



**Office of the Children's Commissioner's
submission to the JCHR inquiry:**

**An inquiry into the human rights of
unaccompanied migrant children and young
people in the UK, with a particular focus on
those who are seeking asylum or have been
the victims of trafficking**

October 2012

Office of the Children's Commissioner

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

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

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

The Office of the Children's Commissioner has a statutory duty to highlight where we believe vulnerable children are not being treated appropriately in accordance with duties established under international and domestic legislation.

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The United Nations Convention on the Rights of the Child

The UK Government ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1991.¹ This is the most widely ratified international human rights treaty, setting out what all children and young people need to be happy and healthy. While the Convention is not incorporated into national law, it still has the status of a binding international treaty. By agreeing to the UNCRC the Government has committed itself to promoting and protecting children's rights by all means available to it.

The legislation governing the operation of the Office of the Children's Commissioner requires us to have regard to the Convention in all our activities. Following an independent review of our office in 2010 we are working to promote and protect children's rights in the spirit of the recommendations made in the Dunford report and accepted by the Secretary of State.

This response has been drafted with the UNCRC in mind and references a number of its articles. We do not propose to respond separately to every consultation question. Rather, we will respond where we feel the UNCRC gives us a locus to do so, and where our existing evidence base gives us a perspective. Throughout, we use the same section headings as in the consultation document.

¹ You can view the full text of the United Nations Convention on the Rights of the Child on the Office of the United Nations High Commissioner for Human Rights website at: <http://www2.ohchr.org/english/law/crc.htm>. A summary version, produced by UNICEF, is available at: http://www.unicef.org/crc/files/Rights_overview.pdf

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An inquiry into the human rights of unaccompanied [1] migrant children and young people in the UK, with a particular focus on those who are seeking asylum or have been the victims of trafficking.

Is the treatment of unaccompanied migrant children and young people in the UK consistent with the UK's obligations under the UN Convention on the Rights of the Child?

The UK's obligations as a State Party to the United Nations Convention on the rights of the Child (UNCRC) ('The Convention') apply to every child within the State's territory and to all children subject to its jurisdiction. The Convention applies without discrimination – including that based on 'other status' (Article 2). We would expect all the Convention's rights to be applied proactively by agents of the State Party to unaccompanied migrant children and young people, irrespective of their status as persons subject to immigration control.

Although the UK Government has withdrawn its reservation to Article 22 of the Convention² and Section 55 of the Borders, Citizenship & Immigration Act 2009 places a duty on the UK Border Agency and its private contractors to safeguard children and promote their welfare, we consider the Government has a considerable distance still to travel to make good a claim that it is meeting in full its UN Convention obligations to unaccompanied migrant children and young people.

We provide below some brief examples of where we consider the Government remains non-compliant. Some examples will be elaborated on in answers to questions in subsequent sections of this submission to the Committee.

Article 1 of the UNCRC defines a child as every human being below the age of 18. Many unaccompanied migrant children arrive in the UK without documentation to prove their age, to have their claimed age disputed by either immigration officials or staff from the Local Authority which would otherwise be responsible for their care. The current arrangements for establishing age are inadequate. They have resulted in children – the exact number of whom are unknown – being treated as adults, and deprived of the rights that would apply under the Convention had they been correctly identified as a child.

Many examples could be presented to demonstrate that the best interests of unaccompanied migrant children are not yet a primary consideration in all the actions of

² Article 22 requires that if a child is a refugee or seeking refuge Governments must ensure they have the same rights as any other child. The reservation to Article 22 was withdrawn by the UK Government in November 2009.

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administrative authorities as required by Article 3³ of the Convention, despite the legal obligation on relevant bodies to safeguard children and promote their welfare under both s.11 of the Children Act 2004 and s.55 of the Borders, Citizenship & Immigration Act 2009.

Clear examples were found during the Office of the Children's Commissioner's investigation into arrangements at the Port of Dover in 2011. We established that unaccompanied children making an asylum claim were put through lengthy screening interviews without the opportunity to consult a legal representative or be accompanied by an appropriate adult. These interviews often took place when they had already complained of being unwell or exhausted. Only after the interviews were completed were these young people released from detention into the care of the Local Authority. Our investigation showed that answers children provided at these screening interviews were used to damage their credibility in assessing their asylum claims.

Unaccompanied children not claiming asylum – in particular children from Vietnam- who are known by police and border officials to be trafficked to the UK to work in Cannabis factories and nail bars – were refused entry to the territory on landing in Dover. Between 1995 and 2011 when we brought this practice to the attention of UKBA these children could be immediately returned to France under the 'Gentleman's Agreement' without any best interests determination being undertaken to consider their situations. Although the agreement is no longer used in respect of arrivals that are accepted as children, we remain concerned at its possible use where an immigration officer disputes a young person's age. The Government has to date refused to accept that it should no longer be used in these circumstances. A copy of our report, 'Landing in Dover' can be accessed through the hyperlink in the footnote below⁴. Correspondence between the (then) Immigration Minister and the Children's Commissioner is attached at Annex 1.

Under UNCRC Article 6(2) State Parties must ensure, to the maximum extent possible, the survival and development of the child, including protection from violence and exploitation. Notwithstanding this requirement, to date it is clear that the UKBA continues to plan for the return of 16 and 17 year old Afghan children to institutional care in Kabul in spite of well-documented risks to such children in that city.

Article 10 (1) of the Convention requires States to consider applications by a child or his or her parents to enter or leave the State Party for the purposes of family reunification in a 'positive, humane and expeditious manner'. The Immigration Rules allow for limited leave to enter and remain for spouses, civil partners, and children of those granted Refugee Status, but do not provide for leave to enter or remain for the parents or siblings of a separated or unaccompanied child who has been granted Refugee status.

³ Article 3 requires that the best interests of the child must be a primary consideration in all decisions and actions concerning them.

⁴ http://www.childrenscommissioner.gov.uk/content/publications/content_556

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The right of an unaccompanied child to express his or her views freely under UNCRC Article 12⁵ is constrained by a number of factors, not least the complexity of the immigration and care systems in which children and adults alike must operate. In many instances we find a 'tick box' approach to providing relevant information to the child concerned. For the child fully to understand these processes and navigate the systems they encounter they need a guardian to help them. The Scottish Guardianship project, currently being evaluated, has produced encouraging initial results. The UK Government continues to resist Guardianship for separated children whose lone status relates to their arrival as unaccompanied asylum seekers or children trafficked for exploitation. A guardianship scheme would greatly assist these children to exercise their UNCRC Article 12 rights.

Interpreters used by UKBA, Local Authorities and the courts to assist children do not appear to have any specific training on how to interpret for children. Telephone interpreting is used too often. The dialect of the interpreter is frequently not sufficiently matched to that of the child. Children frequently complain that interpreters appear inaccurately to interpret what they are saying, that they only partially understand the interpreter, and the interpreter them. For example: the dialect of Pushto spoken in Pakistan is different from Pushto in Afghanistan. Nonetheless, Pakistani Pushto speakers are regularly used to interpret for Afghan children. Iranian Farsi interpreters are all too regularly used to interpret for Afghan children who speak not Farsi, but Dari.

As interpreters work on a sessional basis, they have a built in incentive to tell the authority for which they are interpreting that the client understands them. To question this would lead to the termination of the interview for which they would then only be partly paid. This may also have consequences for their future employment. There has been no research into interpretation services for separated migrant children, or how this complex picture impacts on children's ability to exercise their UNCRC Article 12 rights. The information we hold arises from children we have interviewed, meeting them when they are already in the asylum and immigration system. We can safely say that this issue has been notable in how frequently it arises in that dialogue.

The Government considers, in our view wrongly, that the current arrangements for safeguarding children who may have been trafficked is sufficient. We do not agree. There is considerable evidence that high risk groups – for example Nigerian females and Vietnamese children, often boys - routinely continue to go missing from care and, we must assume, fall into the hands of traffickers. This pattern of "missing" and presumed trafficked children directly relates to the State Parties' duty under Article 19⁶.

⁵ Article 12 requires State Parties to assure that the child capable of forming their views, the right to express those views freely in all matters affecting them, those views being given due weight in accordance with their age and maturity. This applies in particular to judicial or administrative proceedings.

⁶ Article 19 requires State Parties to take all appropriate legislative, administrative, social and educational

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We append at Annex 2 to this submission some information collected by this Office in 2011 concerning Vietnamese children going missing in 2010 from the care of Kent County Council. The numbers speak for themselves and clearly are of concern to the Council, its LSCB, and this Office. The appointment of a Guardian for these children – in line with Article 20 (1)⁷ - could assist in reducing the rates at which high risk groups such as these children go missing as would specialist foster care placements with highly trained and skilled carers. Both options would serve to keep such children safe, and given residential care is an expensive option, save public money, given even specialist foster care is less so.

Art 22 (1) requires that the State Party takes appropriate measures to ensure a child considered a refugee receives appropriate assistance in the enjoyment of all the Convention rights, among which is the right to family life with their parents. However the reunion of a separated child found to be a refugee with their parents, through the parents travelling to settle in the UK is not allowed under UK Immigration Rules. The presumption is that families might begin to send their children to the UK in the hope that they could follow. We consider the evidence supporting this presumption to be sparse.

The rights of unaccompanied and separated children to fully access education are, as they are for children who are citizens, contained in Articles 28, 29(1) (c), 30 and 32 of the Convention. These children are entitled to access education during all phases of the displacement cycle, without discrimination. There are a number of ways in which unaccompanied children are denied these rights. In the first instance many children who on arrival claim to be aged 13, 14 or 15, are assessed as over 16 and denied statutory schooling. Over-16s are frequently directed to minimal 'English for Speakers of Other Languages' courses in FE colleges and often denied places on vocational courses at the same colleges because 'their English is not good enough' to access the curriculum. Language support should be made more consistently available for 16-18 year olds pursuing vocational courses in Further Education to enable them to participate. The rise in the participation age to 18 for all children studying in England, due in 2013, should lead to further consideration of how best the system can meet the needs of asylum seeking children aged 16-18.

It is at present virtually impossible for an unaccompanied migrant child to access Higher Education, even if they have demonstrated the academic ability to qualify. This is due to changes made by the Education (Student Fees, Awards and Support) (Amendment) Regulations 2011 which now exclude those with Discretionary Leave⁸ from eligibility for

measures to protect the child from all forms of violence, injury, abuse, neglect or exploitation while in the care of anyone who has the duty of care to the child.

⁷ Article 20 (1) requires that a child deprived of his or her family environment shall be entitled to special protection and assistance from the State.

⁸ Around 70% of all unaccompanied children seeking asylum are granted Discretionary Leave.

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any degree of statutory student support. 2012 was the first year that these new regulations took effect. The Office of the Children's Commissioner has received communications from several Local Authorities supporting unaccompanied children, asking what they should do, given their own statutory duties under leaving care legislation.

Article 27 of the UN Convention requires States to ensure all children have a standard of living adequate for their physical, mental, spiritual and moral development. In particular Article 27(2) requires states to provide material assistance and support to those who need it, particularly for nutrition, clothing and housing. Local Authorities provide different levels of support to unaccompanied children. Many of them become aware of this and do not understand why they are being treated less well than, or differently from, others living elsewhere. The self-advocacy group for refugee and asylum seeking children, Brighter Futures, has undertaken some work on this issue.⁹

The most serious denial of this Convention right applies to age-disputed children. There are cases where in asylum appeals an Immigration Judge has made a finding of fact that the appellant is a child. This decision binds the UKBA, but not the Local Authority, which is entitled to disagree and maintain that the person is an adult for whom they have no responsibility. In such circumstances the UKBA does not have a power to house a lone child seeking asylum under asylum support provisions, thus rendering the young person homeless until the authorities can come to some accommodation between themselves. Although a protocol exists between the UKBA and the Association of Directors of Children's Services (ADCS) to resolve such situations, it has no statutory force. The High Court, or the Upper Tribunal exercising its judicial review function, can now issue a decision on the age of an appellant that will bind all parties. However, not all children disputing a Local Authority age assessment will have access to the Court due to the 'permission filter' that operates for judicial review.

The vulnerabilities of unaccompanied children due to their separation from or loss of family and the trauma, violence and disruption many have experienced both before and after they reach the UK, are not routinely recognised when a state implements the UNCRC's right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health under Article 24. There is a further obligation under Article 39 to provide rehabilitation to children who have suffered abuse, neglect, exploitation, torture or cruel, inhuman or degrading treatment. There is a lack of appropriate mental health services for the children concerned, often leading to lengthy waits to access those services which are available.

Little co-ordinated work has been done nationally to ensure, in accordance with Article 33 of the Convention, that appropriate measures are in place prevent unaccompanied

⁹, *Flowers that grow from Concrete – the views of young asylum seekers & refugees living in London*. (2011), Brighter Futures

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children from involvement in the illicit production of drugs, in particular cannabis. There is now guidance from the Crown Prosecution Service regarding the prosecution of children – mainly from Vietnam – who are found acting as ‘gardeners’ in cannabis factories operated by organised criminal gangs. This guidance seeks to ensure they are treated as victims of trafficking¹⁰. However some continue to be arrested as perpetrators, and are subsequently imprisoned. A case was recently referred to us of a child serving a sentence for a cannabis production offence and who has been given a decision recognising him as a victim of trafficking under the National Referral Mechanism (NRM,). During his reflection period he was served with a notice of intention to deport him. Further enquiries with the UKBA have shown this is standard practice in dealing with children convicted of such offences. It is difficult to see how such measures are compliant with the State’s duty under Article 39 of the UN Convention.

Although the UKBA has a policy not to detain unaccompanied children except in exceptional circumstances – broadly in line with the requirements of Article 37 (b) of the UN Convention- its age dispute policy means some children are still placed in adult immigration detention centres. The Refugee Council recently published information on the known extent of this practice in their report ‘Not a Minor Offence’¹¹.

Our 2011 enquiries at the Port of Dover – the main entry point for unaccompanied children arriving overland from Europe – showed that these children were routinely detained for up to 24 hours before social care services were informed of their presence at the port. The main purpose of detaining them appears to have been so that they could be interviewed. We have had Ministerial assurance that the practice of conducting asylum screening interviews on children at ports of entry under detention conditions has ceased since we highlighted the issue¹². This is a welcome development, but we have not yet seen a published instruction to staff at the port to this effect.

To what extent is the statutory duty in section 55 of the Borders, Citizenship and Immigration Act 2009, and its accompanying guidance, proving effective in ensuring that in practice public bodies have regard to the need to safeguard and promote the welfare of children?

Section 55 only applies to the UKBA and its contractors, not to any other public bodies. There is, however, a similarly worded duty on other public bodies under section 11 of the Children Act 2004.

The statutory guidance that accompanies the s55 duty on the UKBA sets out the

¹⁰ *Policy for Prosecuting Cases of Human Trafficking*, (May 2011), Crown Prosecution Service, Pages 21-25.

¹¹ Dennis. J, (2012), *Not a Minor Offence*, Refugee Council.

¹² See Annex 1, letter from Damian Green MP to Dr Maggie Atkinson.

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Agency's commitment and accountability to promote the duty, providing advice on its application. The guidance provides for a senior member of staff called 'the Children's Champion' to be appointed, to be directly accountable to the UKBA's Chief Executive¹³.

It is not known how effective the Office of Children's Champion has been in ensuring the Agency complies with its duty, as it has either not yet been evaluated, or if it has the evaluation has not yet been made public. Until recently it was impossible for a member of the public to find reference to the Office of the Children's Champion on the UKBA website or find out how to make contact. Our understanding – we meet the Office's staff on a regular basis – is that the main focus of their work has been on migrant children within families – in particular overseeing the implementation of the national policy to end the detention of children for immigration purposes. They appear to be consulted by UKBA's Criminal Casework Directorate for advice on the deportation of family groups. A significant number of cases reaching the courts make mention of their role. We are not aware that there has been much work promoting the duty in relation to unaccompanied children, although we acknowledge that the office has only a small team and a high workload.

The findings from our work at Dover suggest the Local Immigration Team had not yet thought through the implications of their duty under s55. They appeared not to have been advised on whether their practices were compliant with the duty. Given the centrality of the UKBA's Children's Champion in promoting the s55 duty and ensuring compliance with it, we would like to see an evaluation of its role, alongside an evaluation of the role of the designated staff with special responsibility for children in the UKBA regions.

Should one department in Government have overall responsibility for unaccompanied migrant children and young people in order to ensure that their rights are best promoted and protected? If so, which one?

The department with overall responsibility for children's policy is the Department for Education. The current arrangements whereby UKBA has the main responsibility for unaccompanied migrant children is unusual, in as much as they appear to be one of the few groups of children who do not directly come under the DfE remit.

This is also an example of there being children who are, effectively, in the criminal justice system whether or not they have committed a crime. The problem with this is that the unaccompanied child's immigration status appears to take precedence over their status as a child. This causes a tension both in how they are then treated, and in the ability of the State Party to ensure it is compliant with its obligations under the UN Convention.

¹³ *Every Child Matters – Change for Children*, (November 2009) Home Office UKBA & Department for Children, Schools and Families , Paragraph 2.9

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Are Government departments and their agencies satisfactorily 'joined-up' in how they protect and support unaccompanied migrant children and young people?

Whilst some legislative measures present difficulties in applying children's legislation in full to children subject to immigration control (see below), on the whole there is joint working between the UKBA as part of the Home Office and other departments responsible for children. The problem is less that the agencies are 'not joined up,' than that almost invariably UKBA/Home Office determines the outcomes for these children. For example:

The Children Act 1989 requires that Local Authorities are responsible for accommodating unaccompanied children (under section 20 of the Act) presenting as 'in need' in their area. The routes by which unaccompanied children arrive mean the burden of care falls disproportionately on some local authorities. All Local Authorities receive a 'per capita' grant for the care of unaccompanied children, being the amount set by the UK Border Agency. Many Local Authorities would say the grant does not cover the real costs concerned. This has an effect on their ability fully comply to with their duties under both domestic legislation and the UNCRC. When an asylum seeker who has been a looked after child leaves care the UKBA grant to the Local Authority reduces substantially. Affected Local Authorities consider they are caught between having to fulfil legal duties under leaving care legislation, and having insufficient funding to do so.

In other areas where Local Authorities interact with the UKBA there is often a sense that the Agency is telling the Local Authority what to do. Some social workers consider there is a lack of regard for their professional standards, ethics and obligations. It has for example recently been suggested that social workers should 'fill in the gap' to be left when legal aid is withdrawn from non-asylum immigration cases in early 2013, effectively providing immigration advice to unaccompanied children. Understandably social workers are not keen to undertake this work, which though it is described as 'form filling,' actually entails working through complex legal arguments around ECHR Article 8 rights to private life.

Will the proposed reforms to the Office of the Children's Commissioner for England benefit unaccompanied migrant children and young people or is there more that could be done to ensure that the institutional machinery protects this particular vulnerable group?

The draft legislation concerning the reform of the Office of the Children's Commissioner was published in July 2012.¹⁴ The legislation will be enacted by making changes to Part 1 of the Children Act 2004 under which the Office of the Children's Commissioner was

¹⁴ Cm 8390 , July 2012

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established.

We welcome the proposed changes, believing the legislation will enable OCC to have a sharper focus on children's rights, in addition to the general function under the current remit to promote awareness of children's views and interests.

Several aspects of the proposed legislation will assist us in our work on children subject to immigration control. Given that the Office of the Children's Rights Director's (OCD) functions will become part of the OCC, we will be able to assist and advise children who live away from home or are receiving social care. This will include unaccompanied children in the care of any Local Authority. We will also be able to make representations on behalf of individual migrant children, by dint of their holding the same status.

Our current powers of entry to premises to conduct interviews are strengthened. In addition to the current power to interview a child in private there will now be a specific power to enter premises "for the purpose of observing the standard of care provided to children accommodated or otherwise cared for there" and where we do so, "interview any person present on the premises who works there"¹⁵ (including those working under contract).

A more explicit and robust statement of our primary function under Part 1, section 2 of the Act will assist in clarifying what persons exercising functions in relation to children are required to provide to us under section 2F. It also clarifies that we are able to require information from the other UK administrations, a power we would be most likely to use in respect of non-devolved matters relating to children subject to immigration control.

Although we have not yet used our power of inquiry in relation to a child subject to immigration control, we welcome it in respect of our increased independence, given under the reforms proposed we will no longer have to consult the Secretary of State before doing so.

Is there sufficient awareness and relevant training on children's rights and the UNCRC for those in government, central and local, and other bodies, public or otherwise, who deal with separated migrant children and young people?

We do not have a great deal of evidence on the extent to which UKBA trains its staff on children's rights and the UNCRC, or the extent to which social work or other specialists' training deals with the Convention.

To ensure children can enjoy their rights under the Convention, State Parties must

¹⁵ *ibid*

appreciate what the rights mean in practice and how they impact on their functions. In respect of the treatment of unaccompanied and separated children outside their country of origin, the Committee on the Rights of the Child has produced *General Comment No.6* (GC) which provides States with guidance on their protection, care and proper treatment. This GC is not referenced in any UKBA guidance or policy that we have seen. We are unaware that Local Authority staff use the GC to assist with provision of services.

The Independent Chief Inspector of the Border Agency has produced inspection criteria for his work¹⁶. We are pleased to note that one reads: “functions should be carried out having regard to the need to safeguard and promote the welfare of children. The purpose of having this criterion was to place an expectation on the UK Border Agency that it complies with the law and considers safeguarding and welfare of children throughout its work. In addition, to assess how far the UK Border Agency is proactive in its approach to promoting welfare.” The Chief Inspector references the UNCRC as one of benchmarks against which UKBA’s performance should be delivered. It is therefore vitally important that the Inspectorate themselves are fully aware of the Convention’s provisions. We do not know whether the Chief Inspector’s staff have been trained on the UNCRC. This is particularly important in light of their forthcoming thematic inspection to look at the treatment of unaccompanied children arriving in the UK.

How are unaccompanied migrant children’s best interests being considered and upheld in immigration decisions made about the leave to remain or enter?

It is primarily for the UK Border Agency to provide evidence to the Committee on this question along with those organisations who have first hand knowledge of how a child’s best interests are considered. There is formal recognition by the UKBA that the best interests of the child will be a primary consideration when making decisions affecting them¹⁷. The OCC would only normally receive information about individual immigration decisions either anecdotally or second hand, when there was a contention that the best interests of the child were not a primary consideration. For example we have in the past been involved in bringing to the Agency’s attention a third country removal to Italy where the subject was accepted as a child and placed in foster care in the UK, but it was known that the Italian authorities would treat him as an adult on his return. The UKBA did not exercise its discretion to consider the application in the UK. The High Court eventually ordered that the child be brought back from Italy.

In the wider policy context it appears to be understood by the Agency that where the asylum claim does not reach the threshold for a grant of refugee status or humanitarian

¹⁶ Independent Chief Inspector of the UK Border Agency (March 2011) *Inspection Criteria*

¹⁷ See e.g. Home Office UKBA & Department for Children, Schools and Families (November 2009) *Every Child Matters – Change for Children*, and the asylum process guidance *Processing asylum applications from children*.

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protection, a grant of Discretionary Leave until the age of 17.5, discharges its obligation to act in accordance with the best interest of the child. However, Discretionary Leave is not a 'durable solution' for these children, and does not enable them to plan for their futures. It also leaves Local Authorities in a difficult position in both care and pathway planning for children leaving care.

Is the current decision-making process on children's asylum claims satisfactory and does it represent the finding of a 'durable solution' for each child in the UK, in accordance with the recommendations of the UN Committee on the Rights of the Child?

The Committee on the Rights of the Child considers family reunification and other forms of durable solution in Part VII of General Comment No 6. Durable solutions refer to a solution to the child's situation that address all their protection needs, takes their view and account and where possible leads to overcoming the situation of being separated or unaccompanied. The Committee emphasises family tracing as an essential component in the search for a durable solution, whilst recognising the practical difficulties and risks involved.

Family reunification in the country of origin is sometimes held up by the UKBA as a 'holy grail' of durable solutions. Current plans to look into returning children to Pakistan, Bangladesh and Vietnam focus on this, as distinct from the plan to remove 16 & 17 year olds to institutional care in Kabul. However, as the Committee notes, family reunification in the country of origin should only take place where there is no reasonable risk that a return would lead to a violation of the fundamental rights of the child. It is not simply a question identifying the child's family and returning them without a full assessment of risk. Other than returning the child to his or her country of origin, which must take into account the availability of care arrangements, the views of the child, the level of integration in the host country and the safety, security and other conditions in the country of return – including socio-economic conditions, the remaining durable solutions are 'local integration', inter-country adoption or resettlement in a third country. As the UK is a destination country the last option is not normally appropriate. Inter-country adoption is rare and restricted to cases where the child is able to join an extended family. This leaves local integration as the primary option. Whilst the UKBA continues to consider cases largely in the context of refugee protection, many children with other protection needs are unable to find a durable solution through local integration in the UK. It is important to recognise that different children may wish for, and should have available, different routes into local integration. Some will want to be recognised and accepted as a refugee and this may be an important part of their identity, while others, also deserving of protection, would not voluntarily want to go down this route to remaining and should have available subsidiary forms of protection to allow them to settle.

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Are unaccompanied children able to access the legal advice and representation necessary to ensure that they are able to have their voice heard in any judicial and administrative proceedings affecting them, and that their rights are upheld, in accordance with international standards?

The biggest threat to this access comes from the changes to legal aid due to come into effect in April 2013. This is likely to have a particular impact on unaccompanied children granted Discretionary Leave and where the asylum claim has failed. Where an application is made to extend Discretionary Leave on grounds other than asylum – for example on ECHR Article 8 grounds, legal aid will no longer be available. Attached to this submission is our response to the consultation by the Ministry of Justice on legal aid reform, where we devote attention to the impact of taking immigration advice out of scope of legal aid for children subject to immigration control but who are not seeking asylum. Most of our concerns in this area have not been and seem unlikely to be addressed.

Are all unaccompanied migrant children made aware of the existence of a system for appealing against immigration and asylum decisions, and is this appeal system satisfactory?

There is a difficulty with appeals from a significant group of unaccompanied children due to section 83 of the Nationality, Immigration & Asylum Act 2002.

Section 83 of the Nationality, Immigration and Asylum Act 2002 currently provides that a person may appeal to the tribunal against the rejection of his asylum claim only where he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate). The group of asylum seekers most affected by the 12-month stipulation in Section 83(1) (b) is unaccompanied children.

Unaccompanied children refused asylum are often granted a limited period of discretionary leave (on the basis that there are no adequate reception arrangements in their country of origin to which they could be returned).

Discretionary leave granted to an unaccompanied child on the basis of being a child and having no suitable reception arrangements for them to return to is granted for *whichever is the shorter period* of three years or *until he or she is aged 17 and a half*. An unaccompanied child aged (or assessed as) 16 and a half or over at the time of being refused asylum *will not be granted discretionary leave of sufficient length to allow him or her to appeal against the refusal of asylum*. The child must wait until the discretionary leave is nearing its expiry and apply for an extension. If an extension is refused, or granted for a period which, when added to the period in the original grant, totals more than 12 months, he or she can appeal against the refusal of asylum.

Office of the Children's Commissioner's response to the JCHR inquiry:

An inquiry into the human rights of unaccompanied migrant children and young people in the UK, with a particular focus on those who are seeking asylum or have been the victims of trafficking.

The detriment suffered by children in this position is due to the delay in their ability to bring an appeal against the refusal of their asylum claim. The delay may be considerable. UKBA routinely takes many months, often more than a year, to decide on an application to extend Discretionary Leave. The appeal against the original refusal of asylum is only triggered once the decision on Discretionary Leave (DL) has been made. Detriments to the child or young person can be summarised as follows:

- The delay in establishing refugee status is harmful to welfare and development. In addition to living with continued uncertainty as to their future, they may experience difficulty, or indeed inability, in accessing further or higher education, including financial support (which is not available to those with Discretionary Leave but is available to Refugees); difficulty accessing a range of entitlements as because although in law they continue to have DL whilst awaiting a decision on their extension application, the document they have by which DL was given will show it has expired¹⁸.
- Changes in circumstances of the young person, or in their country of origin, may mean it is harder to succeed in an appeal after a delay. The Immigration Judge hearing the appeal must consider future risk of persecution, not the situation as it was when the child left the country of origin. The further away they are from the events that caused their departure from home, the greater the chance that courts will find that the future risk will diminish. There is also an issue about a child's accurate recall of serious or traumatic events taking place some years before. This disadvantages the young person in relation to those better able to describe more recent events.
- Procedures and guidance designed to protect a child's interests in immigration proceedings will no longer be available when they appeal as an adult. This includes judicial guidance on hearing from child witnesses, UKBA guidance on dealing with children, and Legal Services Commission's more generous application of the 'merits test' for legal aid in respect of children. Guidance requires that children should not be left to represent themselves on appeal. Young adults do not benefit from this protection.

• ¹⁸ OCC has spent considerable energy in trying to address this problem with DWP in the past and we have extensive experience of this group of young people being refused entitlements such as housing benefit and JSA.

Office of the Children's Commissioner's response to the JCHR inquiry:

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Is there sufficient support and advice for unaccompanied migrant children as they approach eighteen years of age, and beyond into adulthood?

The lack of a durable solution by way of a more permanent leave arrangement than Discretionary Leave currently affords, leaves children in a difficult position as they approach 18 and enter early adulthood.

Advice from the UKBA amounts to little more than telling the young person they no longer have a right to remain and should now return home. This is reinforced by a heavily reduced support grant to the Local Authority once a child turns 18, and a commensurate squeeze on leaving care support that the Local Authority can lawfully provide once a young adult is 'appeal rights exhausted'¹⁹ due to the operation of Schedule 3 of the Nationality, Immigration and Asylum Act 2002. The lawful support a young person can obtain from the Local Authority is only to avoid a breach of the young person's rights under the European Convention on Human Rights. Schedule 3 is a stark example of how legislation, designed with the best interests of children in mind, differs in its implementation between young people who are, and those who are not, subject to immigration control.

Has the Government conducted an assessment of the number of young victims of trafficking in youth or adult custody, of the steps being taken to safeguarding them?

Number of young victims of trafficking

As far as the Office of the Children's Commissioner is aware there has been no formal assessment of the number of young people in either youth or adult custody who are victims of trafficking. Our office regularly comes across such cases in the juvenile estate during our programmes of visits to institutions.

Broadly, cases fall into two categories: Those convicted of 'passport' offences such as 'using a false instrument' in attempting to enter the UK, and those convicted of involvement in illegal activity in the UK – commonly offences related to cannabis cultivation, particularly associated with young Vietnamese males, and less commonly, females of the same nationality.

We anticipate problems in the Government's ability to conduct an accurate assessment of

¹⁹ All grant in aid to the Local Authority from UKBA stops once a child has become appeal rights exhausted – typically where an application for an extension of Discretionary Leave has been refused and the young person has not appealed that decision or the appeal has been finally determined or he or she is 'out of time' to lodge an appeal.

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the numbers concerned. The determination of the status of a potential victim of trafficking who is also a foreign national from outside the EU, whether they are a child or an adult, is currently undertaken by case owners in the UKBA. By contrast, determination of the status of a potential victim of trafficking who is a UK national or from within the EU is undertaken by the UK Human Trafficking Centre. There is a marked difference in recognition rates of suspected victims of trafficking by the UK's two competent authorities, with the UKHTC recording 'positive' determinations in a much higher proportion of cases referred to them. There is a danger of a conflict of interest when the body which decides whether a foreign national child is a victim of trafficking is also primarily responsible for the enforcement of immigration control. There are likely to be significantly more children in the juvenile estate (and adult prisons due to incorrect age assessment) than would be deemed trafficking victims by the UKBA, which is the competent authority for deciding on the cases of foreign national children.

When the Government was recently asked a Parliamentary question about the numbers of Vietnamese children and young adults accommodated in the prison estate over the last three years²⁰, the Ministry of Justice provided a 'snapshot' as at 30th June for the three years 2010, 2011 and 2012. Whilst indicating that, on that date, the numbers in the 15-17 age range had decreased year on year since 2010, and whilst increasing slightly in 2011 had decreased for the 18-20 age range in 2012, the total numbers of Vietnamese children and young adults accommodated in the prison estate over those three years have not been identified.

One reading of the figures provided is that the guidance issued by the Crown Prosecution Service (CPS) in May 2011 entitled *Policy for Prosecuting Cases of Human Trafficking*²¹ has reduced the numbers of trafficking victims being prosecuted for criminal offences which were committed by trafficking victims under duress. However, the fact that numbers of Vietnamese children still appear in both the juvenile estate and adult prisons in 2012 also suggests the CPS policy is not being followed consistently. It appears that some prosecutors and counsel are unaware of the policy, and are recommending clients enter a guilty plea so as to receive a reduced sentence, when the guidance states they are victims, not perpetrators.

In both categories of cases with which the OCC is familiar (see paragraph 2 in this section), the process of prosecuting a trafficking victim arises directly from the detection of the offence committed. Although police are included as 'first responders' – that is, they are one of the bodies entitled to make a referral of a potential victim of trafficking under the National Referral Mechanism (NRM), - criminal solicitors are currently not.

We welcome the Government's commitment in the first annual report of the Inter-departmental Ministerial Group on Trafficking to work with the police and the criminal

²⁰ HC Deb, 3 September 2012, c136W

²¹ *Op Cit*

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justice system to ensure that trafficked children found to be involved in criminal activity are dealt with from a child safeguarding perspective and not unnecessarily criminalised. However, we note that there does not currently appear to be a 'real time' ability to monitor and act quickly when trafficked child appear in the prison system. There is a need for centralised tracking and tracing of cases through to resolution so that every child can have his or her outcomes monitored.

Are Local Authorities and immigration officials dealing satisfactorily with the issue of children and young people whose ages have been disputed, and has the Government considered developing an independent multi-agency panel-based approach to determining age assessments?

In its concluding observations of the 49th session, the Committee on the Rights of the Child recommended that the State Party:

(e) Give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts' guidance on how to determine age;

In addition the Committee recommended that the State Party:

(d) Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed; (emphasis added)

It is our view that there remain significant problems in the approach of both immigration officials and local authorities to assessing the age of unaccompanied children. Nothing has changed substantially since the Committee made its recommendations to the UK State Party in October 2008.

In relation to Recommendation (d), although the Migration Statistics section of the Home Office statistical service has produced data since at least Quarter 1 in 2006 on the numbers of asylum applicants whose ages immigration officials have disputed, there is no published data on the numbers of these individuals eventually found to be children, or the locations at which the dispute has taken place. The data cannot assist in improving the performance of the Immigration Service. In our view the data does not therefore meet the requirements for disaggregated data, recommended by the Committee in 2008.²²

There is reason to doubt the accuracy of the age disputed data published at least since Quarter 3 of 2007. From 20.08.07 there was a significant change to the relevant asylum

²² Also, paragraphs 98-100 of the General Comment No.6 (CRC/GC/2005/6) outlines the data and statistics on separated and unaccompanied children that State Parties should collect to assist in the implementation of the rights of the child.

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process guidance document, now called 'Assessing Age'²³. Prior to this change, it appears all those claiming to be children, but whose age an immigration officer was disputing, were included in the age dispute statistics. The policy shift meant where an immigration officer deemed an applicant's appearance or demeanour very strongly suggested that they were significantly over 18 the applicant would now be treated as an adult. Not only would they not be referred to a Local Authority for assessment but they would no longer be recorded as age disputed and would therefore simply appear as adult asylum applicants in the statistics.

Evidence that the discretion given to immigration officers by the October 2007 policy change has had a marked impact on the numbers of recorded age disputes is suggested by the significant decline in the percentage of age disputes as a proportion of all those claiming to be children in the published statistics. The attached table and graph at Annex 3 show the decline following the policy change.

Following a visit to the Asylum Screening Unit in Croydon in December 2009, the former Children's Commissioner was provided with some management information relating to the previous nine and a half month period. The information is contained at Annex 4. It shows that in the period from February to mid-December 2009, excluding October for which figures were not provided, 111 applicants claiming to be children were treated as adults under the post 2007 policy. They would either have been disbursed to adult NASS accommodation, or detained rather than referred to a Local Authority for assessment.

Where immigration staff doubt a young person's age but cannot conclude their appearance or demeanour very strongly suggests they are significantly over 18, they must treat the applicant as a child for the time being. This means the age-disputed applicant is 'routed' to a child-trained asylum case-owner, provided with a statement of evidence form to complete and referred to the appropriate Local Authority to have their age assessed. Immigration staff then normally rely on the assessment by the Local Authority in finally allocating an age to the applicant.

There is evidence that pressure is placed on the Local Authority to complete an age assessment quickly, even where there may be a need to consider whether the person is a child or not over a longer period and by closer observation. This pressure arises from the grant arrangement whereby UKBA reimburses the Local Authority for the care of an unaccompanied child. The effect of the rule is that if the Local Authority concludes that an applicant is an adult, it will not be reimbursed for the young person's care beyond the first 21 days. There is therefore pressure on the Local Authority to conclude assessment within this period. The rule states:

"A maximum of 21 days' grant will be payable (i.e. from the start of care) where a prompt

²³<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view=Binary>

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Merton-compliant age assessment is conducted and the person purporting to be a UASC is found to be over the age of 18.”²⁴

The Commissioner is aware that due to the drop in numbers of unaccompanied children claiming asylum coupled with Local Authorities having to make significant savings, specialist asylum teams within Local Authorities are being absorbed into wider children's looked after and leaving care services. It therefore appears that expertise developed over time in specialists capable of assessing age is being either dissipated, or lost. This turn of events suggests that the development of a multi-agency independent panel to assess age may now be more urgent than when it was first proposed in 2007.²⁵

Recent research by the OCC on how age disputes are being handled by both the courts and Local Authorities since the judgement by the Supreme Court in *R (A) v Croydon LBC [2009]*²⁶ suggests a wide variation in age assessment practice between Local Authorities. Some Local Authorities assess age over the course of several interviews, while others complete the assessment at one. Although an independent appropriate adult is now supposed to be present at age assessment interviews compliance varies across different Local Authorities. Some Local Authorities routinely assess every unaccompanied child presenting to them whilst others assess as few as 20% and only where the social worker is unable to accept the given age. Although some social workers appear to make every effort to find out about the country and culture from which the young person comes, others apply subjective, culturally inappropriate methods to arrive at their decision, such as trying to imagine them in a school uniform. It is also clear some Local Authorities are more frequently subject to legal challenge than others, often when they ignore or breach case law that has developed over time. The judiciary indicates it would be helpful to have statutory guidance for Local Authorities on age assessment, but there is no indication that the Government intends to create it. It is clear from the volume of age-disputed cases dealt with by the High Court, and now by the Upper Tribunal, that current arrangements for age assessment are increasingly unsatisfactory. The principal reason appears to be that there is no required multi-agency input into the process. The decision on age rests solely with the Local Authority unless successfully challenged in the High Court or Upper Tribunal. As the Local Authority is also the gate-keeper to access to appropriate children's services, there is a potential conflict of interest in this decision making, particularly as the grant received from the UKBA is insufficient to cover the true costs of care.

An independent multi-agency panel to determine age would provide a more transparent, fairer process for assessing age. However it may be too costly to establish in the current

²⁴ UKBA (2011) **GRANT INSTRUCTIONS TO LOCAL AUTHORITIES FINANCIAL YEAR 2011/12 - UK BORDER AGENCY GRANT: UNACCOMPANIED ASYLUM SEEKING CHILDREN (UASC)**

²⁵ Crawley. H, (2007), *When is a Child not a Child? – Asylum, Age-disputes and the process of age-assessment*. Immigration Law Practitioners Association.

²⁶ Brownlees and Yazdani (2012), *The Fact of Age*, Office of the Children's Commissioner.

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financial climate. It appears to us that creating such an arrangement is not part of the Government's current thinking. The only initiative currently being considered on age assessment relates to plans to begin to administer dental x-rays to applicants deemed to be adults but continuing to claim to be children, following age assessments undertaken by Croydon Council, in whose jurisdiction the Asylum Screening Unit is situated. The UKBA intends to submit a proposal for ethical approval for such research shortly. Professional medical associations across many disciplines, the four UK Children's Commissioners and the voluntary sector are all strongly opposed to the use of such x-rays to determine age due to both the impossibility of establishing chronological age by looking at the stage of growth of teeth or bones – particularly in the 15 -20 age range, and the legal and ethical barriers to administering radiation to a subject for a non-medical reason.

The Royal College for Paediatrics and Child Health (RCPCH) has already submitted a proposal to develop rigorously evidence based guidance for the paediatric age assessment of separated children and young people who are seeking asylum. The Government has so far, however, not been prepared to fund this initiative. It is the Commissioner's view that were the RCPCH's proposal taken forward, there would be a sound scientific and ethical basis for professional paediatric input into Local Authority decision making – for example through the care recipient's 'looked-after' medical to which every child entering care is entitled under the Children Act 1989. Whilst not reaching the ideal described above of establishing an independent multi-agency panel, the age assessment envisaged under the RCPCH's proposals could be the subject of a Local Authority strategy meeting at which paediatric and other professional input could be properly considered in the presence of the young person concerned, assisted where necessary by both an independent advocate and an interpreter. This model would use existing structures, scientifically and ethically supported rather than as at present vociferously opposed by the professional bodies concerned, to arrive at a fair assessment of age. Given it could also reduce the likelihood of disputes escalating through the courts, it could also both achieve savings to the public purse, and hasten and assure dignity in the processes concerned. However, to date the Government has shown little interest in scoping such a proposal. We remain in dialogue with Ministers and officials, as do others across the sector, to press home the merits of this solution.

For more information contact:

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NB: Annexes follow in consecutive order.

Office of the Children's Commissioner's response to the JCHR inquiry:

An inquiry into the human rights of unaccompanied migrant children and young people in the UK, with a particular focus on those who are seeking asylum or have been the victims of trafficking.



Home Office

Damian Green MP
MINISTER FOR IMMIGRATION

2 Marsham Street, London SW1P 4DF
www.homeoffice.gov.uk



Dr Maggie Atkinson
Children's Commissioner for England
33 Greycoat Street
London
SW1P 2QF

06 FEB 2012

Dear Maggie,

LANDING IN DOVER REPORT

Thank you for sending me an embargoed copy of your "Landing in Dover" report prior to its recent publication.

I was pleased to be able to respond positively in the press to the report's main recommendation, which was that interviewing at Dover should be postponed until after a child has had a period of some days to recover from their journey and secure legal representation. As you will know, we have been operating in this way in Dover, and in other parts of the organization, for some time now. Since your report was published, however, I have given consideration to whether the practice already employed in Dover should be formally applied to all other parts of the organization. I have concluded that, at the point at which a minor makes an asylum application, and when it is their first point of contact with the Agency, the Agency will ensure that it carries out the necessary biometric tests, that it establishes the identify of the minor, and that it carries out a welfare interview. Following this, the Agency will immediately refer the minor to local social services and there will then be a period of up to 4 days, to allow the minor to recuperate from their journey and arrange for legal representation (should they require it), before an asylum screening interview takes place.

We have also been considering the Agency's responses to the additional recommendations in your Dover report, alongside the outstanding recommendations from your "Landing in Kent" report last year. I attach the Agency's detailed responses. You will see that we have been able to respond positively to the majority of your recommendations. I am sorry that I was not able to get this to you by the end of January, as I had hoped to do.

Agency officials will be pleased to discuss the responses further with your officials.

A handwritten signature in dark ink, appearing to read 'Damian', written in a cursive style.

Damian Green

Damien Green MP
Minister of State for immigration
Home Office
2 Marsham Street
London, SW1P 4DF

28 March 2012

Reference 201200148

Dear Minister,

Outstanding clarifications from recommending contained in 'Landing in Dover'

Thank you for your letter of 6th February 2012 in response to my report 'Landing in Dover'. I am of course very pleased that you have agreed to cease screening asylum seeking children at the point of first contact across the Agency and that children will now be given time to recover and the opportunity to instruct a representative before the formal processes begin. I am assuming that after the more recent announcement of the Agency splitting into two, the new arrangement will apply to both UKBA's and the UK Border Force's 'points of first contact'.

I have considered in some detail both your letter and the response to the other recommendations, and as a result, would like to clarify a number of issues with you prior to my staff meeting with the Agency and Border Force to take some of these matters forward.

I was unsure what the limitation '*and when it is their first point of contact with the Agency*' refers to in paragraph 2. I would be grateful if you would clarify the classes of case that will be exempt from the new arrangement. It would also be helpful to me if I could have sufficient explanation to understand how the process will differ from the one you outline for these cases, and indeed for children who do not claim asylum at first contact.

I assume that your reference to 'the necessary biometric tests' would include fingerprinting. My understanding is that current policy requires UKBA to have an appropriate adult present when fingerprints are taken from a child under 16. I would be grateful for an outline of how this requirement will be met under the new arrangements.

It is clear from your letter that an interview of some kind to establish whether a child wishes to claim asylum will still take place. My report refers to these interviews as 'Initial Entry Interviews'. I remain concerned that the detail - or lack of detail - of the asylum claim given by the child at this juncture may still be used in the decision making process. I would therefore like your reassurance that this will not be the case, and that case-owners will be clearly instructed not to take into account details provided at the initial entry interview, both when conducting substantive asylum interviews, and in the decision making process.



Thank you for conceding a period of up to four days before the screening interview then takes place. Whilst I think four days may be sufficient as a guide, I would ask that there is provision for some flexibility in its application. I remain of the view that a childcare professional should be able to inform the local immigration office that the child is not yet fit for interview, and that the immigration office should comply with any such request. I am investigating whether these timescales would work for legal representatives and may refer back to you if I hear that the 'window' you have decided on is impractical. I appreciate that the Local Authority has a clear role here in ensuring a timely referral to a legal representative.

There is one of my additional recommendations that has not been accepted, and that I particularly wanted to draw to your attention to ask you to review. It appears to be a key child protection concern even if it does not affect very many children.

I asked that where an age-disputed applicant is returned to France under the terms of the 'Gentleman's Agreement', an age assessment is first carried out by the local authority to ensure that the CIO's decision to treat the subject as an adult is correct. The response I have now received only restates the current policy position: that the Agency would not seek to remove the claimant unless the subject's physical appearance and demeanour very strongly suggested that they were significantly over 18.

Unfortunately, I can not accept that this is a sufficient safeguard in these circumstances. Recent statistics from the Agency's Children & Families section on the detention of age disputed cases indicates that in May 2011 a child remained in detention for some 12 days following such a decision by a Kent CIO and was only released when the local authority ascertained that they were in fact a child. My considered opinion is that if the physical appearance test can result in a decision to detain it can equally result in a decision to remove. I would ask you to look again at the response to this recommendation.

Thank you once again for the overall very positive response to my report and I look forward to hearing from you shortly on these matters of clarification and detail.

Yours sincerely

Maggie Atkinson
Children's Commissioner for England



Analysis of the collated information on unaccompanied Vietnamese children arriving in Kent in 2010

Refugee Council Children's Panel originally provided us with 42 records stated to be Vietnamese children with a DVE (Dover) Port Reference number who had been referred to them by UKBA in 2010.

Two of these records can be deleted with confidence. CP Ref **51165** is a duplicate of **51149** for reasons explained below. **51583** is now accepted by all parties to be an Iranian adult whose port reference number was mistakenly included. This leaves a data set of 40 cases on which the analysis below is based.

Of the 40 cases, 34 have been confirmed by either KCC or UKBA as transferred to KCC care.

- Of the 6 cases not referred to KCC by UKBA, 2 (**51170 & 51870**) were considered to be adults due to documentation or CIO assessment. The other 4 (**51418, 51424, 51427, 51428**) were removed directly to France under the 'Gentleman's agreement'. One of these was the duplicate case **51165**)

Of the 34 cases confirmed to us as placed into KCC care, KCC have yet to find the information on 2 cases (**51324 & 51426**)

- **51324** is a 16 year old male and was referred to the out of hours service at 21.50 on 09.06.10. **51426** is a 14 year old girl and was released into foster care 'out of hours' on 09.07.11. UKBA have the details.

Of the 32 cases referred by UKBA and accepted as known by KCC, 1 was subsequently assessed as an adult (**51516**) following going missing and then being returned to care. KCC have recorded this as 'extraneous'.

Of the 31 remaining cases, 30 have gone missing and only 1 remains in KCC care. KCC have informed us that in 2 cases (**51086** and **51087**) the subjects went missing on their return to the immigration office. On enquiry from us, UKBA confirmed that both were returned to France under the 'Gentleman's agreement'. They are not therefore to be counted as 'missing from care'.

- Kent Police have confirmed that in three of these cases (**51171, 51271** and **51485**) other police forces have arrested the subjects working in cannabis factories. **51171**, for whom KCC had a 'suspicion but no evidence of trafficking' was arrested in Birmingham. **51271**, for whom KCC had 'no evidence of child trafficking' was arrested in Wales. **51485** was arrested in Reading. All were 14 years old at the time of going into care.

Collated information on unaccompanied Vietnamese children arriving in Kent in 2010

The information below has been collated from 3 principle sources. The starting point was the list of 'returns' of Vietnamese under 18's with a DVE port reference made to the Refugee Council Children's Panel (**RC** or **CP**) by UKBA in 2010. UKBA routinely provide the Panel with the details of all unaccompanied children arriving in the UK. The Children's Commissioner has been in correspondence with Kent County Council Children's Service (**KCC**) and UKBA's Local Immigration Team in Kent (**UKBA**) for further information on what happened to these young people. A forth source of information is **Kent Police** indicated in 3 cases. The source for each piece of information below is indicated by the use of bold text following the information itself. 'Clusters' refer to children who arrived/ were located as part of a group. The circumstances of their discovery is described in the narrative before each case in the cluster.

CP Ref/ date referred

October 2009

50952 DEU/**2928391**, 17 year old male (18 at time of referral to CP on 02.03.10) (**RC**); 1 of 7 (6 x VNM and 1 x IRN) located in a lorry at Lympne Industrial Estate. Police were contacted and transferred them to Folkestone custody for referral to Immigration (**UKBA**). Referred to KCC on 17.10.09. Went missing after 10 days (**KCC**)

March 2010

50961 DEU/**3131798**, 14 year old male referred to the CP on 08.03.10 (**RC**); Driver approached police at J11 services of M20 advising he had heard banging from rear of his lorry. 1 of 3 VNM found inside (**UKBA**) Referred to KCC on 06.03.10. Went missing after 1 day (**KCC**);

April 2010

Cluster 1

Three Vietnamese (2 recorded as children) found concealed in a lorry having been scanned by UKBA Customs (**UKBA**). Returned to Immigration the day following referral to KCC (**KCC**)

51086 DEU/**3190893**, 15 year old male. Referred to CP on 06.04.10 (**RC**); Referred to KCC 06.04.10; Returned to immigration on 07.04.10. KCC advised by UKBA that he went missing while in UKBA care (**KCC**); 'Returned to France under the Gentleman's agreement' (**UKBA**)

51087 DEU/**3190894**, 15 year old male. Referred to CP on 06.04.10 (**RC**); Referred to KCC 06.04.10; Returned to immigration on 07.04.10. KCC *not* advised by UKBA that he went missing while in their care (**KCC**); **NB** Implication of KCC information is that he went missing from UKBA care on return to port but that this was not reported to KCC; 'Returned to France under the Gentleman's Agreement' (**UKBA**)

51097 DEU/**3195825**, 15 year old male. Referred to CP on 12.04.10 (**RC**); Female - 1 of 16 subjects (8 x IND, 4 x VNM, 3 x LKA, 1 x PAK) found within concealment of a 7.5 tonne box van after its arrival in Ramsgate. **NB** UKBA records suggests subject was female not male (as initially reported by them to RC) (**UKBA**). Referred to on KCC 10.04.10, missing after 3 days (**KCC**)

Cluster 2

Two of 5 VNM referred to UKBA by Maidstone Police on 23.04.10 having been encountered on the A20 at Lenham (**UKBA**)

51149 DEU/**5215944**, 15 year old male. Referred to CP on 21.04.10 (**RC**); Subject was 1 of 4 VNM found by UKBA Customs within a vehicle at Dover docks on 20.04.10 and was removed from the UK to France the same day under the 'Gentleman's Agreement'. The three other males found with him were all adults. The subject was then encountered again three days later (23.04.10) with another child - DEU/3224904 (**UKBA**) Referred to KCC 23.04.10. Went missing after 4 days. KCC say may be a duplicate of 51165 (DEU/5215944) (**KCC**)

51171 DEU/**3224904**; 14 year old male. Referred to CP on 23.04.10 (**RC**). Referred to KCC 24.04.10. Went missing after 3 days. 'Suspicion but no evidence of child trafficking' (**KCC**). Arrested in Birmingham in a cannabis factory (**Kent Police**)

51165 (See above CP Ref **51149** – Duplicate case) No Port reference on the return from UKBA to RC. 15 year old male. Referred to CP on 23.04.10 (**RC**); Referred to KCC 23.04.10. KCC note that he '*appears to be a duplicate of 51149 (DEU/5215944) as all known information is identical*' (**KCC**). NB: KCC assumption of being a duplicate seems correct as he was initially returned to France and then re-entered the UK three days later. This would also explain why CP were not provided with a Port reference on this occasion.

Cluster 3

Subjects arrested by Folkestone Police at J9 of the M20 London-bound. Police had responded to several calls from the public advising that people had been seen jumping out of the back of a lorry. Police saw 5 individuals at the scene but they dispersed upon sight of the police and only two were arrested. Both were children **(UKBA)**.

51167 DEU/**3225878**; 15 year old male. Referred to CP on 24.04.10 **(RC)**. Referred to KCC 23.04.10. Went missing after 2 days **(KCC)**;

51166 DEU/**3225879**; 14 year old female. Referred to CP on 24.04.10 **(RC)**. Referred to KCC 24.04.10. Went missing after 41 days **(KCC)**

Cluster 4

Three VNM males found together in lorry having arrived at Ramsgate from Belgium **(UKBA)**

51170 DEU/**3225884**, 15 year old male. Referred to CP on 24.04.10 **(RC)**. Gave a DOB of 14/10/94 upon encounter by UKBA. Fingerprint results showed him to be a match with himself when he applied for a UK visa in 2007. His passport gave his DOB as 04/10/87 and he was therefore treated as an adult from that point on. **(UKBA)**. *'Awaiting confirmation' from KCC (KCC)* NB: Possible 'Gentleman's Agreement' return.

51168 DEU/**3225886**, 16 year old male. Referred to CP on 24.04.10 **(RC)**; Referred to KCC out of hours service on 24/04/10 at 18:40hrs. Released into KCC care later that evening **(UKBA)**. Referred to KCC 24.04.10. Went missing after 6 days **(KCC)**;

51169	DEU/ 3225888 , 17 year old male. Referred to CP on 24.04.10 (RC); Referred to KCC 24.04.10. Went missing after 4 days (KCC)
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May 2010

- 51271 DEU/**3267285**; 14 year old male. Referred to CP on 27.05.10 (**RC**). 1 x VNM male referred by police having been encountered at a service station on Sheerness. Admitted illegal entry in a lorry **NB**: Correct Port reference is DEU/3267185 - reference incorrectly recorded on spreadsheet as DEU/3267285) (**UKBA**). Referred to KCC on 26.05.10. Went missing after 13 days in foster care. 'No evidence of child trafficking' (**KCC**). Arrested in Wales working in a cannabis factory (**Kent Police**)
- 51324 DEU/**3284175**; 16 year old male. Referred to CP on 10.06.10 (**RC**); 1 x VNM referred by Maidstone Police having been found at J5 of M2 following reports of 2 males walking along the motorway. Police attended and saw two males hiding in a woodland area near the slip road. As police approached they ran off. Only one could be located. Referred to KCC out of hours and was collected from Dover at 21:50hrs on 09/06/10. (**UKBA**) '*Awaiting confirmation*' from KCC (**KCC**)

Cluster 5

Two 14 year old females found at Lenham storage in Maidstone having come out of the back of a lorry recently arrived in the UK **(UKBA)**

51426 DEU/**3322329**; 14 year old female. Referred to CP on 09.07.10 **(RC)** Referred to KCC on 09/07/11. Released into foster care out of hours (details of carers available if required) **(UKBA)** *Awaiting confirmation* from KCC **(KCC)**;

51425 DEU/**3322330**; 14 year old female. Referred to CP on 09.07.10 **(RC)**; Referred to KCC 08.07.10. Went missing after 2 days, returned after a further day. Claimed asylum **(KCC)**; NB: not clear from KCC information if she went missing again after her return.

Cluster 6

2 VNM males found in the back of a lorry at berth 6 within Dover Eastern Docks having just arrived from France. Both were removed together to France the same day under the 'Gentleman's Agreement' and therefore were not referred to KCC **(UKBA)**.

51424 DEU/**3322254**; 17 year old male. Referred to CP on 09.07.10 **(RC)**; *Awaiting confirmation* from KCC **(KCC)**;

51427 DEU/**3322358**; 17 year old male. Referred to CP on 09.07.10 **(RC)**; Found with DEU/**3322254** **(UKBA)**. *Awaiting confirmation* from KCC **(KCC)**

Cluster 7

2 VNM Children, 1 male , 1 female found in a group of 10 VNM found concealed in a freight vehicle having arrived in the UK from Coquilles via the Channel Tunnel. Both removed under the Gentleman's Agreement.

51418 DEU/**3322186**; 16 year old female. Referred to CP on 09.07.10 (**RC**); 1 of 10 VNM. Not referred to KCC as she was removed the same day to Coquilles under the Gentleman's Agreement. (**UKBA**) '*Awaiting confirmation*' from KCC (**KCC**);

51428 No Port ref from RC . 16 year old male. Referred to CP on 09.07.10 (**RC**); No one was encountered by Dover on 09/07/10. A nil return was sent to the RC Children's Panel that day. There was however a referral to the Children's Panel on 08/07/10 of a VNM male with the DOB 24/07/93 (DEU/3322185). He was removed that same day to Coquilles under the Gentleman's Agreement so was not referred to KCC. (**UKBA**) '*Awaiting confirmation*' from KCC (**KCC**)

Cluster 8

Part of a group of 8 subjects in total (6 x VNM and 2 x IRN) found in the back of a lorry at Berth 1 within Dover Eastern Docks having just arrived in the UK (**UKBA**)

51448 DEU/**3328283**; 14 year old male. Referred to CP on 15.07.10 (**RC**); Referred to KCC 13.07.10. Went missing after 5 days; 'claimed asylum' (**KCC**);

51449 DEU/**3328287**; 15 year old male. Referred to CP on 15.07.10 (**RC**); Referred to KCC 13.07.10. Went missing after 2 days (**KCC**);

Cluster 9

Part of a group of 10 subjects in total (5 x VNM, 4 x IRN and 1 x AFG) found in the rear of a tanker lorry in a lay by on the A20 near Wrotham. All three referred to KCC on the same day (**UKBA**)

- 51447 DEU/**3328369**; 16 year old female. Referred to CP on 15.07.10 (**RC**); Referred to KCC 13.07.10. Went missing after 10 days. 'Claimed asylum' (**KCC**);
- 51445 DEU/**3328402**; 15 year old male. Referred to CP on 15.07.10 (**RC**); Referred to KCC 13.07.10. Went missing after 2 days. 'Claimed asylum' (**KCC**)
- 51446 DEU/**3328387**; 15 year old male. Referred to CP on 15.07.10 (**RC**); Referred to KCC 13.07.10, missing after 10 days; 'claimed asylum' (**KCC**);

Cluster 10

Part of a group of 3 VNM referred by Tonbridge Police. Police attended an Industrial Estate in Aylesford following a report that 6 males had been seen exiting a Tesco lorry. Search of the area could only produce the location of 3 of the males (**UKBA**)

- 51391 DEU/**3312273**; 15 year old male. Referred to CP on 02.07.10 (**RC**); Referred to KCC 01.07.10. Went missing after 1 day (**KCC**); NB RC appear to have incorrectly recorded the date of referral to them as 20.07.10 rather than 02.07.10.
- 51392 DEU/**3312279**; 12 year old male. Referred to CP on 02.07.10 (**RC**); Referred to KCC 01.07.10. Went missing after 1 day (**KCC**);

51488 DEU/**333931**; 16 year old male. Referred to CP on 20.07.10 (**RC**) Found alone concealed in a lorry that had recently arrived in the UK from Coquilles (Channel Tunnel) (**UKBA**) Referred to KCC 20.07.10. Went missing after 5 days ((**KCC**))

Cluster 11

Part of a group of 5 VNM arrested by Kent Police at a farm in Hunton Hill having jumped out the back of a lorry (**UKBA**)

51487 DEU/**3339372**; 15 year old male. Referred to CP on 20.07.10 (**RC**). Referred to KCC 20.07.10. Went missing after 3 days (**KCC**)

51486 DEU/**3339375**; 11 year old male. Referred to CP on 20.07.10 (**RC**). Referred to KCC 20.07.10. Went missing after 1 day. KCC say DOB on his KCC file is 23.10.**95** (as opposed to 92) making him 14 rather than 11 at the date of referral (**KCC**)

51485 DEU/**3339376**; 14 year old male. Referred to CP on 20.07.10 (**RC**); Referred to KCC 20.07.10. Went missing after 1 day. 'No evidence of child trafficking' (**KCC**) Kent Police informed subject arrested in Reading working in a cannabis factory on 23.07.10. (**Kent Police**)

51483 DEU/**3339460**; 15 year old male. Referred to CP on 20.07.10 (**RC**). Encountered inside a vehicle at Dover Eastern Docks trying to leave the UK. Admitted in a PACE interview that he had entered illegally in the back of a lorry in November 2009. During interview he was asked why he was leaving the UK and he replied that he was going to France to look for work. UKBA do not prosecute for attempts to leave the UK illegally in the back of a lorry where no documents are involved so he was not subject of any prosecution. He was released into the care of KCC at 20:50hrs on 21/07/10. (**UKBA**) Referred to KCC on 20.07.10. Went missing after 3 days (**KCC**).

Cluster 12

Part of a group of 12 subjects seen exiting a lorry. 5 were arrested by Kent Police (**UKBA**) NB: others presumed to have run off

51516 DEU/**3349280**; 16 year old female. Referred to CP on 26.07.10 (**RC**). Claimed asylum on 26.07.10 claiming to be a minor and was transferred to KCC care. UKBA informed on 29.07.10 that she had gone missing from foster care and was found and returned by police. UKBA had evidence that she was in fact an adult and she later admitted falsely claiming to be a minor. No substantive asylum claim heard as she was registered as an absconder on 04.09.10 after being dispersed to Glasgow. (**UKBA**) Referred to KCC on 20.07.10 but also recorded as 'extraneous' in their reply of 19.07.11; 'Home Office subsequently confirmed her age as 27' (**KCC**).

51519 DEU/**3349294**; 16 year old male. Referred to CP on 27.07.10 (**RC**). Referred to KCC on 26.07.10. Has never been missing from care. One of only 6 known by KCC from the CP list as having claimed asylum (**KCC**).

51521 DEU/**3349306**; 16 year old male. Referred to CP on 27.07.10 (**RC**); Referred to KCC on 26.07.10. Went missing after 18 days (**KCC**);

51583 DEU/**3368664**; 16 year old male. Referred from Leeds RC who supplied the incorrect port ref to RC Children's Panel. Subject reported by project worker as having run away from a cannabis factory and then age disputed by Nottingham City Council. Claimed date of arrival in UK 05.08.10 (**RC**) UKBA say reference number relates to an IRN adult and can find no trace of having dealings with a VNM minor around this time (**UKBA**). Recorded as 'extraneous' in KCC reply of 19.07.11 to OCC's data request; 'Known to UKBA as an Iranian adult' (**KCC**).

September 2010

51660 DEU/**3390641**; 16 year old male. Referred to CP on 03.09.10 (**RC**). Found on his own walking along the M20 London-bound carriageway having entered the UK in the back of a lorry (**UKBA**). Referred to KCC 02.09.10. Went missing after 1 day (**KCC**).

Cluster 13

Part of a group of 5 (3 x VNM and 2 x IRN) found by North Kent police on 07/09/10 and transferred to Dover overnight having entered the UK illegally in the back of a lorry. They were interviewed on 08/09/. All referred to KSS on 08/09/10 at 13:00hrs and were released to their care later that day. (**UKBA**)

51680 DEU/**3395702**; 16 year old male. Referred to CP on 09.09.10 (**RC**). Referred to KCC 08.09.10. Went missing after 1 day (**KCC**).

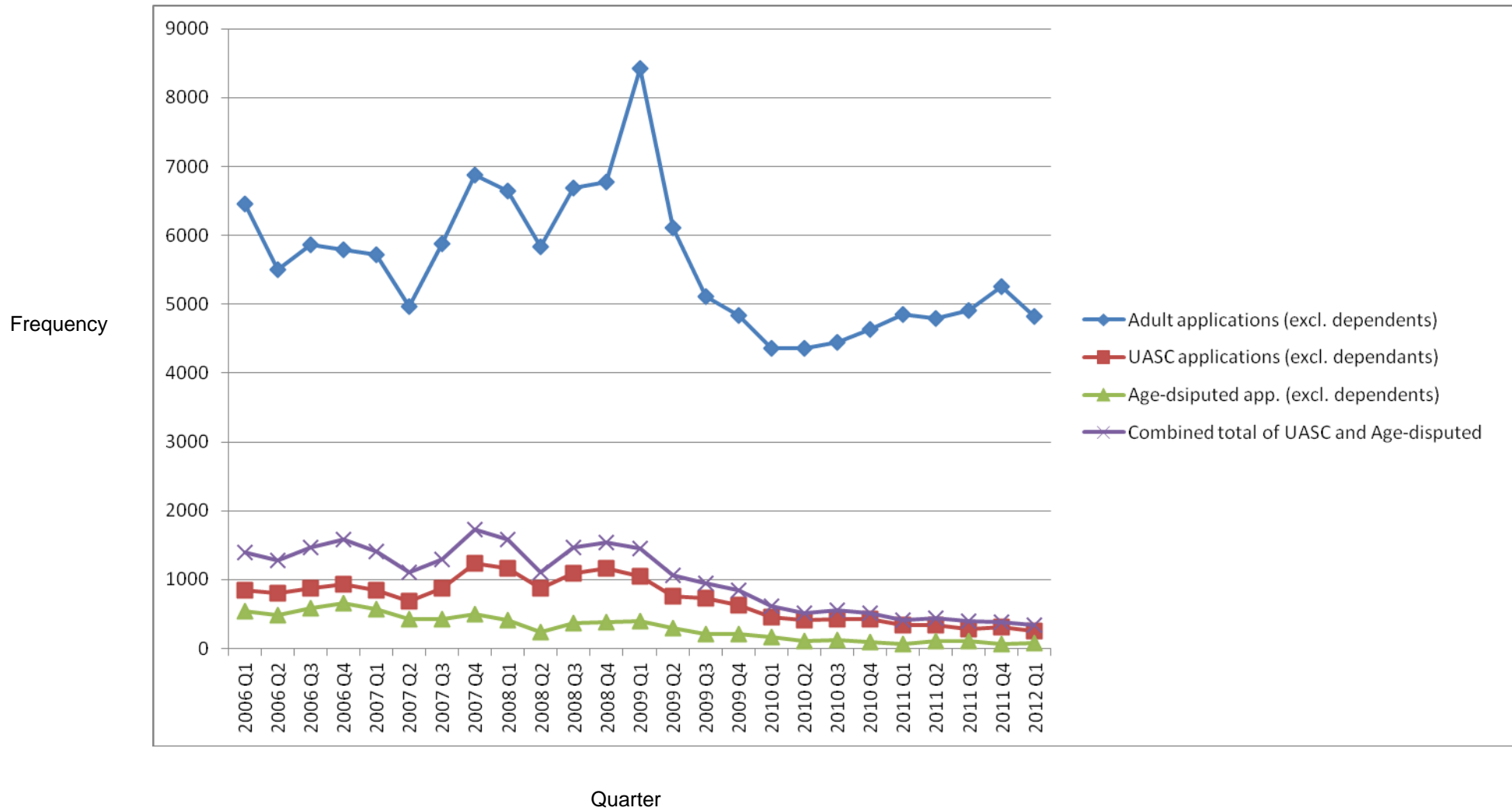
51682 DEU/**3395707**; 16 year old male. Referred to CP on 09.09.10 (**RC**). Referred to KCC 08.09.10. Went missing after 1 day (**KCC**)

51679 DEU/**3395734**; 16 year old male. Referred to CP on 09.09.10 (**RC**). Referred to KCC 08.09.10. Went missing after 1 day (**KCC**)

51870 DEU/**3732780**; 15 year old female. Referred to CP on 03.11.10 (**RC**).1 x VNM found concealed in the bunk of a cab of a lorry that had just entered the UK. UKBA officers in Calais and Dunkerque had also detected her in Sept and October 2009 trying to enter the UK illegally. On both occasions she claimed to be an adult. On encountering her on 02.11.10 in Dover Eastern Docks in the rear of a vehicle, she claimed to be a minor but was age assessed by the CIO as over 18 taking into account her physical presence and previous claims. She was transferred to initial accommodation in Croydon awaiting dispersal. She absconded on the 04.11.10. (**UKBA**).Recorded as '*extraneous*' in KCC's reply of 19.07.11(**KCC**).

Quarter	All main applicants excluding dependants	UASC applications excluding dependants	Age-disputed applic. excluding dependants	UASC + Disputed combined total	% of combined total disputed
2006 Q1	6453	852	544	1396	38.97%
2006 Q2	5497	795	480	1275	37.65%
2006 Q3	5862	874	586	1460	40.14%
2006 Q4	5796	930	659	1589	41.47%
2007 Q1	5720	839	577	1416	40.75%
2007 Q2	4960	691	420	1111	37.80%
2007 Q3	5885	874	425	1299	32.72%
2007 Q4	6870	1241	491	1732	28.35%
2008 Q1	6645	1159	417	1576	26.46%
2008 Q2	5830	870	232	1102	21.05%
2008 Q3	6685	1095	372	1467	25.36%
2008 Q4	6775	1161	380	1541	24.66%
2009 Q1	8430	1050	403	1453	27.74%
2009 Q2	6110	755	300	1055	28.44%
2009 Q3	5110	736	214	950	22.53%
2009 Q4	4840	633	212	845	25.09%
2010 Q1	4355	452	168	620	27.10%
2010 Q2	4365	406	103	509	20.24%
2010 Q3	4440	432	129	561	22.99%
2010 Q4	4630	427	89	516	17.25%
2011 Q1	4845	344	71	415	17.11%
2011 Q2	4787	339	102	441	23.13%
2011 Q3	4912	285	110	395	27.85%
2011 Q4	5261	309	71	380	18.68%
2012 Q1	4818	259	80	339	23.60%

Graph Showing the Changes in Asylum Applications from the 1st Quarter of 2006 to the 2nd Quarter of 2012



From: []
Sent: 14 December 2009 10:40
To: MATTHEWS, Adrian - Children's Commissioner
Cc: Sturgess Sarah (POISE)
Subject: CROYDON ASU - STATISTICS REQUIRED FOR THE CHILDREN'S COMMISSIONER

Good morning Adrian

I am now in a position to furnish you with some of the statistics that Sir Al required concerning age disputes.

Please find below the number of applicants that presented themselves as children that were then assessed to be "over 25" and were consequently sent to the Adult section of ASU to be processed.

2009

Feb	10	
March	17	
April	12	
May	13	
June	5	
July	17	
August		10
Sept	14	
Nov	12	
Dec (to date)	1	

I have requested the information as to how many of these were subsequently assessed to be adults but this has not been forthcoming.
This is not something that can be accessed by us and I am reliant on another unit to come up with the answers and I am not sure how difficult an exercise it is. I have sent them a reminder and will forward any statistics received.

Regards

Wishing you a Merry Christmas and a peaceful New Year.

Debbie
Debbie Murphy
Senior Executive Officer
Children's Team
Asylum Screening Unit
3rd floor podium
London and South East
UK Border Agency
Lunar House 40 Wellesley Road Croydon CR9 2BY
