University of Bedfordshire. I have been working in the territory of unaccompanied asylum-seeking children as a researcher for about 20 years.

**Beth Gardiner-Smith:** I am chief executive of Safe Passage International, a charity based in the UK, France and Greece. We specifically support unaccompanied child refugees and adults to access family reunification under the Dublin regulation.

**Q2 The Chair:** Thank you very much indeed. Thank you, all three of you, for being with us. This is a subject that one of our predecessor sub-committees, the Home Affairs Sub-Committee, took a particular interest in and published reports on. We are very keen to keep up to date with developments on it.

Perhaps I may start with a broad question, which each of you can answer briefly, on your assessment of the greatest threats now being faced by unaccompanied migrant children as they arrive in the EU and the UK. Have you seen any change in the causes for seeking asylum recently?

**Lord Dubs:** Thank you very much. The greatest challenge is that these children arrive in Greece, or eventually in northern France, and are in terrible conditions. They are in dangerous camps or they are not in camps at all. They are in danger. There is nobody to protect them. They have no certainty in their lives. They are vulnerable to traffickers and sexual assault. Terrible things happen. They need some safety in their lives.

**Beth Gardiner-Smith:** I echo what Lord Dubs said. To focus on Greece as an example, there are just under 5,000 unaccompanied children currently in Greece, the majority of whom currently live in unsafe and inappropriate accommodation. That might include temporary accommodation and open camps. It can even include what is called protective custody, which is essentially a mattress on the floor of a police cell because no other accommodation is available. They are living in overcrowded camps, particularly on the islands in Greece, where the population is

now around 38,000 people—the camps have a capacity of about 6,000, to put that into context.

The problem is that there is a lack of safe and legal routes out of that situation. Greece is seeing the largest number of arrivals of unaccompanied children into Europe at the moment. There is simply nowhere else for them to go. The geographical restrictions brought in after the EU-Turkey deal mean that many of the children are contained on these islands and wait there for many months. Some of our research has shown that children awaiting family reunion have to wait up to 16 months from the point of applying for family reunion to finally being relocated. The lack of safe and legal routes out of their point of first arrival is a really serious situation for these children. It means that they live for many months in overcrowded and often degrading circumstances.

**Professor Ravi KS Kohli:** I shall focus on your second question: the principal causes for seeking asylum. To be clear, we are now familiar with the contexts from which children come. Those contexts contain war, poverty, climate change and now the pandemic. It is a deadly scenario: the four horsemen of the apocalypse wandering among the children and the children wandering among them. The contexts are themselves catastrophic. The things that impel families to sheer themselves away from their own children are compelling. The challenges that have been outlined arise from and are directly linked to the causes.

**The Chair:** Thank you. That gets us off to a very good start on this important area.

**Q3 Lord Polak:** Can you explain the attitude of the different EU countries and the UK towards the needs and circumstances of asylum seekers and unaccompanied migrant children? What impact has Brexit had, or is it likely to have, in this context?

**Lord Dubs:** EU countries have a range of different attitudes and practices, from the Germans, who are very welcoming, to the Hungarians, who do not want any of them, since their stated policy seems to be that they are interested only in white Christians, and refugees are not their concern. There has been a range of responses and the UK is probably about halfway, to be fair. We have always tried to make the argument about child refugees a non-party-political one, so I will be totally fair and say that the UK has not come out of this too badly, but we could do a lot better.

However, the problem is also that in some EU countries, like Germany, there has been a political backlash, unfortunately. Some of the extreme right-wing parties in those countries have taken advantage of the situation regarding refugees, including child refugees, in a cynical move to exploit the situation for their parliamentary ends. That has been moderately successful for right-wing parties in Germany, Italy, Austria and elsewhere. They have done well. So one important thing is to make sure that we keep public opinion on our side. On the whole, the British people—not all British people, but the majority—are willing to accept child refugees if the argument is put to them. It is not an unpopular policy.

As regards Brexit, I think it depends a bit on the outcome of the negotiations on family reunion under the Dublin treaty or its successor treaty. The danger is that if we crash out without a deal and there is no agreement regarding the Dublin treaty, it will be a very poor outlook indeed; there will be no way for these children to get to the UK at all.

Otherwise, my general view is that dealing with child refugees and giving them safety and safe passage depends a lot on good will and on whether it will continue between Britain and EU countries or evaporate. If we keep the good will going we can have good co-operation with individual EU countries.

**Beth Gardiner-Smith:** Unfortunately, we have seen attitudes harden over the last few years. In 2015, the context was quite different and we saw a Europe coming together in parts to try to find a collective solution. Unfortunately, in the last few years we have seen a regression from that position, much more of a focus on push-backs and containment, and a sense that if we try to forget about the issue, contain people on the islands in Greece and do not join together in relocation we might contain the problem and deny that it is there. You see that in the situation on the Greek islands at the moment.

More positive is that in the last six months—really very recently—we have seen countries start to step up and offer support to relocate unaccompanied children again. This is a voluntary initiative modelled on the Dubs scheme, so Britain can be proud of the Dubs scheme in that respect. We have seen 13 countries in Europe so far pledging to relocate unaccompanied children from Greece directly.

At the moment, just 80 children have been transferred, to countries like Luxembourg and Germany, but we hope to see that initiative grow. However, the UK has unfortunately gone in the opposite direction and has closed the Dubs route after relocating a specified number of children, rather than seeing it as an opportunity to continue in that collaborative effort to find a collective solution to the plight of so many people who are currently living in appalling conditions in Greece.

**Q4** **Baroness Goudie:** Thank you. What factors do you think should be applied when making a best interests decision in relation to an unaccompanied child asylum application? Do you think that the EU states and the UK apply similar criteria? If not, what is the reason for this?

**Professor Ravi KS Kohli:** One thing that worries me generally about the question of best interests is that we do not have a systematic process for either identifying what “best interests” means to different parties, or operationalising it in a way that allows a number of participants to determine together the best interests of a child.

Following our exit from the EU, we do not have a process in the absence of using a term like “best interests” in a constructive, systematic and thorough way, which takes into account the views of a child, their relatives, or other stakeholders who are fundamental to the child’s well-being. It is all very well for the draft to mention

best interests, and I am glad that that reference is there, but without an identified process for judging best interests, how it is done, or how collaboration happens, we are no further forward in this country, after Brexit, in being fair to children.

**Q5** **Baroness Finn:** Thank you very much. I am interested in the draft agreement between the UK and EU member states on the transfer of asylum-seeking unaccompanied children. I would be interested to hear your overall assessment of the Government's draft agreement. Does it address the principal challenges that you have mentioned that are faced by unaccompanied migrant children?

Which parts do you welcome and which would you change? I know that Safe Passage has worried about the draft agreement not obliging countries to support unaccompanied children to reunite with their families. Are there safeguards that could mitigate against this?

**Beth Gardiner-Smith:** We are really concerned about what has been published. It did not represent what we thought, or what we expected from the Government's statements to Parliament and public statements beforehand.

Essentially, we think that a number of things are problematic. I will start with the parts that we welcome, since you asked. We welcome the fact that a draft agreement has been put forward; that it contains the same categories of family members and relatives for children to reunite with in the UK as are currently under Dublin, although we are sorry that it does not go further; and that the family member needs only to be legally present in the UK rather than requiring status such as indefinite leave to remain, whereas under refugee family reunion rules they need refugee status, for instance, to reunite.

Finally, the draft agreement talks about the best interests of the child being a primary consideration. However, it does not elaborate in any way on how you would determine that, which the Dublin regulation does to some extent.

So that is what we welcome. Unfortunately, there is a lot more that we are very concerned about. First, you mentioned the fact that it is not mandatory. The text removes all mandatory requirements on the Government to facilitate family reunion. Any "musts" are now "mays", and it is also silent on the obligations of the UK as the receiving country and what these obligations may look like when it comes to transfer of the family reunion of children.

If you contrast that with the draft negotiating text which the Government have published on returns of asylum seekers to other countries, that text is full of "musts" rather than "mays". So, we can see that there is a big difference between what the Government believe their obligations should be in relation to unaccompanied children and their reunion with family members.

Also, the text intentionally avoids providing rights to children, such as rights to challenge decisions. This is absolutely critical; I might come back to that later. Although I know that this Committee is focused in particular on unaccompanied children, it is important to remember that the Dublin regulation also provides for

accompanied children: that is, children as part of a family group that has been separated. In fact, under the Dublin rules, the majority of those who are transferred to the UK are accompanied, not unaccompanied, children. This text is completely silent on those children, who will simply not have a route after Brexit in current circumstances.

Other key safeguards that are currently contained in the Dublin agreement are removed, such as strict timelines, timeframes for decision-making and other obligations that are really critical, because they enable this process, when it is done well, to happen quickly, efficiently and effectively in the best interests of the child.

**Lord Dubs:** Could I just add that there is a history to this? We do not want to spend too much time on the history, but the provision was put into the 2017 Act, then taken out in the 2019 Act, and then we had long arguments, sometimes with Ministers, about what the Government proposed to do. The result is this agreement.

So the history of it is that the Government have been inclined to do not very much. We could not understand why they deleted the 2017 provisions when the 2019 Act came along. There seemed to be no particular purpose to this; certainly, we have not yet discovered what it was.

I agree entirely with what Beth said. The good will from many of us has been somewhat weakened by the process by which we have got to where we are.

**Professor Ravi KS Kohli:** Perhaps I may add a point that supports the points made by Lord Dubs and Beth. At the moment in the EU, children benefit from around 100 substantive laws and policies that confer direct entitlements on them in the context of immigration and asylum: for example, the reception conditions directive, the procedures directive, the Dublin III regulations that Beth has mentioned, the family reunification direction, qualifications and temporary protection directives, and so on. They are all related to specific provisions on unaccompanied children.

What happens with a draft like this is that, instead of the great big tapestry of law that already exists within the EU, we have a single thread. The draft represents quite a weak thread itself and will take a long time to weave back into the tapestry that children need to continue to enjoy the care that they should.

We lose that scaffolding for them as a consequence, and we lose the EU's capacity to develop and provide extensive intelligence on the ways in which unaccompanied children can be supported. The European Asylum Support Office, the European Migration Network, the EU Fundamental Rights Agency, and so on, become absent. Europol, FRONTEX, Eurojust and so on disappear. In their absence, the country has a job to do to resurrect something that is meaningful and sustainable for children.

Q6 **Baroness Hamwee:** Chair. I ought to declare an interest. My Private Member's Bill—the Refugees (Family Reunion) Bill—got through the Lords in the Session that ended in 2019. I also have one on the stocks for this Session, but events are obviously

overtaking it.

I want to ask about best interests. The picture that Professor Kohli paints makes me think that if you pull on a single thread, you risk unravelling the whole thing if it is not properly woven in. I want to ask about the approach to best interests by other countries; Alf Dubs has talked about the spectrum of attitudes. We should be concerned about what will happen after the end of this year not just in the UK but elsewhere. I wonder whether any of the witnesses would like to say anything about that.

**Professor Ravi KS Kohli:** I am happy to. It is such a fundamentally important question to ask, if I may say so, because we often learn from what is happening elsewhere to inform our own standards. As you may understand, the things I have been saying should show you how worried I am about the absence of context, about collaboration and about our capacity to compare with other European states in protecting children.

In 2018, the UNHCR revised and refreshed its best interests determination procedures, which are a central and very good touchstone for the way in which standards ought to be maintained. Some states, as Lord Dubs has said, try to keep a handle on those standards. For example, some of the Nordic countries and Germany have done that terribly well. We have never done that well in this country. I am sorry to say that, in a way. In comparative terms, we are not on top of best interests as a systematic process. There is plenty for us to learn from the Nordic countries and Germany; I can provide the Committee with further details on that.

**The Chair:** That would be very helpful indeed. Thank you.

**Q7 Lord Kirkhope of Harrogate:** Good morning. I had the dubious privilege, perhaps, of being part of the drafting process of Dublin, up to Dublin IV but certainly including Dublin III. I am very interested to hear your views about the future, particularly in the event of no deal.

When Brandon Lewis was Immigration Minister, he was on record as saying that he wanted a close partnership to go ahead. Of course, as you have already mentioned, the withdrawal Act—Section 17 in particular—commits the Government to seeking to negotiate an agreement for unaccompanied asylum-seeking children. The difficulty that we have with all this is that, in the event of no deal, we will not pursue the elements of Dublin. I want to say to you that I think that most people would agree that Dublin has not been an outrageous success in its implementation by the member states of the European Union, some of which have defined their major criteria or interests as irregular entry rather than family unity.

Having said that, I want to know how you think the Government's draft agreement, which I referred to, compares to the elements of Dublin, bearing in mind its complications and difficulties. Do you think that, without a deal and without Dublin, we have adequate facilities and attitudes in place through our legislation and statements by government that will be able to deal with the applications that we will get for unaccompanied asylum-seeking children?

**Lord Dubs:** Thank you for the question. Whatever the weaknesses of Dublin, the fact is that it has been a way in which people, particularly children, have found safety in other countries and been able to join their families. For those people, it has been a tremendous breakthrough, giving their lives a chance to move forward.

If we leave the EU without a deal and we have no arrangement at all, we will be in a real difficulty because it will depend entirely on whether the Government are interested in doing anything. It would be totally discretionary and the Government would be under no obligation at all. It would be pretty hard for us as a country to say to a child in Calais or Greece, “You have an uncle in London but you are not allowed to join him and we are not interested in having you join him”. It would be a retrograde step.

If good will prevails, the Government might say, “We’ll act as if the Dublin convention were still in force”, but if it is not, I doubt, given the Government’s previous policies, that they would be all that keen to do it. That would be a very sad day indeed.

**Beth Gardiner-Smith:** I completely agree with what Lord Dubs said. You have asked a couple of questions. First, you note that Dublin has not been an outrageous success—I think we would agree with you there—but key to that is the implementation by EU member states. If we are focusing on the family reunion provisions of Dublin, we as an organisation think that it is a pretty good piece of legislation and regulation as drafted. Unfortunately, the practical application by different member states and the consistency in their interpretation has not been so good. There are certainly things that can be learned from that, but it contains some really important safeguards for children that would simply fall away if we were not part of Dublin and had a no-deal Brexit without an agreement to replace it.

The current Immigration Rules are simply deficient for the vast number of unaccompanied children and families in Europe. We at Safe Passage have looked at our cases, and we estimate that about 95% of the unaccompanied children who we provide legal support to under Dublin would not be eligible to apply under refugee family reunion rules. That is because the refugee family reunion rules are currently very narrowly drafted. In the majority, they allow children to reunite only with parents, without any other pre-conditions. They do not provide for children to join siblings, uncles, aunts or grandparents. They impose much more stringent checks and obligations on them. So in a sense we would see many children suddenly have that safe and legal route to family reunion simply taken away.

We would probably say: do not ditch Dublin if we have not come up with a better solution. If we come to the end of the year and there is no agreement, we would urge the UK to remain part of the Dublin convention until it can come up with a viable alternative.

**Lord Kirkhope of Harrogate:** I am just looking at the figures. We obviously have to get this right, but it is interesting that this country—with the size that it is, the resources that we have, our general worldwide connections and all the rest of it—

seems to take very few children in this category compared to even the smallest countries and countries that are attached to Dublin but are not members of the EU.

Therefore, I cannot see that we cannot find a solution here that makes sense and is at least as generous as Dublin—perhaps also, in some respects, not as controversial as Dublin as it is implemented. Would anybody like to comment on that? This is something that we ought to be able to deal with.

**Lord Dubs:** Yes, of course, we could do that, but it would be up to us as a country, or our Government, to decide that we want to do that. The danger is that the Government might not be that keen to move in that direction. You are as good a judge of that as anybody.

Perhaps I could throw in one other issue that has not been mentioned yet. In so far as we as a country are seeking to negotiate the future of the Dublin treaty, we are in the difficulty that the EU negotiating position seems to be that Brussels cannot negotiate on behalf of the EU 27, and therefore we will be left with the UK having to negotiate with each individual country. That is a recipe for not making much progress.

Therefore, some of us have been arguing in international fora that the EU should do this as one agreement on behalf of the EU 27. Some people would say that that is cherry picking by the UK, but I think that is an absurd argument. This is not directly our problem; it is a problem of how Brussels responds to our wish to negotiate, but there could be consequential pitfalls in how we come to agree things in the future.

Going back to your main point, it is perfectly possible for us to continue in the spirit of the Dublin treaty, but it requires the EU member states to act reciprocally.

**Professor Ravi KS Kohli:** Perhaps I may add how lovely it is to hear something hopeful said in the way that Lord Kirkhope has articulated it. Yes, we can afford it. Yes, we should step up to the plate. Lord Dubs has committed his life to making this realisable in the ways that have been set out, and it is terrific to hear a member of the Committee put such thought and effort into saying it in such broad terms: yes, we can.

**Q8 Lord Lexden:** Continuing our discussion on the Government's draft agreement, can I ask for the panel's views on whether it should be amended to include the right of unaccompanied migrant children to sponsor their families to join them? One is always conscious of the difficulty that that involves in stimulating and encouraging children to make dangerous journeys. I would be very grateful for the views of our guests.

**Professor Ravi KS Kohli:** There really is no empirical evidence to say that children who seek to be reunited with their families act like attractors in the new country. If you look at any of the research evidence across Europe—in Finland, for example, reunification is a daily fact—you will see that their numbers are not boosted because children make applications for reunification. It just does not happen in that way. Often, children are not aware of the reunification possibilities and they do not

choose countries on the basis of seeking reunification. So the empirical evidence just is not there to substantiate that worry.

**Beth Gardiner-Smith:** We would agree. In all our contact with and support for the unaccompanied children whom we work with, they never say that the reason for seeking safety in a country is the specific rules and regulations that exist there. Unfortunately, they are largely unaware of those rules. That is why it is so important to have systems such as the Dublin regulation that pose obligations on member states to enable children to access safe and legal routes, rather than rely on them to understand the regulatory framework and to be able to access these safe routes alone. Therefore, we absolutely agree that children should be able to bring their families.

As an example, we supported a case involving four unaccompanied children from Syria. This was happening outside the EU, but their families were missing and they were living on their own. They were finally able to come to the UK to join relatives. Then, some months later, their parents were found. They had been captured and were then found. Would we, as a country, really deny those children the right to be reunited with their parents?

**Lord Dubs:** I agree. In humanitarian terms, it would be the right thing to do, and Private Members' Bills have been introduced in both Houses with that aim in view. However, it would be naive not to say that politically it is a bit awkward. I believe in the principle, but I think that some people who were against admitting refugees would use it as leverage against the Government. Therefore, we have to be careful, but in principle I think that it is the right thing to do.

Q9 **Lord Anderson of Swansea:** To be a devil's advocate, some years ago it was alleged that in Albania, I think, that traffickers were entering into collusive agreements with parents to bring their children to the UK on the promise that the parents would ultimately follow. Do you see any circumstances in which discretion might be given against family reunification in circumstances such as the ones alleged in Albania?

**Lord Dubs:** Of course, we do not have that provision, but if we had a provision that allowed children to be joined by their parents, I suppose that there might be such instances. Traffickers are pretty miserable and nasty people, and, as we know, they are exploiting the situation everywhere—in Libya and so on. Therefore, in theory, it might be possible, but I would have thought that some safeguards could be built in so that, if there were blatant trafficking, we could take action without closing the door on the possibility of children here being joined by their families.

**Lord Anderson of Swansea:** Would you agree that there are limited circumstances in which discretion might be offered against family reunification?

**Lord Dubs:** I am not sure that I am in a position to draft any legislation on that, but I would have thought that it would be possible to have some safeguards while still establishing the principle of children here being joined by their families unless there

were circumstances such as the ones that you have described. It would be difficult to prove but that might be the way forward.

**Professor Ravi KS Kohli:** It is a very good question. In these circumstances, one cannot say anything more. You admit the possibility of that happening but you also assert the probability of it not happening in most cases. Something needs to be drafted to allow that possibility and to allow it to be examined if it ever occurs. My own experience is that it is a very rare event.

**Lord Anderson of Swansea:** But in those rare events, would you agree that it should be a bar?

**Professor Ravi KS Kohli:** Yes.

**Beth Gardiner-Smith:** Perhaps I may come in here. I would be very worried if our system was designed to penalise children twice. It is clearly not a child's fault if a trafficker exploits their vulnerability and separates them from their family. If we design policies in the UK to penalise children once again for something that is out of their control and we prevent them reunifying with their families, we are designing a pretty poor system. We should put the best interests of the child first. If that means reunifying them with their family, we should do that.

**Lord Anderson of Swansea:** Even if it were an incentive to traffickers?

**Professor Ravi KS Kohli:** I am sorry to jump in, Beth, but I think that what you are asking us to do, and what we should do, is to take particular care in situations where children are passed from pillar to post by known and unknown adults. Our first duty is to safeguard them and, within that, we can think about the possibility of family reunification if it is safe and appropriate. If it is not, then we should not do it, but Beth is asking us to continue to consider what is in the interests of a child in those circumstances and to make sure that we do not perpetuate a sense of their uncertainty, bewilderment and fear by insisting on simple solutions when complex understanding is needed.

**Lord Dubs:** May I just add that the traffickers are most likely to operate in situations where there are children—in France, Greece or wherever—and that traffickers say, “We’ll get you to another country”? That is where traffickers exploit children, even more than the situation that Lord Anderson put forward.

If I may widen the question, the danger is that if we make getting a safe and legal route for children impossible, they will simply be persuaded by traffickers that there are other ways of doing it, with all the hazards we have seen, for example in crossing parts of the Mediterranean or trying to cross the channel. That is where traffickers exploit children the most, more than in the situation suggested by Lord Anderson. If we change the law, it might happen as Lord Anderson said, but it would be very infrequent.

Q10 **Lord Anderson of Ipswich:** I would like to ask Beth Gardiner-Smith a couple of questions. Picking up on things you said before, you were quite keen to come back

to the issue of legal remedies under the UK's draft agreement. Of course, Article 12 of that negotiating document says that no rights can be directly invoked in the domestic legal systems of the parties.

I would like you to tell us what effect you think that would have, bearing in mind, as I am sure the Government will remind us when we speak to them, that there is still the European Convention on Human Rights and the refugee convention. Of course, in Article 11 of the same negotiating document, there is a Joint Committee with its own dispute resolution function.

**Beth Gardiner-Smith:** Absolutely. Thank you for the question. I think that we can learn a bit from the previous iterations of the Dublin regulation when we think about what it means not to have a legally enforceable right. Dublin II was the prior iteration of Dublin III and was the first time that Dublin was a regulation. However, the right of appeal was extremely limited in scope; that was borne out in case law. Essentially, it remained largely an interstate mechanism. You could show a breach of rights under the ECHR only to challenge a decision not to reunite a family.

When Dublin III came into effect, it set out enforceable, mandatory criteria under the regulation. This had an enormous impact. If you just look at the figures, under Dublin II, the UK accepted annually 11 people from the EU for family reunion on average. After Dublin III was introduced, the average rate was around 547 people annually. So you can see what a big difference making those provisions legally enforceable made to the number of people arriving and able to access that route.

If we look at our own casework, in 2019, around half of all the cases that we supported required legal challenge of some sort. I wish that we were not in that situation, but unfortunately we are. That is why it is so critical to have a legally enforceable agreement in place, where a child has the right of appeal against a decision.

These are complex cases. We are talking about unaccompanied children with chaotic and complex lives in very difficult circumstances. In some cases, it is difficult to prove the family link. You are requiring children and families essentially to provide the necessary documentation and evidence to ascertain that that family link is there. That right of legal challenge is really critical.

**Lord Anderson of Ipswich:** Of course, you still have a right of legal challenge so far as the European convention is concerned. Are you saying that the great majority of cases you bring do not rely on the convention rights and therefore the convention would not help you in future if we did not have Dublin?

**Beth Gardiner-Smith:** Essentially, you are requiring a higher burden of proof. At the moment, we can challenge different Governments' applications of the regulation, which may be missing deadlines and timelines. They are highly specific, whereas the challenge that you would need to make if those provisions fell away is much more

general. That is why we believe that in most cases it will be very difficult, it will require legal representation, and you will remove many safeguards for children.<sup>1</sup>

**Lord Anderson of Ipswich:** Can I take you back to one other comment that you made? You said the same as what you said in a fact-check sheet which Safe Passage produced last week: although there are limited provisions for family reunion under the UK's refugee family reunion rules, 95% of people whom you currently help would not be eligible. That is a remarkable statistic.

You put a little flesh on the bones just now by pointing out that the category of relatives and family members is narrower under the UK rules, although I think you said that it was going to be the same under the negotiating agreement—or that it was at least proposed that it should be the same. You also referred to more onerous checks under the UK rules. I may be wrong, but I think it is right to say that you have a pay a fee, which you do not have to pay under the Dublin regulation.

Can you break that 95% down for me? Which difference really affects those numbers? Is it because lots of people who are not parents but are more distant relatives are applying? Is it that the checks are unduly onerous? If so, which checks are you thinking about? Or is it a question of the fee? If you could change one or two things about the UK rules, what would they be?

**Beth Gardiner-Smith:** In our casework, it is usually about the type of family member who the child is seeking to reunite with. Most of the cases that we support are seeking to join siblings or aunts and uncles. That may be for many different reasons, such as that the child's parents have died or that they have been separated—for example, if the child's parents are imprisoned or missing in their home country—so they seek to join their next-closest family member in Europe.

It is about the categories of what are termed “relatives” rather than “close family”. Under Dublin, children can apply to join those relatives without the same conditions as under the UK's current Immigration Rules. There is a provision in paragraph 319X of Part 8 of the rules, but it is extremely difficult to meet the criteria; there is also an application fee. You have to show that there are serious and compelling family or

---

<sup>1</sup> To elaborate on this point and provide further example, Beth Gardiner-Smith asked for the following text to be drawn to the Committee's attention: “Having said this, the convention is always helpful. Dublin III gives effect to rights that are contained in the convention, most notably the right to a family life under Article 8. However, the key issue is that at the moment, we can challenge the Government's application of the Dublin III regulation, as well as any breach of Convention rights. This is useful because the provisions in Dublin III are highly specific. To give a couple of examples, there are strict timescales in Dublin III and a duty for the Government to check “exhaustively and objectively [...] all the information directly or indirectly available to it” when making a decision. If the Government fails to meet these timescales or fails to fully exercise its ‘investigative duty’, you can challenge a decision on the basis that they have breached the Regulation. Whereas, if those provisions fell away, the challenge that you would need to make is much more general.”

While we would argue that the Government making prompt decisions and fully investigating a case are inherent to Article 8 under the ECHR, this is open to interpretation and not ‘a given’. By not having a legally enforceable agreement with specific provisions and direct effect, we therefore believe you will remove many safeguards for children and it will be significantly more difficult to challenge any unlawful decisions.”

other considerations that make exclusion of the child undesirable. You would hope that that would be easy to do in all cases—we would expect that to be the case—but, in practice, it is simply not. The rules are defined very tightly in comparison to Dublin. That is a critical element, from our perspective.<sup>2</sup>

**The Chair:** We have two more questions. I think we will finish just on the hour. Both questions are about the prospects for an agreement or implications if we do not get one.

Q11 **Lord Arbuthnot of Edrom:** How far apart are the parties? What are the principal areas of agreement between the UK and the EU, and what still needs to be resolved?

**The Chair:** Who is going to get their crystal ball out?

**Lord Dubs:** I am not sure that I can answer that. I refer to the point I made a few moments ago. One possible difficulty—I am not sure whether there is disagreement—is whether Brussels can negotiate on behalf of the 27. If Brussels cannot do that, the British Government will have to negotiate with each individual country, which is quite a task. It may take a long time.

I think there is a general sense—I have talked to people who are close to the Greek Government—that they appreciate what we are trying to do under the Dublin treaty, they appreciate our motives, and they appreciate that it takes some of the pressure in a small way off the situation in the camps on the Greek islands, which are pretty horrific.

So I think there is some understanding of what we are trying to do. I am on the OSCE Parliamentary Assembly migration committee and we have certainly discussed these matters there as well. The committee has wide representation from across, and indeed outside, the EU to discuss this issue.

If I may move a bit beyond your question, of course if there were a deal and a liberal Europe-wide agreement on how to approach refugees, there would be the same standards in all countries. That would provide much more certainty and there would not be these arguments.

I think that an agreement with EU countries is possible. If there is good will on our side, I think that the EU countries will see it as a benefit, particularly as there are more children who want to join relatives in the UK than there are children in the UK who want to join relatives in any of the EU 27 countries. That would take a bit of

---

<sup>2</sup> Beth Gardiner-Smith subsequently asked for the following to be drawn to the Committee's attention: "Another key factor is the immigration status of the UK based family member. Under the refugee family reunion rules and also 319(X) which you mention, the family member must have been granted refugee status or humanitarian protection in the UK for the child to be eligible for family reunification with them. Whereas, under the Dublin regulation, the UK family member is only required to be "legally present". This is a far wider definition, which also includes family members who are asylum-seekers, British and have other forms of leave to remain (e.g. a spouse visa). A lot of the children we help have relatives with different immigration statuses in the UK, not just refugee / humanitarian leave."

pressure off EU countries at the moment, and I think that on the whole they would welcome it.

**Beth Gardiner-Smith:** Perhaps I might add a note of pessimism to that. Even though I agree that it would be in the EU's interest to negotiate an agreement on this, currently, as far as we are aware, and as Lord Dubs said, the EU Commission does not have a mandate to negotiate on this area. I understand that it is seeking that mandate and it may well come, but it is quite late in the day for us to start those negotiations.

It has not been possible even to start them at the moment because, as yet, the EU is not mandated to negotiate on this area. I know that this Committee looked at a no-deal scenario last year, and that is why it is so critical that we should already be thinking again about contingency planning. We are leaving it very late in the day to try to reach an agreement by the end of the year, but the UK has to have something in domestic legislation to fall back on.

**The Chair:** That is quite a good cue to bring in Baroness Primarolo to pursue that line of questioning.

Q12 **Baroness Primarolo:** I thank the witnesses very much. This has been a really important and informative session, and many of the points have been covered.

Regrettably, Beth, I want to pick up on your pessimism, which I completely understand. Can each of the witnesses tell us succinctly in conclusion what the impact on unaccompanied migrant children would be if the UK and the EU were unable, for whatever reason, to reach an agreement by the end of the transition period? Most importantly, if our Government are to step up to the plate, as I think you said, Professor Kohli, what robust procedures and safeguards do we need to have in place now to minimise the delays that will put the safety of unaccompanied children across Europe at huge risk?

**The Chair:** Professor Kohli, do you want to start a wrap-up series of answers to that question?

**Professor Ravi KS Kohli:** Thank you. I just want to go back to some of the points that we have already made this morning. What do unaccompanied children need? They need clarity and certainty, and they need a lack of delay. When they get here, they need, as many of us have said, a sense of assured safety, a sense of belonging—that is, being able to embed themselves within a family or a community that will keep them safe—and a sense of being successful. For example, as Lord Dubs knows through his personal narrative, the Kindertransport children will tell us that success matters to these children.

At the moment, we do not have a story about these children that covers the talents and enrichment that they bring; we only have stories of how they cost us money or might have needs that we have to meet. The relationship with unaccompanied children is very donor-based and I think that we need to change the narrative in different ways.

From my point of view, Britain should be able to reasonably calculate how many children it is prepared to accept on an annual basis and should negotiate with local authorities in a systematic way about how and where these children settle and with whom. “Yes, where possible” rather than “No, where possible” is the deal-maker. That is what I would like to see happen.

**Baroness Primarolo:** So you are clearly saying that we in the UK can sort this and that we could do it now if there was the political will to do it. I want to be clear on that.

**Professor Ravi KS Kohli:** Yes, that is right.

**Beth Gardiner-Smith:** We have said it before, but we would see it as a blank cheque for people-smugglers and traffickers. Our incredible professionals working in Greece, France and the UK daily spend hours trying to persuade children not to be led by the temptations of the traffickers or smugglers who tell them that they can reach the UK and join their families quickly through alternative means. We persuade them to join the legal process, to wait, to hold on and not to risk their lives.

That legal process is there. If we reach the end of the year without an agreement and without the UK continuing as part of the Dublin agreement, we will have to tell them that there is no longer a legal process that works for them, and we will see many more of them risk their lives.

Therefore, we absolutely urge the UK to take domestic action now. It can do so through primary legislation to guarantee the rights of those children and, if needs be, expand the Immigration Rules to enable the children who are currently provided for under Dublin to continue to reunite with their families in the UK. However, we do not want to forget the importance of that international agreement. It is important to have both countries working together in the interests of the children, with the sending country working to identify the children, making the application to the UK and preparing the evidence, and the UK working hand in hand with that country. That is critical. Therefore, if needs be, the UK should remain part of Dublin until it seeks a new agreement.

**Lord Dubs:** I agree with both my colleagues. We have a real challenge ahead of us. If we can do something positive, there will be a better world for at least a small number of children; otherwise, as Beth said, they will be in the arms of the traffickers. What else can they do? They have had horrific journeys, having experienced war zones, persecution and the fear of death. They have seen their family members killed in front of them during fighting and so on, and they are trying to seek safety. If they have family here whom they can join, surely that is the best way forward for them. It is not a very difficult problem—we are not talking about enormous numbers—but the principle is absolutely fundamental. As Baroness Primarolo said, it is about political will. It is absolutely about that.

Lastly, about a week ago an amendment to the Immigration Bill in the House of Commons was defeated—not by many but defeated nevertheless. I guarantee that

that amendment will also be brought forward in the Lords. There is a chance that we can have a sensible amendment to clarify this issue and to give some of these children hope. That is what we need to do—give them hope and the chance of a decent life.

**The Chair:** Thank you very much. On behalf of the whole Committee, I extend warm thanks to all three of you for some very powerful, passionate and moving evidence. Thank you for your time.

We will send you a transcript of this session for you to correct before publishing it. I now ask that the broadcast be paused for a moment so that we can welcome in another panel of three experts to give us evidence. Again, I thank all three of you.

#### Examination of witnesses

Professor Elspeth Guild, Pinar Aksu and Daniela Reale.

Q13 **The Chair:** Welcome to a session of our Lords' Justice and Security Committee looking into the transfer of unaccompanied asylum-seeking children and the draft UK agreement on it. I welcome our second group of distinguished panellists and thank you for your patience before joining us. This is obviously a live session and is being transcribed. We have about an hour, so I ask both Members and witnesses to keep responses fairly concise. Also, not everyone has to respond to each question, but we will be fascinated to hear your evidence.

I start by asking each of the three witnesses to introduce yourselves in a sentence or two before we start the questions, perhaps starting with Professor Guild.

**Professor Elspeth Guild:** Good morning, my Lords. It is a great pleasure to be invited to give evidence at this session. I am a professor of law at Queen Mary University London and Emeritus Professor at the Radboud University in the Netherlands. I am also the co-convenor of the European group of the Immigration Law Practitioners' Association.

**Pinar Aksu:** Hi, everyone. My name is Pinar Aksu. I am a community worker with Maryhill Integration Network. I am also an ambassador for the global End Child Detention campaign, and I am here today to share my experience of being detained, and some expertise. Thank you.

**Daniela Reale:** Thank you very much for inviting me. My name is Daniela Reale. I am the lead for policy on children on the move and for Save the Children. Save the Children supports migrant and refugee children across the world, including in Syria, in various contexts in northern, eastern, south and western Africa, and in Europe.

Q14 **The Chair:** Thank you very much indeed. I kick off with a broad question to ask you to set the scene for us. What is your assessment of the biggest challenges now facing unaccompanied migrant children as they arrive in Europe and the UK? Have you seen any changes in the principal causes of migration recently?

**Professor Elspeth Guild:** Thank you very much for the question. I will leave the practical side to my esteemed other witnesses, who are working on the ground.

From the legal perspective, having listened to the evidence given in your first session, I would say that the importance of the political declaration of 17 October 2019 between the EU and the UK was the setting of the framework for what can be negotiated in the future agreement. In that political declaration, on the basis of which the Commission has been given its mandate to negotiate, there is only one section on illegal immigration. There is no mention of asylum, refugees or unaccompanied minors.

Under illegal immigration, which is the basis on which the draft agreement which the UK Government has put forward seems to be founded, there are only three issues that can be negotiated with the EU in the context of the future relationship under paragraph 114 of the political declaration: “operational cooperation with Europol to combat organised immigration crime ... working with the European Border and Coastguard Agency to strengthen the Union's external border ... and ... dialogue on shared objectives and cooperation, including in third countries and international fora, to tackle illegal migration upstream”.

It seems to me that it would be difficult for the European Commission to interpret paragraph 114 of the political declaration, which is the foundation of its mandate, to negotiate the future relationship to include this proposal by the British Government.

As Lord Dubs said at the end of your last session, this issue must be dealt with in the Immigration Bill; a right must be inserted into that Bill for protection-seeking minors with a relative in the UK who is willing to take responsibility for that minor to join that family member in the UK, including the issue of documents. That is the way forward at this point. At this late point in the mandate negotiated in October between the UK and the EU, there is no place for this particular solution.

**Pinar Aksu:** On the question about what the children face, I would say that after the 2015 humanitarian crisis, the impact of war and displacement of people, especially for children, became clearer to the world. We witnessed people crossing the sea for their safety and a future. However, many never made it to the shore, and among the most vulnerable, from a safety point of view, who did make it to the shore were children.

Sadly, many unaccompanied and separated children on the move are left in isolation and darkness. That means that they are staying in detention centres, whether in Calais or especially in Greece, they are in camps where there is a lack of security, safety and education. The children are suffering trauma. They do not know where to go next and they are being left in the hands of people-smugglers to reach the UK. Overall, there is lack of access to safe, legal routes. There is no information, so the children choose or are forced to be handed over to the smugglers.

Another big aspect is being detained. Children are put in detention centres where

there is no security for them. They are most vulnerable to all sorts of incidents in detention centres and in the camps.

Those are the main issues that children face. The most important one is no access to a safe and legal route or to information, which leads to their being handed to smugglers.

**Daniela Reale:** To answer your question on the principal cause of children seeking asylum, if we look at the nationalities of children who seek asylum in the EU, we see that two-thirds of them were citizens of countries like Afghanistan, Syria or Pakistan, as well as Somalia, Guinea or Iran. In the UK, we see children from Eritrea, Iraq, Iran, Albania, Pakistan, Ethiopia and Vietnam.

It is clear that most of these children are escaping situations of conflict, violence and human rights violations in their countries. The children we work with in our programme also tell us about the reasons related to the safety and protection issues which they face within communities and families. They also tell us about their desire for a better future and for opportunities to access education and work, but let us remember that many of these children who are escaping will have seen their homes destroyed and their loved ones killed. They will have been tortured or may be victims of trafficking.

In addition to all that, as my colleagues here mentioned, due to the lack of safe and legal routes—and regular access routes—many of these children are still taking long and terrifying journeys in their search for safety. They are risking their lives to reach Europe. We are still seeing huge numbers of people losing their lives crossing the Mediterranean, many of whom are children.

The children we work with still talk to us about travelling for long hours, in overcrowded vehicles or on foot, during the night, in harsh weather and lacking food or water. Being at an extremely high risk of violence, they always tell us about what they face and the people they come into contact with, and about being terrified of traffickers and smugglers. In some cases, they experience push-back and violence at the borders; in other cases, the border procedures are simply inefficient and not sensitive to their needs at all.

I overheard in the previous session that reception, accommodation and support standards are very variable in many European countries. In some contexts, the situation is really alarming, as in the case of unaccompanied children in Greece and the Greek islands at the moment. There are 1,500 children on the islands, for example. The conditions that we are seeing are extremely alarming, with overcrowded reception centres and limited access to healthcare and other facilities. Obviously, this puts children at high risk. Security is a major concern; we are extremely worried about it.

In addition, asylum procedures are often too lengthy and too complicated. They are not explained well to children, who really struggle to understand the process. It is key for them to have somebody to support them in this.

**The Chair:** We will come on to quite a lot of those different issues. That is extremely helpful as an initial starting point. Thank you very much indeed.

Q15 **Lord Polak:** Listening to Daniela just now, it has been really interesting. While we have been talking generally, we must always remember that we are individuals and that this is about children and people. In my own tradition, the saying goes that if you save one life, you have saved a world. It is important that Daniela has just reminded us of that.

I want to ask about the different attitudes of the EU countries and the UK toward the needs and circumstances of asylum seekers and unaccompanied migrant children. What impact has Brexit had, or is likely to have, in this context?

**Professor Elspeth Guild:** I will make a couple of comments from the legal perspective because, of course, that is the expertise for which you invited me to this session.

The continuing EU member states will continue to apply Dublin without the United Kingdom. Other member states also have difficulties in getting Article 6 of the Dublin regulation provisions on unaccompanied minors to work properly. Safe Passage is particularly well placed to tell you about the problems in the UK, but that is not the only country where there are problems. Of course, the harder the border controls are between the member states, the worse the problems are for the children. Children who get to one Schengen country will find it much easier without internal border controls to join their parents, and the issue of reunification can be dealt with when they get there.

Also, for unaccompanied minors who want to be joined by their parents, the EU has the family reunification directive 2003/86/EC, which specifically provides for the family reunification of unaccompanied minors and their parents. The parents and other family members are entitled to join the unaccompanied minor. There is case law on this from the Court of Justice of the European Union and from a case in the Netherlands; of course, the perspective of the Netherlands tends to be a bit closer to that of the United Kingdom, in respect of asylum being a rather harsh approach.

What I see coming in the future is that without the more humanitarian perspective of the common European asylum system—leaving aside the terrible problems at the southern borders and the inadmissible actions that are taking place at some parts of the external border—the UK will develop a much harsher regime in respect of asylum seekers and children will find it increasingly difficult to come and join their family members in the UK where they are in need of protection.

**Pinar Aksu:** To add to what has been said, looking at this from the perspective of working on the ground and what is happening at the borders at the moment, it will become really difficult—and not just for children. Initially, for everyone seeking asylum or refuge or running away from persecution, the borders are becoming so much tighter that the people in the process will be lost.

As has been said here, there used to be a will for states to do their duty, which binds them to international laws and international communities and to learn from each other to accept more children and not leave them behind, where they will be lost and will never be known to anyone. Sadly, there is a perception of fear in accepting children. We are seeing that in accepting children to come to a country and providing safety for them. That is the view that is being shown towards these children.

In terms of what Brexit will do, we in the UK should not fall into the trap of leaving children behind. We need to make things better and create the policy. I totally respect that this is a starting point, but there has to be more work on this to make the policy fit for children's needs.

**Q16** **Baroness Goudie:** Thank you very much for coming today. What factors do you think should be applied when making best interests decisions in relation to unaccompanied children's asylum applications? Do the EU states and the UK apply similar criteria? If not, why not?

**Professor Elspeth Guild:** This is a rather legal answer. Of course, the principle of the best interests of the child comes from the 1990 UN Convention on the Rights of the Child. The purpose of that convention was to provide one common understanding of the best interests of a child. It has been ratified by all EU member states. It has been incorporated into all EU legislation that touches on children and children's rights. It is interpreted by the Court of Justice of the European Union and has been about asylum-seeking children in quite a number of cases.

As the UK is no longer part of the EU, it is no longer bound by that common interpretation at EU level of the international obligation, in my opinion. The UN has opened for signature and ratification a protocol to the UN Convention on the Rights of the Child that creates a jurisdiction for the Committee on the Rights of the Child to receive complaints from children who consider that their best interests have been violated by a state. I would strongly recommend that the UK sign and ratify that additional protocol to ensure that the interpretation of the best interests of the child in the UK does not now begin to deviate and drift away from the international standard.

**Daniela Reale:** As Professor Guild said, the principle of the best interests of the child is absolutely the cornerstone of any action that affects children. Obviously, the key question here is how to translate that principle into practice. For a long time, Save the Children has advocated for clear guidance on, and common approaches to, the translation of that principle into practice.

In implementing that principle, due consideration needs to be given to some key children's rights. The first is looking at the family situation of the child—for example, the child's right to family unity, the child's vulnerability, their safety and the risk they are exposed to. What are their needs in terms of protection, physical health, mental health, education and socioeconomic conditions? A whole plethora of rights need to be taken into consideration when assessing what is in the best

interests of the child, particularly when they are going through a very complex process such as asylum.

You will also want to look at how integrated the child is in the country, the situation they come from in their country of origin, their gender, and their national, ethnic and social origin. It is important for children that in this process there are some key, fundamental guarantees and safeguards. Any assessment that guided decisions about the future of a child would need to be individual, looking at the child as an individual and at what they have gone through. It would need to be multidisciplinary, meaning that it would need to include relevant actors, specialists and experts who know how to work with children and who have had the appropriate training to work with children. Importantly, it will need to include the views of the child, and a mechanism is required to ensure that that is happening.

**Q17 Baroness Finn:** Thank you very much for coming. It is really interesting to hear what you have to say. My focus is basically on your overall assessment of the Government's draft agreement on the transfer of asylum-seeking unaccompanied children between the UK and the EU member states. In your view, does that draft agreement assess the principal challenges faced by unaccompanied migrant children? What parts do you welcome and what would you change? I know that there are concerns over the lack of an obligation to reunite, the lack of conferring legal rights, and whether there are safeguards to mitigate against those things if they are not enshrined in legislation.

**Professor Elspeth Guild:** Please excuse me, because I will be a little bit brutal. From a legal perspective, there is no mention of that particular issue in the political declaration, which is the basis of the mandate for the negotiation of the future agreement. The UK's document issued in February on the UK's approach to the negotiations on the future relationship with the EU states at paragraph 54: "The UK has made a specific commitment to seek to negotiate a reciprocal agreement for family reunion of unaccompanied children". Who was that commitment made to? Certainly it was not made to the EU, because it was never put into the political declaration, so there is no basis for it. Therefore, what is the purpose of this document coming out now?

I am sorry to say that I must go back to what Lord Dubs said in the earlier evidence session: it is an attempt to distract attention away from the Immigration Bill. A provision must now be put into national legislation providing a right for unaccompanied minors, irrespective of whether they are in the EU or elsewhere in the world, to join family members in the UK. There is no mandate for the Commission to negotiate this agreement with the EU unless it distorts out of all proportion the political agreement of October 2019.

**The Chair:** So this is where it is down to the member states rather than the EU as a whole, as Lord Dubs said.

**Professor Elspeth Guild:** It is worse than that. We cannot negotiate an agreement like this member state by member state, because this is a fully exercised

competence of the European Union. It can be negotiated only with the EU. Member states cannot exercise a competence which they have mandated to the EU and which has been fully exercised by the European Union. This was one of the big issues that we discussed endlessly in the Brexit debate: “We want to be masters of our own destiny. Therefore, we do not want to have a joint agreement”. The idea that we would be able to negotiate with each member state an equivalent of Article 6 of the Dublin regulations seems to me, as a law professor, astonishingly naive.

**The Chair:** I think that is a clear answer to Baroness Finn’s question. Thank you very much. We will continue with Lord Dholakia.

Q18 **Lord Dholakia:** My question is directed to Professor Guild and relates to the Dublin arrangements. First, how closely should any agreement between the UK and the EU to support the reunification of unaccompanied children with their families follow the provisions set out in the Dublin regulation? Secondly, how does the Government’s draft agreement compare with the support for unaccompanied migrant children provided for by the EU’s Dublin system?

**Professor Elspeth Guild:** As was mentioned in your previous evidence session, the draft agreement is really inferior to the Dublin regulation. As you heard from your witnesses earlier, the way in which the Dublin regulation has been developed, the appeal rights and the way in which it has been concretised into practices, with forms and systems for states to work with, has led to the speeding up of children being reunited with their family members.

This agreement has none of those elements in it and would be very difficult to implement. It does not have procedures that mirror the Dublin procedures. EU states that use the Dublin system but then get a request from the UK or which have a child with family in the UK will not be able to use the same systems. So all the benefits of Article 6 of the Dublin regulation are abandoned and, instead, we have something else which is unenforceable.

**The Chair:** I do not know whether any of my other colleagues want to pursue that line of questioning for a moment. I know that Lord Kirkhope focused on it in our earlier range of questions. Lord Rowlands, do you want to come in on this?

Q19 **Lord Rowlands:** I was set to ask the next question, but I am not sure whether we should even bother asking it, given that the draft agreement appears to have no value. However, if it did have some value, should it not include the right of an unaccompanied migrant child to sponsor their family to join them, or—this is a concern that has been expressed—if there were such a provision, might it encourage children to make perilous journeys? I wonder whether our witnesses would like to comment on that.

**Professor Elspeth Guild:** I am taking up all the space, so I would rather like one of the other witnesses to comment.

**Daniela Reale:** The UK is the only country in Europe that does not recognise the right of refugee children or children who have received humanitarian protection to

sponsor the families and join them in safety in the UK. Together with Amnesty International and the Refugee Council, Save the Children published in January a report outlining why recognising this right is absolutely the right thing to do.

In the Immigration Rules in the UK, we see that adult refugees can sponsor the partners of their children, provided that they are under 18, but child refugees are explicitly excluded from this provision. The policy guidance goes further and explicitly excludes children as eligible sponsors. Basically, children can apply for family reunion only outside the Immigration Rules and only in exceptional and compassionate circumstances. Those are very difficult and rare indeed.

In this way, what we are doing to children is basically preventing child refugees who have sought safety in the UK being joined by their parents, brothers or sisters. That is directly at odds with the best interests of the child.

You were saying that children might act as an attractor or an anchor for their parents to come here. There is absolutely no evidence to substantiate that assertion. The children we talked to in our research told us the reasons why and how they made the decision to leave their country. They told us that their journeys were made in urgent haste to escape danger, that their choices were limited and that the primary motivation was searching for safety. None of the people interviewed were aware of the family reunion policies in different countries. In that respect, it shows that that was not a primary consideration in their decision-making.

**Lord Rowlands:** I gather from previous witnesses that there is unanimity that this concern or worry that has been put up—that it would encourage people to make these journeys—is not really a significant matter or a matter that should be taken into consideration.

**The Chair:** Do you want to respond to that issue of the pull factor?

**Pinar Aksu:** I absolutely agree with what Daniela said. The most important thing to remember is that, when the children are making the journey, it is not in their mind to say, “We’re making this journey so that this will open a gate for us”. They do it out of desperation when bombs are being dropped on them and out of poverty. As a child, there is no information for them; they do not have access to the information that would let them know how to do this.

We must remember that, in normal circumstances, those are the main reasons for children making the dangerous journey. We must remember that, at the moment, thousands of children have already made the journey and been accidentally separated from their parents. This was not done on purpose but because of the journeys they took.

**Lord Rowlands:** So is it your unanimous view that we should establish the children’s right to sponsor their family to join them?

**The Chair:** I think that silence is consent.

**Pinar Aksu:** Definitely.

Q20 **Lord Anderson of Swansea:** I think that this question has already been partly covered. Are there any circumstances in which the Government would be justified in saying that there will be no family reunification, at least for the remote, non-immediate members of the family?

**Professor Elspeth Guild:** The question of family reunification is one where we must be guided by the international commitments that we have made in the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the UN Convention on the Rights of the Child. The question of how widely we need to define a family in respect of an unaccompanied refugee child for the purposes of reunification must be determined in the context of those particular obligations. If the Home Office decides in its wisdom that it wants to take an extremely restrictive approach to family reunification for unaccompanied refugee minors in the UK—that has been the position in the past; I hope that it will change in future—it must still remain within the ambit of the obligations to the international community that we have undertaken on human rights.

**Lord Anderson of Swansea:** Those obligations, bar any discretion?

**Professor Elspeth Guild:** The refugee convention permits exclusion on the basis of crimes against humanity—that is the particularly important one—and crimes against the interests and objectives of the UN. The UN convention on the elimination of torture does not permit any exception, so a child who has been recognised as being at risk of torture in their country of origin can never be sent back to that country. Therefore, the question is: in what circumstances is that child entitled to family reunification? There, the questions are about the age of the child and the conditions—all the issues that my colleague mentioned as needing to be taken into consideration.

On the Home Office's direction of travel in respect of EU nationals in the UK, there seems to be a real shift toward using criminality as a reason for excluding people. That ground is limited in EU law to a very serious crime affecting a fundamental interest of the society and posing future risk. That definition is now being abandoned by the Home Office for a much more restrictive one where, for instance, two or three convictions for drug offences may be a ground for exclusion.

**Lord Anderson of Swansea:** Reposing the question that I put to the previous panel, if there was clear evidence of collusion between traffickers and parents, with a promise by the traffickers that the parents would inevitably follow, would that not be a ground for preventing family reunion?

**Professor Elspeth Guild:** I was very interested in the discussion that you had, particularly on the example of Albania. I want to clarify a little the answers that you received in that session. The first question is: is the child at risk of persecution or torture in Albania? If the child is not at risk of persecution, torture or inhuman and

degrading treatment in Albania, there is no reason per se why the child cannot go back to Albania.

We need always to remember that when we look at these unaccompanied minors we look at them in the context of their protection needs. If they do not have a protection need in the UK, the question of family reunification does not even come up. If they do, the question of family reunification comes up. Then, the question may be: to what extent are those other family members also at risk of persecution, inhuman and degrading treatment or punishment?

**Lord Anderson of Swansea:** How remote are those family members?

**Professor Elspeth Guild:** The EU deals with the question of wider family members very fully in the context of EU nationals and their entitlement to family reunification with wider family members who are third-country nationals. Its generous and wide set of provisions have not been transposed fully into the refugee context but none the less provide a template against which the common European asylum system has to be taken into account.

The UK has no such wide and generous provisions in respect of family reunification for British citizens, refugees or unaccompanied minors in its own national legislation.

**The Chair:** Very good. Thank you. We now move on a question from the other Lord Anderson, Lord Anderson of Ipswich, who I know wants to return to a previous line of questioning.

Q21 **Lord Anderson of Ipswich:** I am afraid that this question is again for Professor Guild. It relates to the bombshell that you have now dropped twice. I hope you will forgive me or correct me if I summarise it wrongly, but I think you are saying that we have an Immigration Bill that deserves our very close attention, but the UK's negotiating document, on the other hand, deserves very little attention—it is a smokescreen—first, because the European Commission has no mandate to negotiate on it, and, secondly, because there is no prospect of it having a mandate because the political declaration has practically nothing to say on this subject.

It is on that last point that I would like to press you for clarification. I quite accept the limited scope of the political declaration in this area but, given a political will on the European side, would it not be possible for the Council of Ministers to meet and grant the Commission a negotiating mandate, irrespective of the fact that the political declaration might not have covered everything in the UK's document?

**Professor Elspeth Guild:** The answer is, of course, yes. We live in a world of politics. The EU 27 could get together tomorrow and agree to renegotiate the political declaration of October 2019 and include a whole range of stuff if it wanted to. At the moment, as I think you are thoroughly aware, Barnier's team is having a terribly difficult time in getting even the basics of the future relationship agreed. This issue must be considered by Barnier's team as peripheral to the questions of whether tomatoes will be able to go back and forth across the channel and what we are

going to do about data protection and about the extraordinarily complex and very immediate issues concerning the capacity of our economies to come out of the Covid-19 downturn.

So, yes, of course we could do this, but is it a priority? In that particular set of negotiations, if we can get something by the end of the year that will at least allow our economies to recover from the shock they have had, that will be terrific. As I have said before and as you have reiterated, this issue belongs in the Immigration Bill.

**The Chair:** Thank you. Do either of our other panellists want to comment on this exchange and the importance of it? I think they are going to pass on that one, so I will turn to Baroness Hamwee.

**Q22 Baroness Hamwee:** I want to return to Elspeth Guild. I take on board what you say about the unlikelihood of putting tomatoes on the back-burner, as it were—I did not mean to make a pun there—and focusing on this issue. I am intrigued by Article 11 of the negotiating document, which provides for a Joint Committee responsible for the implementation and application of the agreement to meet at least once a year. As I understand it, there are no procedural rules as yet. Can you tell us what you understand its role would be? Surely it cannot be a substitute for an appeal court. What would it do?

**Professor Elspeth Guild:** It is always a pleasure to respond to your questions, which are so incisive. When I read Articles 11 and 12 together, I felt a little depressed. You will recall that in 2016 there was a particularly important judgment of the Upper Tribunal in the case of ZAT that brought into existence safe passage. It interpreted Article 6 of the Dublin regulation, in combination with Article 8 of the European Convention on Human Rights, as entitling children to be joined with family members in the UK. That decision was then confirmed by the Court of Appeal.

In Article 12 there is now an attempt to unpick the case law of our own domestic courts as set out in the Dublin regulation. It is a very blatant effort to say, “Oh, we really didn’t like ZAT. That wasn’t the direction that we wanted to go in. Now we have an opportunity to get rid of it. We’ll just hide it in this international agreement and pretend that it is all good”. When our courts come back and ask what has happened to our constant case law on this issue, they can say, “Well, we’re terribly sorry but we negotiated it away”.

The sop to that is Article 11, which says, “Well, you won’t have any right of appeal. No rights will accompany this particular agreement”. This agreement, as an international agreement, will have to be implemented in national law, so it will have to go somewhere in the Immigration Rules and regulations.

One of my colleagues said to me that in his opinion, because it is an international treaty, if it ever came into existence it would have to be transposed into primary legislation. As we have an Immigration Bill almost every other year, it will not take too long to wait around for that. None the less, it would have to go into primary

legislation. Then you can say to the courts, “Well, we’re very sorry. We have to get rid of this right of appeal which you interpreted as being a necessary element of Article 6 of the Dublin regulation because we have something else here. But we have this wonderful committee over there. There’s a solution for you, so please, national courts, just wait for that committee to get going and it will resolve all the problems”.

Here, of course, I am speaking as a professor of law, but that seems to me a very sad alternative to accessing the domestic courts.

**Baroness Hamwee:** Do either of the other witnesses want to come in on this? I am afraid that I have another question for Professor Guild after that.

**The Chair:** We will in any case give the other two witnesses a chance to come in with some final comments at the end on things other than the legal issues.

**Daniela Reale:** I want to add a couple of things, particularly in the light of what Professor Guild has just said. I want to bring us back a little to the needs of children. They need to be with their families in a protective environment and they need that to happen quickly. They need full safeguards that protect them, and for that it is absolutely key that a system is established that builds on the strengths of the Dublin regulation and improves on its shortcomings. The alternative is terrible for stranded children who want to unify with their families, and rightly so.

Q23 **Baroness Hamwee:** I want to ask Professor Guild another question. This morning, we have been talking about the possibility of the UK entering into arrangements bilaterally with other states. Can we enter into arrangements with other EU states if they are part of Dublin? Can we become part of Dublin if we leave the EU without a deal on this area? Are there macro problems, and indeed are there problems with the other arrangements—for instance, Eurodac? If we do not join up to that, will we find ourselves excluded from any sort of workable arrangements?

**Professor Elspeth Guild:** You have asked a question that we have been throwing around a bit with colleagues: whether the UK could either revive its participation in the Dublin convention of 1990, or rejoin that convention, which of course does not include the developments of the legislation subsequently.

Of course, third countries can join the Dublin convention, and a number of them have. For instance, Denmark has a total opt-out; it cannot opt into anything in justice and home affairs, so it is not part of the common European asylum system, but it is associated by means of the Dublin convention.

Of course, the non-EU states—the Nordic EFTA states—are parties to the Dublin convention. The last time we discussed this we got bogged down in an awful lot of detail about legal positions here and there, how it could happen, who has denounced what, what has denounced whom and what we could take forward, but at least we all agreed that it is not impossible for a third country like the UK now to join the Dublin convention.

**Baroness Hamwee:** If you get to a point where more than that can be put down on paper, we would be interested to see it.

Q24 **Baroness Primarolo:** This session has taken a slightly different turn in that the balance between the best interests of the children has to be enshrined in legal rights. In Professor Guild's contributions, she is flagging up a clear route for us. I have a couple of questions about the consequences of not having those clear legal rights. As I understand what Professor Guild is saying, we are currently under an EU umbrella that conveys a network of obligations, reinforced internationally. When we leave the EU at the end of the December, that goes. The Commission has the competency in this area, so there is no question of negotiating individually with member states, and the political agreement—the framework—does not cover this issue anyway. Getting the European Council to agree to put it in before we leave at the end of December is unlikely.

The first question is therefore: what is necessary for the continuation of enshrining those legal rights for unaccompanied children? I think the answer you are giving us, which I would like you to confirm very clearly as we draw to a conclusion, is that first we have to look to the Immigration Bill, our own legislation, and just do it: put the necessary legal rights there. Secondly, we have to back it up. I think you talked about endorsing the UN protocol that has been opened up and put on the table—signing up to that to reinforce those legal rights. Is that a correct summary of your position?

**Professor Elspeth Guild:** Yes.

**Baroness Primarolo:** That is very helpful, thank you. I now turn to the other witnesses in this really important session in which we have covered so much of what is important to the safety of children. It is a difficult question, because you have described very challenging circumstances—that is putting it politely—for children now. If the UK fails to take these steps now, what will be the consequences or the impact on unaccompanied migrant children when the UK leaves the umbrella of the European legislation at the end of this year?

**Daniela Reale:** Our conversation today has outlined that clearly. Some clear guarantees are provided by the Dublin regulation to children, in particular unaccompanied children, in whose best interests it is to unify with a family from the UK. Depriving children of that right would basically leave them without the support and protection of their family at a moment and in a situation where they need their family most, having left the trauma and the experiences they have gone through. Our programmes and colleagues always tell us what children tell them about what they have faced through their terrible journey. I reiterate our recommendation: we need to have a system in place that really responds to the best interests of these children and their right to be reunited with their family.

I will very quickly give you a quote from a child we have spoken to that will give a little context to why we are all doing this and why this is a key issue for the negotiations. A 17-year-old child from Sudan told us this: "Family is everything, an

absolutely magnificent thing. When you say family, it is simple, it is everything. Family is life. They give you inspiration and everything to move forward with this life ... I haven't seen my family for nearly three years now. It is a long time and I miss my mum. I cannot explain what this feels like. A mum is, she gives me life ... She is like my beating heart. Being without your family, it is like you have a body without a soul".

**Baroness Primarolo:** Thank you. That is very harrowing. We are clearly being told: ignore the smokescreen of Brexit negotiations and get on and deliver the rights to these children in our own legislation.

**Pinar Aksu:** I will add a few extra words to summarise. We must remember that the more we neglect this, the more children we will get, whether from exploitation or stigma. The majority of minors stay invisible, not registered, and out of the system. Lack of shelters and what has gone on in detention centres are some of the inhumane treatments faced by the children. This is basically about having a dignified life. Everyone must remember the human cost of the policies and their impact on the children.

What is needed most and needed now is action to change and create a better route and safety for unaccompanied children. Remember that at the moment more than 10,000 children are missing in the EU. We must not forget that these are children with stories. They have seen their homes destroyed and loved ones tortured or killed. They have made terrifying journeys to reach safety. They are children with dreams and hopes. These children, who have names and stories, deserve a better and safer future. They should not suffer any longer or carry on their shoulders the pain caused by Governments who create the platform for suffering, be separated or become stateless. The UK and all EU members have a role in creating a safe legal route to bring the children.

Like Daniela, I will finish by reading a quote sent to me by a friend in Greece who works with a charity to provide safety for children. A 15-year-old said the following when they were informed of being transferred to safety: "I am so happy I will fly. Maybe, I will be able to touch the sky".

**The Chair:** Thank you very much indeed. Those were moving and powerful words from you both. We have really appreciated your honesty and clarity on this important set of issues, so a warm thanks on behalf of the whole Committee. We take very seriously what you said and will now think how we can best follow it up, including with the Immigration Bill. We will send you a transcript of this session so that you can correct it before it is made public. Once again, I thank all the witnesses in both sessions, who have been very enlightening and moving. Thank you all. I close the session.