

**Written evidence from Unaccompanied Migrant Children's Court Steering Group  
(COV0187)**

**I am Catriona Jarvis chair of the Unaccompanied Migrant Children's Court Steering Group. We call for two urgent policy changes on behalf of unaccompanied and separated migrant children. Brief detail about us and our work is below.**

**Our concerns today are about the adverse effects of Covid-19 on the rights of these vulnerable children, including failure to respect the right to health and all that flows from that. We are calling for two immediate changes to mitigate the extraordinary adverse effects of the pandemic upon this group in circumstances where protection from prohibited risks is difficult to provide within the UK, let alone in countries of origin, even assuming that any child whose case had been rejected could be safely returned during this period and into the foreseeable future.**

### **1. Grant Indefinite Leave**

Addressing the requirement to respect the rights of unaccompanied and separated migrant children, including under the 1989 UN Convention on the Rights of the Child, the Steering Group now calls for all unaccompanied and separated migrant children to be granted indefinite leave to enter or remain in the UK forthwith. As you may know, at best, where such a child is recognized as a refugee, they are granted a limited residence permit for only five years. Other such children are granted different temporary forms of leave, usually discretionary, until the age of seventeen and a half years, when they are obliged to lodge a fresh application and once again try to make good their case. During the year to March 2020, 4940 children were granted some form of temporary leave. Further, there are delays in dealing with claims, which delays have been exacerbated by the pandemic so that there has already been a drop in the number of decisions made by the Home Office as well as a drop in the numbers of applications themselves. Asylum interviews and face to face hearings are 'paused' for an unknown period. The circumstances of this group of children and young people are immensely fragile and in their best interests they require this degree of certainty of legal status. To grant indefinite leave to all such children who have made or will make an application for leave to enter or remain in the UK, for example on or after 11 March 2020 (date of declaration of the pandemic by WHO) until the time when the pandemic is declared at an end by WHO (or other appropriate date); would also enable the Home Office and the courts to reduce use of public funds. In the life of a child, time is of the essence.

### **2. End Unsafe Travel Requirements and Home Office Practices**

End, forthwith, the requirement for unaccompanied and separated migrant children to attend Home Office premises in person in order to make an application to enter or remain or to provide biometric information, until such time as the level of risk to health shall have decreased so that it is probably safe to resume.

## **Why is there a need for a court for unaccompanied and separated migrant children?**

Statutory guidance from the Department for Education to local authorities recognizes that:

“Unaccompanied migrant children and child victims of modern slavery, including trafficking, can be some of the most vulnerable children in the country. Unaccompanied children are alone, in an unfamiliar country and may be surrounded by people unable to speak their first language. Modern slavery includes human trafficking, slavery, servitude and forced or compulsory labour. Exploitation takes a number of forms, including sexual exploitation, forced labour, forced criminality, begging, organ harvesting and domestic servitude and victims may come from all walks of life...Because of the circumstances they have faced, unaccompanied migrant children and child victims of modern slavery, including trafficking, often have complex needs in addition to those faced by looked after children more generally”. (DfE/Home Office, November 2017).

The UK has signed and ratified the 1989 United Nations Convention on the Rights of the Child and although this has not been incorporated into the law of the UK, the decision of the Supreme Court in the case of *ZH (Tanzania)* [2011] UKSC 4, has established that Article 3 of the Convention is a binding obligation of international law. This requires that in all actions concerning children, including those taken by local authorities, courts or administrative or legislative bodies, the best interests of the child shall be a primary consideration. In addition, section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Secretary of State to ensure that any action carried out in relation to immigration, asylum or nationality must be discharged having regard to the need to safeguard and promote the welfare of the children.

A thematic report on unaccompanied children prepared for the Association of Directors of Children’s Services (ADCS) noted concerns expressed by respondent local authorities about delays in decision making on immigration issues, often of up to two to three years, having a negative impact on young people. The negative impact of the process increases as the young person becomes older and approaches the time for leaving care and ceasing to be a child. It can contribute to young people going missing. The report also notes concern about the difficulties young people have accessing solicitors and counsel (ADCS 2016). Similar concerns about lack of legal aid and about insufficient attention to the best interests of the child were raised in a report in 2016 from the European Union Committee of the House of Lords (House of Lords 2016).

## **How will a specialist court help?**

There remains concern among many working with unaccompanied and separated children that despite considerable discussion over a number of years and the issuing of guidance to improve practice, process and decision making in relation to unaccompanied and separated children, the system or systems are still not working well. In particular, and as indicated in previous reports, there is concern that all too often when issues concerning unaccompanied and separated migrant children are being considered, the best interests of the child are not a primary consideration and insufficient attention is paid to the duty to safeguard and promote welfare. Instead the focus is on the child's immigration status. There is concern that the situation whereby asylum decisions are effectively delayed until the child reaches adulthood, through the granting of a special leave to remain until the age of 17 and a half, means that the duty to consider the best interests of the child is not being applied at a sufficiently early stage.

On occasion, unaccompanied children and separated children may be in dispute with the local authority providing care for them, most commonly these disputes arise when the local authority assesses the child as being older than they claim, which will affect the type of placement the child is offered (foster care or semi-independent living), or assesses the child as having already reached the age of 18.

When a child does challenge a decision of the Home Office, for example, in relation to their application for asylum or when they wish to challenge a local authority assessment of their age, these vulnerable and traumatised children have to establish the right to be treated as a child or to be granted the right to remain here into their adulthood within an adversarial system which places the child in conflict with the State.

The Youth Justice System, including specialist Youth Courts, was set up in 1998 in recognition of the need to treat children who offend differently to adult offenders. In private law family proceedings, independent Cafcass Family Court advisers are appointed to help ensure that the welfare of the child is protected, and procedural rules and guidance encourage information sharing and attempts to reach agreement in recognition that the adversarial process is, usually, unhelpful in matters concerning children. In public law family proceedings - in which the State is intervening in family life - children are automatic parties (with automatic entitlement to legal aid) and are represented by their own specialist solicitor and a children's guardian, both appointed by the court. However, within the immigration and asylum system there is no separate legal or judicial process for children.

## **What Does the Steering Group Propose?**

The Steering Group has developed an outline proposal for a specialist, inclusive jurisdiction, a 'one stop shop,' perhaps through the inherent jurisdiction of the High Court, acting in a supervisory capacity (mindful of cost and the scarcity of high court judges) and the intention is to test out this proposal with stakeholders.

We are working with Lord Justice McFarlane, successor to Sir James Munby, with the aim of maintaining the momentum that has now begun to build.

The Covid-19 pandemic has created a hiatus, but we will plot our course with care, as best we can, aiming to establish a court, or specialist jurisdiction, for unaccompanied and separated migrant children, always keeping in mind the long-term goal of a specialist court for all children, always keeping the discussion alive.

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Chair UMCCSG

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