

# Landing in Kent:

The experience of unaccompanied children arriving in the UK

A report by the Office of the Children's Commissioner on a visit to Millbank Reception and Assessment Centre in Kent

February 2011



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## Foreword by the Children's Commissioner



This report, the first I have issued as Children's Commissioner on the subject of asylum-seeking children, continues the influential work done by this office on the circumstances of this vulnerable population. Our research visit to the Millbank Reception and Assessment Centre allowed me, and a team from my office, to talk and listen to newly arrived young asylum seekers so as to learn of their experiences and concerns.

The protection of asylum seekers continues to be a challenging issue for governments across Europe, including here in the UK. Unaccompanied and separated children seeking asylum can be regarded as a 'sub-set' of the movements of people into and across Europe from other parts of the world. This perspective can obscure the fact that, first and foremost, they are children, requiring our attention and protection. As a nation, we signed the United Nations Convention on the Rights of the Child (UNCRC) in 1991. We therefore have a duty to uphold these vulnerable children's rights. This requirement on us is strengthened by our being a member of the European Union, thereby bound by its Charter of Human Rights and our own human rights legislation which also applies to children.

I recognise that the particularly vulnerable situation of unaccompanied and separated children seeking asylum presents multifaceted challenges, both to states and other actors, in ensuring they can access and enjoy their rights.

This visit demonstrated a very good model for the reception and care of asylum-seeking children. At Millbank we saw practice that the centre's staff and Kent County Council can be proud of. The young people we spoke to also reported mainly positive experiences with immigration and police officials at the point of entry into the UK. However, the visit also demonstrated that in these children's countries of origin, and in transit across Europe to the UK, some of their fundamental rights appear to have been breached. This raises concerns about both existing and proposed UK policies which might lead to further breaches. Where we have concerns, we draw the Government's attention to these issues in our recommendations.

From the accounts given to us by the children at Millbank, reception arrangements for unaccompanied and separated children in the UK are often of a better standard than in some other European states. We remain concerned about some of the practices we were told about, and we also highlight these concerns in our recommendations.

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I want to thank the young people we met at Millbank for their frank and open accounts of their situations, concerns and worries, all of which I trust we reflect accurately in this report. I hope it will help us to bring these children's voices to Government, those operating our immigration services, and all who have responsibility for their care. I also offer my sincere thanks to Kent County Council and partners' staff, who facilitated our visit to the centre and meetings with children both sensitively and professionally.

A handwritten signature in black ink, appearing to read 'ME Atkinson', with a long, sweeping horizontal stroke at the end.

**Dr Maggie Atkinson**  
**Children's Commissioner for England**

**February 2011**

## About the Office of the Children's Commissioner



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

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

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

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

# 1. Introduction



We report here on the views of unaccompanied young people – mostly asylum seekers – arriving in Kent and accommodated initially at the Millbank Reception and Assessment Centre in Ashford.

In line with the Children’s Commissioner for England’s general function under Part 2 of the Children Act 2004, we also consider this group of young people’s interests. The recommendations we make are directed at those bodies exercising functions relating to the administration of entry control and the processing of protection claims, as well as those with direct responsibility for these young people’s care and support.

This report contains findings and recommendations, from a particular setting, that have lessons to pass on to the national stage. Where relevant these are pointed out, for the use of both United Kingdom Border Agency (UKBA) and the Government, in policy and practice relating to vulnerable children and young people in the asylum system. This duty to generalise upwards to policy, from the specifics found in a particular setting, is a part of the Children’s Commissioner’s statutory remit under the Children Act 2004. The standards that form the backdrop to our findings and recommendations are the rights established in the United Nations Convention on the Rights of the Child (UNCRC) and the guidance provided by the Committee on the Rights of Child on the treatment of unaccompanied and separated children outside their country of origin.<sup>1</sup>

The Committee on the Rights of the Child, the body overseeing implementation of the Convention, issued one of its periodic ‘General Comments’ in 2005, relating to the treatment of unaccompanied and separated children outside of their country of origin.<sup>2</sup> General Comment No. 6 provides guidance on the *“protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the Convention on the Rights of the Child (‘the Convention’), with particular reference to the principles of non-discrimination, the best interests of the child and the right of the child to express his or her views freely.”*<sup>3</sup> We draw attention to the guidance given in the General Comment where appropriate.

Where articles of the UNCRC (‘The Convention’) are engaged, we have referenced them by way of footnotes. The full text of the relevant articles, or parts of articles, can be found in Appendix 3.

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<sup>1</sup> *General Comment No. 6 (2005)*, Committee on the Rights of the Child, 01.09.05.

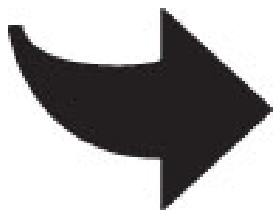
<sup>2</sup> *General Comment No. 6*, as it is known, will be referenced throughout footnotes in this report as CRC/GC/2005/6.

<sup>3</sup> CRC/GC/2005/6, paragraph 1.

Article 22 of the UNCRC specifically refers to signatories' responsibilities towards children seeking refugee status. It requires signatory states to provide children with "*appropriate protection and humanitarian assistance*" in the enjoyment of applicable rights as set forth in the UNCRC.

In the accounts that follow, children's rights as laid out in the Convention have been engaged and often breached in the child's country of origin, during transit and sometimes on reaching the UK.

## 2. Background to the visit



The Children's Commissioner and her team made an announced visit to Millbank Reception and Assessment Centre in Kent on 6 August 2010. Millbank is a residential reception and assessment centre commissioned and funded by Kent County Council. It provides services for up to 30 newly arrived unaccompanied asylum-seeking young males aged between 16 and 18.<sup>4</sup>

The funding for running the centre is partly drawn from a grant provided by the United Kingdom Border Agency (UKBA), but it does not appear that the running costs are entirely covered by the per capita grant arrangement.

Kent County Council assists UKBA by identifying those likely to be children at the Port of Dover and in transferring those identified as such to appropriate accommodation, including Millbank. Once accommodated, the centre co-operates with UKBA by ensuring residents obtain legal advice and attend their screening and substantive asylum interviews.

Millbank aims to offer all its young residents security, stability and support in a warm and caring environment. It provides the opportunity and facilities to enable them to recover from their journeys and the experiences they have undergone prior to arrival in the UK. Its reception and assessment function means there is also an emphasis on preparing the young people to move on into more independent living after an appropriate period of time.

Kent, and the Port of Dover in particular, is an important point of entry into the UK for migrants arriving from mainland Europe and especially for those arriving from Calais. Many of those arriving in Kent have come to ask for asylum and some are under 18 and therefore children, both under UK legislation, and under international human rights instruments, including the United Nations Convention on the Rights of the Child.<sup>5</sup> They have travelled without a parent and are unaccompanied by any adult able to care for them.

Adult asylum seekers (those over 18 years old) and any dependants they have with them are dispersed throughout the UK. They are accommodated and provided with subsistence directly by the UKBA under an arrangement called 'asylum support'. By contrast, the care of any unaccompanied child seeking asylum is the responsibility of the local authority in which they first arrive and present as 'in need'. Kent accommodates more unaccompanied children than any other local authority in the country because of the presence of the Port of Dover in the county.

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<sup>4</sup> Kent County Council is responsible for providing accommodation for any child in need within the county who appears "to require accommodation as a result of there being no person who has parental responsibility for them" (Children Act 1989, s.20). This includes children who arrive in the UK without a parent or guardian and are seeking asylum.

<sup>5</sup> See Article 1 of the UNCRC (definition of a child).



### 3. Millbank's role within the Kent County Council asylum service



All of the young people arriving at Millbank come in as emergency placements. Most have arrived in Dover without any form of proof of identity and some have been arrested by the police or the UK Border Agency (UKBA) prior to being placed with the local authority.

Any child arriving in Kent and claiming asylum is referred by the UKBA Immigration Service to Kent County Council's duty and initial assessment team or the out-of-hours service. An initial assessment is conducted, and where a young male is assessed as being aged 16 or 17, they are sent on to Millbank. Male children assessed as being younger than 16, those who are particularly vulnerable and all unaccompanied girls are routed to foster care or to a dedicated children's home, all of which provision is also funded and commissioned or directly provided by Kent County Council.

If assessed as meeting the age criteria, the young person will remain at Millbank for between six and eight weeks. During this time they complete a programme of assessment and training. As well as ensuring that an educational assessment is conducted, the young people are equipped with important skills for independent living in the UK, such as cooking and budgeting and looking after themselves. They are also given information on staying safe and healthy. At the end of this period a decision will be made about where the best placement is for that particular young person. In the absence of any special vulnerability they are likely to go into semi-supported shared accommodation. Provision at Millbank appears to us to comply with the states' duties established under the United Nations Convention on the Rights of the Child<sup>6</sup> and provides a model of good practice which we would encourage other 'gateway authorities'<sup>7</sup> to learn from.

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<sup>6</sup> See, in particular, Article 20 of the UNCRC (children deprived of a family). See Appendix 3 for full article text.

<sup>7</sup> 'Gateway authorities' are those local authorities with major ports of entry or screening units within their geographical area. These authorities tend to receive the largest numbers of unaccompanied and separated children.

## 4. The visit



A fuller explanation of the preparation for the visit is contained in Appendix 2 of this report. A 'pre-visit' before the Commissioner's visit in August allowed for plans to be developed and consideration given to the best way to structure meetings with the young people to obtain their views. We also planned time to talk to staff working at the centre, and others connected to it through their work for Kent County Council children's service.

The young people's views, reported in the following sections, were obtained both in group situations using interpreters generously provided by the authority and in individual conversations with the Commissioner and her staff over the course of the day.

We are immensely grateful to Kent County Council and in particular to the asylum service and the staff at Millbank for the co-operation and assistance we received with the visit. Senior staff in the council's children's services department have commented constructively on near-final drafts of this report. We remain in positive dialogue with the council and its partners on the vital work they are doing with these vulnerable young people.

## 5. Reasons for leaving the country of origin



We were sensitive to the difficulties that Millbank's young people might have in talking about their reasons for leaving their countries. However, we found that many of them readily volunteered information to us about their reasons for departure.

The countries from which most of the young people came are subject to armed conflicts, ethnic divisions or human rights abuses. This was reflected in what we were told about their motives for departure. The exception to this were the young people from Vietnam who had all been trafficked into the UK to work as 'gardeners' in cannabis factories, or to work in associated settings such as nail bars or restaurants.<sup>8</sup>

A group of six Kurdish boys came from Iran, Iraq and Syria and spoke the Kurdish languages Sorani and Bahdini. In discussing their reasons for leaving their countries, these boys spoke about severe and ongoing discrimination against the Kurdish minority, and the lack of schooling in their own language.<sup>9</sup>

The group of Eritrean young people had fled to avoid under-age conscription into military service which would involve them in sporadic ongoing conflict with Ethiopia.<sup>10</sup>

Fourteen young people from Afghanistan mostly spoke Pashtu, with a minority speaking Dari. All had left because of the war and a uniting factor was fear of the Taliban. In some cases we were told that the young person's parent or parents had been killed by the Taliban.<sup>11</sup>

Six Arabic speakers came from Sudan, Algeria and Palestine. These young people had been travelling for between one and six years before reaching the UK. More than any other group, these boys had England in mind as a destination. Whether this was the case on departure or whether the idea developed during their lengthy journey was unclear. One Arabic speaker stated his reason for leaving his country of origin was "*to live in*

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<sup>8</sup> Irrespective of whether these children have a 'well-founded fear' engaging Article 1 (A) of the Refugee Convention (1951), states in whose territory they land have protection duties under the UNCRC, including under Articles 32 (child labour), 35 (abduction) and 36 (other forms of exploitation). The Committee on the Rights of the Child suggests that states consider complementary forms of protection for trafficked children where return is not in their best interests.

<sup>9</sup> Article 29 of the UNCRC (goals of education) requires at (1) (c) that state parties agree to the goals of education being directed to respect for the child's cultural identity, language and values.

<sup>10</sup> See Article 38 of the UNCRC (war and armed conflicts) and the Optional Protocol on the involvement of children in armed conflict, articles 2, 3 and 4.

<sup>11</sup> See Article 38 of the UNCRC (war and armed conflicts), and Article 20 (children deprived of a family).

*“[I left my country] to live in peace, security and lead a good life.”*

**– A young Arabic speaker**

*peace, security and lead a good life”*. Some also reported wanting to access education.<sup>12</sup>

For the majority of the young people, the final destination in their journey was not connected with their motive for leaving and had not featured in their thinking on departure. Mostly an ‘event’ had prompted a necessary and swift exit from the home country.

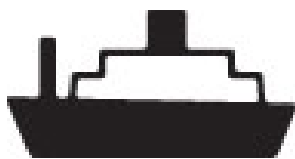
The Vietnamese boys had been enticed to leave by the promise of good jobs abroad, although England was not mentioned as the destination when they were in Vietnam. Both of the boys we spoke to told us they had been orphaned at a young age, leaving them vulnerable to being trafficked.<sup>13</sup>

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<sup>12</sup> See Articles 6 (survival and development) and 28 (right to education) of the UNCRC.

<sup>13</sup> See Articles 20 (children deprived of a family), 32 (child labour), 35 (abduction), 36 (other forms of exploitation) of the UNCRC.

## 6. Between departure and arrival



The young people's experiences of arriving in mainland Europe had been unexpectedly negative. Having anticipated finding "*a tolerant continent*", Afghan youngsters described being jailed on entering Greece and being forced to live rough in France. Most of the Afghans described similar treatment in Greece, Italy and France, with beatings, raids and detention being commonplace. It was clear from the Afghan young people that their journeys had been organised by people smugglers – described by them as 'agents' – and that they had been told by these agents that in contrast to the European countries they had travelled through, the UK was "so much better".<sup>14</sup>

We asked all the young people why they had not claimed asylum in other European countries. The answers were clear and immediate: their experience was that there was no 'care' for unaccompanied children and young people; there was a lack of available interpretation in their own languages (meaning that they could not explain their situations to officials); there was no attempt to assimilate or integrate them; there was little or no provision to meet basic needs and no 'fair treatment'. Some described being given papers that placed a time limit on their stay without first being asked why they had come or being given access to the asylum procedure.<sup>15</sup>

The Arabic speakers described spending months sleeping rough in France. It was a notable feature from all of the groups of young people that we spoke to that they had not accessed any formal care while staying in France. Whether this is due to their agents deliberately keeping the young people away from the French authorities or whether there are problems in accessing formal procedures was unclear from what they told us.

The route taken by the Vietnamese children involved firstly flying to Russia and then travelling by lorry to the UK via France. The young people from Africa (Eritrea and Ivory Coast) had travelled through the Sahara desert and then over the sea – usually to Italy first. One described his journey as "*almost like life and death*".

The consistent accounts of mistreatment and neglect by state officials given by all the groups of young people casts real doubt on whether all the European countries through which they travelled can properly be thought

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<sup>14</sup> 'Agents' extract further payment from relatives of young people in exchange for moving them on to a safer country. Poor conditions for young people in mainland Europe appear to coincide with the interests of people smugglers to keep them 'on the move' for longer, thus being able to demand more money from relatives in the home country. For further details see: Mougne, C. *Trees only move in the wind: A study of unaccompanied Afghan children in Europe UNHCR*, June 2010.

<sup>15</sup> See Article 22 of the UNCRC (refugee children).

*“[The journey was] almost like life and death.”*

**– A young person who had travelled across the Sahara**

to provide a safe environment for children seeking asylum. The standard of care and access to asylum procedures provided to children are patently not the same across the European Union, which suggests that some countries are not meeting their obligations under the United Nations Convention on the Rights of the Child (UNCRC). This raises serious questions as to the current UK Government policy of attempting to return children to the member state responsible for examining the asylum application in accordance with the ‘Dublin Regulation’<sup>16</sup> and whether such a policy is consistent with the legal duty on all who work for the United Kingdom Border Agency both to safeguard these children, and to promote their welfare.<sup>17</sup>

## Recommendations

- 6.1** The policy of attempting to return children who arrive in the UK to some other European countries where they have not been able to access an acceptable level of care and/or access the asylum procedure should be reviewed against the duties required of states under the 1951 Refugee Convention, the UN Convention on the Rights of the Child (and the associated guidance provided in the General Comment No.6) and Council Directive 2003/9 (‘the reception directive’). Where a planned return is unsafe against these benchmarks, the UK Government should derogate from the general rule under the Dublin Regulation utilising the ‘sovereignty clause’ and assume the responsibility for examining the claim here.
- 6.2** The UK Government should press for urgent action within the European Union to equalise the treatment of asylum-seeking children in line with the standards set out in the UNCRC, and the guidance on the protection, care and proper treatment of unaccompanied and separated children given by the UN Committee on the Rights of the Child’s General Comment No. 6.

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<sup>16</sup> Council Regulation No. 343/2003. The ‘Dublin Regulation’ establishes the criteria and mechanism for determining the member state responsible for examining an asylum application lodged in a member state by a third country national.

<sup>17</sup> Although figures provided by the UK Border Agency indicate a progressive reduction in the number of children actually returned under the Dublin Regulation since 2005, this has not resulted from a change in policy. The exception to this has been a “pragmatic” decision in respect of Greece, effective from September 2010, shortly after our visit to Millbank.

## 7. Treatment on entry to the UK



Most of the young people we spoke to were recent arrivals – landing within several days or weeks of our visit. A few were former residents of Millbank who had returned for our visit. This latter group of young people had mostly been in the UK for a year or so.

Differences in when each young person arrived may have led to some of the differences in treatment reported below, with recent arrivals telling us of a far more positive experience on entry than those who had arrived a year or so previously. UKBA and the Immigration Service are to be congratulated on the evident improvements that have taken place in reception arrangements.

We were aware, following publication of a report by Refugee and Migrant Justice<sup>18</sup> (RMJ) that there had been substantial evidence of the Immigration Service interviewing children on arrival without an appropriate adult present, with the information gained through such interviews later being used in the asylum decision. We are pleased to note that discussions between RMJ and United Kingdom Border Agency, and ongoing litigation, appear to have combined to reduce the incidence of unacceptably lengthy and inappropriately unaccompanied interviewing of children on arrival.

Of the six Arabic speakers, four said that they had been treated fairly on arrival. They had not been questioned in great detail and had been brought directly to Millbank. The two others reported that they had been questioned without an appropriate adult being present. Questioning had been lengthy and they had felt scared and anxious while it happened. The experiences on entry of the Kurdish boys were largely positive. One reported:

*“I was in the lorry sitting on top of the cargo and the door opened. I was scared. The policeman was very nice to me – he got me out of the lorry and I had to wait for five hours for an interpreter – a phone interpreter. Then I waited for five more hours at the police station and was taken to Millbank. The police spoke well to me, fed me well. They brought me juice and crisps. They gave me information about what was happening to me. I felt human again.”*

Another Kurdish boy described his treatment as *“beyond expectation – much better than I would have expected... I was very scared when I was in the lorry and when the policeman opened the door but he was smiling a lot at me and I’m sure he said ‘welcome to England.’ ”*

Some of the Afghan young people gave a disturbing account of travelling for long periods and then arriving in a ‘big group in one lorry’ (17 people).

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<sup>18</sup> *Safe at last – Children on the front line of UK border control*, Refugee and Migrant Justice, March 2010.

Because of the numbers there was little oxygen and some of them were quite sick as a result. Once detected, however, the police realised immediately that they were unwell and some were transferred to hospital.

*“The police spoke well to me, fed me well. They brought me juice and crisps. They gave me information about what was happening to me. I felt human again.”*

**– A Kurdish young person**

Although they were fingerprinted and interviewed, the interviews were not overly pressurised and when they complained about being ill, the interviews were stopped. They were transferred to Millbank quite quickly.

Some of the boys arriving in this large group reported having their mobile phones confiscated by the police. We are aware that the authorities might have concerns that traffickers’ or agents’ numbers could be stored on these phones. This is often the stated reason for their confiscation. However, this had happened “two months ago” but the boys’ phones had not yet been returned. This was causing them considerable personal difficulties, as their phones contained the numbers of friends and family, important contacts whom they had been unable to contact subsequently.<sup>19</sup>

Two of the Afghan boys had managed to evade detection on entry but had handed themselves in to the police after disembarking from the lorries under which they had travelled. Both reported waiting for half a day at a police station and told of immigration officers attending to them at the police station. One of these boys had handed in a document described as a ‘birth certificate’ which he had brought with him from Afghanistan. The police had lost this, which was causing him great distress. Despite the efforts of his social worker and his lawyer, the document could not be traced.

One boy had a wait of a day and a half before he was transferred to Millbank. He had arrived at 1pm and had remained at the police station until 5am the following morning when he was taken to a UKBA office, where he remained until late the following afternoon when he was finally taken to Millbank. He reported not knowing what was going on and not being given information about why he was waiting.

The Eritrean boys felt they had been treated well on entry to the UK. They had been processed quickly and although they had to engage with unfamiliar processes like telephone interpreting they had been brought to Millbank promptly by staff who had asked them about their age. A boy from Ivory Coast was caught at 5am and taken to immigration at 9am. He was interviewed for four or five hours before being taken to Millbank. He was pleasantly surprised because in some of the European countries he had travelled through, the police had beaten him.

The Vietnamese children spoke of having their interviews recorded, with no appropriate adult present. Telephone interpreting was used. Officers had

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<sup>19</sup> Since September 2010, and following a recommendation from Her Majesty’s Chief Inspector of Prisons, all arrivals at Dover have been allowed to retain their mobile phones except those carrying camera phones (for security reasons). In the case of camera phones, alternative arrangements are in place in the holding room to allow them to make calls.



been “strict but kind”. They shook hands, spoke nicely and provided some food and drink. They had not seen a doctor until they arrived at Millbank. One had been briefly handcuffed when he ran off on being discovered. However, he said he had run off because he had expected to be badly treated by the police, but instead had found them to be kind.

It is important to note that before the visit to Millbank we had requested a meeting with the Immigration Service in Dover to discuss their practice when children are apprehended or present themselves on entry, following publication of RMJ’s report.<sup>20</sup> Unfortunately, we received no response to our requests to meet and discuss these issues from the agency’s perspective. Our recommendations therefore are unfortunately made in the absence of having had this important dialogue.

*“I had to wait for five hours for an interpreter – a phone interpreter. Then I waited for five more hours at the police station and was taken to Millbank.”*

**– A Kurdish young person**

## **Recommendations**

- 7.1** Telephone interpreting is a new experience for most children entering the UK. Interpreters should provide reassurance and information about what is going to happen to the child next. This should be done at the earliest possible stage in addition to establishing basic information about the child’s identity. Given that these children are likely to be anxious, such information may need to be repeated at each stage in order to give them reassurance.
- 7.2** The mobile phones brought in by children may contain the numbers of family and friends, as well as contact details of those assisting clandestine entry. Where phones are confiscated by the police or immigration authorities, arrangements need to be in place to ensure that children can maintain contact with their relatives and friends. Phones must be returned where they are no longer required as evidence in a criminal prosecution.
- 7.3** Children should not be interviewed about substantive matters that bear on their asylum claim or about their method of entering the country in the absence of Police and Criminal Evidence Act conditions<sup>21</sup> and legal advice and representation. Details sought to establish identity and to provide information about the next stage of the process should be conducted in the presence of an appropriate adult.
- 7.4** Any document brought by a child and handed to the immigration authorities or police should be kept safe and properly recorded. A copy should be made and handed to the child or their social worker on their release. This should be passed to their legal representative.

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<sup>20</sup> ‘Safe at last – Children on the front line of UK border control’, Refugee and Migrant Justice, March 2010.

<sup>21</sup> See the codes made under the Police and Criminal Evidence (PACE) Act, 1984.

## 8. Millbank Reception and Assessment Centre



All of the young people we spoke to praised staff in all roles for the way they had been treated since their arrival at Millbank. Young people told us staff from Millbank had collected them directly from the immigration office and brought them to the centre. One Arabic speaker told us “*staff really cared for us and helped us since we arrived*”. Another boy told us he felt “*100% safe*” since his arrival. The Afghan boys pointed to “*a lack of prejudice*” and “*equality of treatment*” between the centre’s residents. The philosophy that imbues the centre is very much based around realising the young people’s rights and responsibilities and it was clear from the relationships that we observed and were told about that these highly committed and professional staff are held in both affection and esteem by the young people for whom they are caring.

The young people felt that their needs were being met. They had been allocated a ‘key worker’, had been directed to lawyers to help with their claims and had been given all the basic necessities they needed to rebuild their lives after very difficult journeys. Their religious needs were respected. The Muslim residents had been provided with prayer mats and caps and copies of the Koran, and could attend the mosque in Ashford. All the young people had been seen and assessed by the centre doctor, and most had either already had, or were due to have, a detailed educational assessment.

Some of the young people told us how important it was that there were “*adults who cared*” to look after and guide them. They were alert to the dangers of drugs, cigarettes and alcohol. They each received an allowance of £15 a week which they spent on a variety of things, especially toiletries.

The ‘relief’ at being in a place of safety, expressed in various ways by the young people, was also commented on during discussions with the GP who works at the centre and assesses the children shortly after they arrive and during their stay. She told us that many of the young people experienced “*purely psychological*” problems such as sleep disturbance and memory loss. There were also “*difficult to sort out*” expressions of distress such as “*falling on the floor*”. The centre has productive links with the local child and adolescent mental health service (CAMHS) service to which referrals can be made.

The GP told us that in terms of their physical condition, most of the young people presented with relatively minor acute problems. Some had musculoskeletal issues connected with their growth. Others displayed heart problems. TB screening sometimes revealed evidence of previous infection but rarely, if ever, active TB. The young people can be screened for other conditions such as HIV infection if they are at risk.

## 9. Beyond Millbank – Looking to the future: Hopes and fears



To varying degrees the young people talked to us about their hopes, aspirations and fears for the future. Sometimes comments were made in group discussions and sometimes to the Children’s Commissioner or members of her staff.

We have grouped the topics raised with us under the issue sub-headings below. We first set out the issues raised with us. In the next section we discuss the issues raised and make recommendations.

### Issue 1: Return of under 18-year-olds to Afghanistan

We had not discussed the planned UK Government policy change on returning 16- and 17-year-old Afghans to Kabul during the group sessions. However, this was raised directly with the Commissioner during her individual meetings with young Afghans. Information about this proposed change in policy had reached all of the young Afghans we spoke to individually, through the networks they were now part of in and beyond the centre.

What most of the young people had understood was that the policy could affect any or all of them and that it was already ‘effective’ – that is that they could be returned to Kabul at any moment. They questioned whether, and if so how, the UK Government could ensure their safety. Some reiterated that their lives would be at risk from the people they had fled from if they were sent back to Kabul. It was clear this was an issue of huge concern. We felt obliged to try and calm some of the fear and anxiety expressed over this matter and in particular emphasised that the policy had not begun operating at the time of our visit and that the Government had yet to set out the arrangements, so any new policy was unlikely to come into effect in the immediate future. Nonetheless it was clear that their fears remained.

### Issue 2: Obtaining legal advice after leaving Millbank

Some of the young people were very concerned about their future legal representation following the demise of Refugee and Migrant Justice, which had offices in both Ashford and Dover. Since the start of the new Legal Services Commission contract round (October 2010), there is no longer any legally aided immigration law firm based in Kent. The issue raised by the young people is therefore very pertinent, especially given Kent’s unique position as a county housing the major port of entry and reception for the UK.

### Issue 3: Delays in UKBA communicating decisions in ‘third country’ cases

A number of young people complained about waiting for excessive periods of time for a decision on their asylum claims. This issue was raised by

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ex-Millbank residents now living in the community. It appears likely that delays relate to children deemed 'third country' cases.

One young person reported being first fingerprinted in Greece but not having claimed asylum there. He later approached the authorities in France and claimed asylum. They were "not interested" and wanted to remove him to Greece so he "ran" and came to England. He was still waiting to hear whether his claim would be considered by the authorities in the UK or whether he would be returned to either France or Greece.<sup>22</sup>

One young person, now living in Folkestone, had waited 20 months and still had "no paperwork of any kind"<sup>23</sup>. Leaving these young people 'in limbo' with regard to their legal position was causing them considerable stress and may prejudice their application. Naturally they wanted us to understand their fears and concerns.

#### **Issue 4: Age assessment**

Some of the young people complained that the system for assessing age was unfair, with some complaining that the assessments undertaken by the social workers happened 'too quickly'.

In some of the countries from which the young people originated registration of births either does not occur or did not occur at the time they were born.<sup>24</sup> There is a very real and complex issue for all parties and great care needs to be taken in arriving at decisions. Some of the young people we spoke to did not appear to know their exact age and were relying on imprecise information from parents or other relatives.

One further source of complaint was the discrepancy between what appeared on a young person's Asylum Registration Card (ARC) and the subsequent assessment by the social worker. Most young people told us that the age on the ARC was often younger than that declared by the social worker. The Children's Commissioner is on record as having considerable detailed concerns around age assessment of asylum-seeking children and young people. These are concerns shared by many others in the medical profession, and elsewhere.

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<sup>22</sup> France could only lawfully remove the young person to Greece if he had claimed asylum there. If the child had been fingerprinted in Greece as an illegal entrant but had not claimed asylum, the French authorities should have enquired further. If they accepted he was a minor, they should have enquired whether he had a close relative residing in a 'Dublin' country and, if in the child's best interests, requested that country to register his claim. If no close relative resided in a 'Dublin' country, they should have registered his asylum claim in France as the first country in which he had claimed asylum. See Council Regulation (EC) No. 343/2003 (The 'Dublin Regulation'), Article 6.

<sup>23</sup> "Unaccompanied children should be provided with their own personal identity documentation as soon as possible", CRC/GC/2005/6, p.12.

<sup>24</sup> See Article 7 of the UNCRC (registration, name, nationality, care).

## **Issue 5: Education and work**

Some of the young people were clearly literate and ambitious, and some already well educated. At the other extreme, some had never had any formal schooling and were illiterate in their mother tongue. All had aspirations either to work, or continue with education. Some had been working for some years already before leaving their countries. For example, one boy had been working as a mechanic with his father since the age of 13, before his father's death.

The more educated young people suggested they might be provided with an 'education advocate' to assist them in negotiating access to educational and training provision.

Most young people were concerned, and keen, to learn English quickly. Some mentioned that they wanted more formal English teaching (English for Speakers of Other Languages - ESOL) than they were currently receiving.

## **Issue 6: Choice over where to live and who to live with**

This was raised by those who had already left Millbank. Some told us that they would like a greater say in who they lived with when they left Millbank and went into shared accommodation. Some also wanted a choice in where they lived. Some of the ex-residents who were settled in Kent told us that they felt very visible as a minority in the small Kent towns where they lived and some had experienced racism from local residents. This had led some to aspire to move to London or a large city.

## **Issue 7: Trafficking**

Two children from Vietnam had been trafficked into the UK. One had been picked up by his trafficker in Dover, directly from either the police station or an immigration service office. Both had been put to work in cannabis factories, where they had been discovered by police and arrested. They had both subsequently been prosecuted, in one case under an incorrect name and an incorrect age, meaning he had been placed into an adult prison on conviction. Both had been advised by their defence solicitors to plead guilty to the charges against them, and had served a year in prison in the case of the wrongly age-assessed boy, and a young offender institution in the case of the other.

On release they had both been transferred to Millbank, and put in touch with relevant services, and the 'National Referral Mechanism' for victims of trafficking. A new criminal solicitor was attempting to get their criminal convictions quashed. Neither of the boys had known anything about claiming asylum. Neither had properly understood what was happening to them, at any stage of the trafficking process, or once they were arrested, charged, tried, convicted and imprisoned.

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## 10. Beyond Millbank – Looking to the future: Discussion and recommendations



### Issue 1: Return of under 18-year-olds to Afghanistan

We understand that the rationale behind the proposed policy is to discourage Afghan children from making dangerous journeys across the world. However, from the discussions we had with the young Afghans we anticipate there will be a number of knock-on effects from the intended policy of returns to Kabul, which are likely to corrode the protection system for refugee children. We also encountered social care staff who were both unclear and uncomfortable about their potential roles in the processes concerned, including in such areas as sharing sensitive client information with an outside agency.

Among our foremost concerns are that a change in national policy will:

- Place young people in danger in Kabul, thus breaching the UK's obligations under the United Nations Convention on the Rights of the Child.<sup>25</sup>
- Encourage young people to misrepresent their age on arrival, in order to try to fall outside of the 'age criteria' for return under the policy and so avoid the risk of being returned.
- Far from discouraging young people from setting out in the first place, encourage migration from Afghanistan from an even younger age profile of asylum seekers than currently occurs.
- Substantially increase the risk of 16- and 17-year-old Afghans absconding from care in the UK, or bypassing the care system altogether and "going underground". This would expose them to the possibility of exploitation and trafficking.
- Create a risk that because social workers would be asked to provide information to United Kingdom Border Agency (UKBA) to assist in UKBA's selection of suitable candidates for early return,<sup>26</sup> the bonds of trust we saw would be compromised.

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<sup>25</sup> See in particular, Articles 22 (refugee children) and 6.2 (survival and development) of the UNCRC.

<sup>26</sup> See Article 16 of the UNCRC (right to privacy). The obligation to protect the confidentiality of information received in relation to an unaccompanied child 'applies to all settings including health and social welfare' (CRC/GC/2005/6, Para 29).

## Recommendations

- 10.1** Children should only be returned to Afghanistan when it is safe and if it is in their best interests. The General Comment No. 6, states that *“in the absence of availability of care provided by parents or members of the extended family, return should not take place without secure and concrete arrangements of care and custodial responsibility upon return”*.<sup>27</sup> These conditions have not as yet been demonstrated.<sup>28</sup> We draw the Government’s attention to the recent Aide Memoire from UNHCR relating to returns of children to Afghanistan.<sup>29</sup>
- 10.2** There is a need for UKBA to provide up-to-date, clear, regular and detailed information to all local authorities accommodating Afghan 16- and 17-year-olds as the policy develops and if it is implemented. The current lack of authoritative information allows rumours to spread among the young people, causing unnecessary fear and falsehood to endure.
- 10.3** Social workers need to be helped to consider how accurate information, rather than rumour, can be communicated to young people who think they might be affected, as well as to those who certainly will be affected if the change in policy comes into effect.

## Issue 2: Obtaining legal advice after leaving Millbank

This is a crucial issue for the young people we spoke to, made pressing by the demise of Refugee and Migrant Justice and the consequent absence of any legally aided immigration firm in Kent. The arrangements subsequently put in place for the young people to obtain legal advice and representation from a visiting lawyer while at Millbank, is in our view, both cost effective and efficient.

It was explained that under this arrangement, a legal representative visits the centre with an appropriate interpreter, and instructions are taken from the young person on site. This means that a number of young people can be seen in the same day by the same legal representative and there is a cost saving on social worker time as no-one is required to accompany the young person to the legal representatives’ office. Travelling to London to accompany young people attending meetings with a legal representative

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<sup>27</sup> CRC/GC/2005/6, paragraph 85. See also paragraphs 84-88.

<sup>28</sup> UKBA has discussed with those in the sector what the policy might look like and how it could be implemented, but has not yet concluded, either in these forums or publicly, what the intended arrangements are. Therefore it is not possible to assess whether the conditions outlined in the General Comment No. 6 have been taken into account in the proposed arrangements.

<sup>29</sup> *Special measures applying to the return of unaccompanied and separated children to Afghanistan*, UN High Commissioner for Refugees, August 2010, available at: <http://www.unhcr.org/refworld/docid/4c91dbb22.html> [accessed 1 February 2011].

is likely to be resource intensive for Kent County Council (KCC), and would waste considerable time for all concerned.

The current scheme operating from Millbank, which we consider is good practice, could be extended to other unaccompanied children in the care of the authority and in particular to those who are ex-residents of the centre who may live within easy reach. Such arrangements could also be taken up by other local authorities where local provision is hard to come by. It would of course be a more attractive proposition for legal aid practitioners if they could see a number of clients over a day.

### **Recommendation**

**10.4** KCC staff should review the arrangements for assisting young people to access an immigration lawyer both while at Millbank and after they have been placed in the community. Consideration should be given to using any available space at Millbank for legal representatives to take instructions from both residents and ex-residents, or other unaccompanied children in KCC care.

### **Issue 3: Delays in UKBA communicating decisions in ‘third country’ cases**

We appreciate that it takes some time to go through the formal arrangements with other signatories to the Dublin Regulation concerning taking back children who have claimed asylum in their countries. Our view is that where an applicant has been found to be a child by a local authority in the UK and is being looked after, it falls to the UK Border Agency to ensure that the European country to which they are returned also cares for them as a child. While we understand that UKBA communicates any finding from an age assessment in the UK to the potential receiving state, this is not the same as securing an agreement to treat the returnee as a child. Where an assurance cannot be secured, any child’s case should be substantively considered in the UK as allowed for under the Dublin Regulation.

Having said this, delays in communicating decisions to children are deeply stressful and need to be avoided. Whilst the current system of attempting to return children under the Dublin Regulation remains, we make the following recommendation.

### **Recommendation**

**10.5** UKBA’s third country unit should have in place arrangements that are subject to timescales for informing both the local authority and a child’s legal representative on the progress of arrangements to return unaccompanied children who are ‘third country cases’.



## Issue 4: Age assessment

The complaint from some young people that age assessments by social workers had happened ‘too quickly’ raises complex issues. Some kind of provisional age assessment must be made when the young person is picked up from Dover immigration in order to ‘allocate’ them either to foster care or a children’s home (Appledore) if under 16, or to Millbank if they are deemed to be 16 or 17.

We did not ask KCC about the process for making ‘provisional’ age assessments and whether, after a period of time, any provisional assessment might be reviewed. We note that the rules under the Children Act in respect of children’s homes (applying to accommodating the under 16’s) are distinct from centres such as Millbank which accommodates 16- and 17-year-olds – for example in staffing and overnight stay requirements.

The process described by staff in respect of age assessment at Millbank involved the judgement not just of the child’s allocated social worker but also their ‘key worker’, the educational assessor, and other professionals involved with the child. This appears to us to be a relatively fair system, based on our observation of the young person over a period of time by a number of professionals, including watching the young person concerned interacting with other young people. We would like to know more about how the process works and how the assessment is arrived at. However, given our lack of detailed knowledge, we remain concerned at comments from the young people that the assessments happened “too quickly”.

Finally, some young people raised the issue of disparity between the Home Office age assessment as recorded on the Asylum Registration Card (ARC) and the Kent social worker assessment that, it was said, was often less generous. Given that UKBA has delegated the assessment of age to local authorities, we question the need to put a ‘stated age’ on the ARC when the child applies for asylum. This appears to have set up a conflict where the social worker is seen to be acting less generously than UKBA.

The issue of age assessment (or lack of it) in European transit countries is beyond the scope of this report but is a vital issue that bears on Dublin Regulation returns of children. We merely observe here that there is a need for greater consistency across Europe in the methods used to determine age. We and others have consistently argued elsewhere that any age assessment method should not include a radiological component such as bone, wrist or dental x-rays.<sup>30</sup> We consider there is scope for greater involvement by paediatricians in assisting social workers with age assessments.

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<sup>30</sup> See for example, The Children’s Commissioner’s foreword to: Immigration Law Practitioners Association, 2007 *‘When is a child not a child?’* And the legal opinion *In the matter of a proposed amendment to the immigration rules* provided to the Immigration Minister by the Children’s Commissioner, November 2007.

## Recommendations

- 10.6** Accurate height and weight measurements should be taken by either trained GPs or paediatricians when unaccompanied children first enter care. These should be recorded on a growth chart and the measures repeated regularly throughout the care episode. Paediatricians should be involved in interpreting the resulting data.
- 10.7** UKBA should consider abandoning the practice of putting any age on the ARC before an assessment being conducted by the local authority.

## Issue 5: Education and work

We had the opportunity to look at an educational assessment being undertaken on a new arrival during our pre-visit. The tool being used required the individual (in the part of the assessment observed) to reproduce a complex pattern from memory by drawing, requiring a number of different skills. What we observed was an impressive way of bypassing the 'language issue' on new arrivals. It was clear to us that Millbank takes educational assessment very seriously and attempts to match those assessments with the available provision in the area. Staff deal with a very wide range of capabilities amongst Millbank residents.

Education staff talked through some of the difficulties in accessing education courses for this group of young people in the locality. As they were all deemed beyond statutory school age there was no compulsory education. College courses frequently demanded a certain level of spoken or written English as an entrance requirement, which meant that this group were often excluded from mainstream provision. English for Speakers of Other Languages (ESOL) was often the only thing on offer, but was largely unsuitable. The limited time they were likely to be in the UK also created a barrier to embarking on the kinds of courses many of the young people would like. A positive asylum decision would change this but the temporary protection most often provided to children presented real challenges in terms of meeting educational needs.

An interesting discussion took place in respect of a boy who had worked as a mechanic with his father for a number of years before coming to the UK. He would have been suited to a mechanics course but his English was not sufficiently good. However, one could speculate that entry onto such a course might be a better route into his learning English than are rather more abstract 'ESOL' classes.

We were struck by both the commitment and energy of the education staff member attached to Millbank, and by the considerable difficulties he faces in providing for a very diverse group, in circumstances where whether they

will be able to remain in the UK remains undecided. Most of these difficulties are common to other authorities where young asylum seekers are accommodated. This leads us to wonder what greater scope exists for sharing best practice across local authorities.

### **Issue 6: Choice over where to live and who to live with**

The issues brought to our attention concerned ‘choice’. The first concerned choice over where a young person is accommodated at the end of their stay at Millbank. The two elements of this are where the young person goes (i.e., to which town) and who they live with once they arrive there.

It is natural that young people have preferences as to who they go on to live with when they are ready for independent living. It is right and proper that those preferences should be aired and given full consideration by those deciding on the move-on placement.<sup>31</sup> We would hope there is a formal mechanism in place for making those views known before any decision is reached. However, stating a preference is not the same as getting that preference. We appreciate that there are a range of factors that social work staff must take into account when placing young people in shared accommodation. To the extent that it is possible to do so, it is of course helpful to explain the arrangements arrived at to the young person concerned.

The issue of feeling conspicuous because of your ethnicity in small, largely ‘white’ towns in Kent is a real one for these young people. We were told of incidents of racism or racial harassment from local people. This had led some of the young people to yearn for the anonymity of a larger city, though the comparative lack of both visibility and safety that would accompany such a move were also acknowledged.

One issue for the authority is providing ‘care’ or ‘leaving care’ services over large distances. There are mechanisms for the transfer of care in the Children Act and associated regulations but these are not frequently used or even understood by local authorities. We do not however think it is necessarily advisable for young people to move to larger cities on account of negative experiences in small towns. While this is unlikely to be the sole reason for wishing to move, we would like to see all young people going through Millbank ‘prepared’ for living as a minority in places such as Ashford and Folkestone. This means explaining the context of racism and hostility, encouraging young people to integrate and how to do so (e.g. joining clubs and so on) and also giving them the skills and knowledge to complain if it becomes a real problem.

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<sup>31</sup> See Article 12 of the UNCRC (respect for the views of the child).

## Recommendation

**10.8** Teaching the skills of independent living should include teaching sensitively about racism and the possible hostility that might be faced as a young immigrant. This should include strategies for dealing with or challenging such behaviour as well as information on who to complain to and how to do so. This recommendation, relating directly to Millbank, would apply elsewhere in the country wherever young people like those at Millbank are cared for and educated.

## Issue 7: Trafficking

There is currently a wider debate underway about prosecuting the victims of trafficking for offences they may have committed while coerced or under duress by those responsible for the trafficking and exploitation concerned. The fact that prosecutions like those of the two boys at Millbank are still taking place highlights the fact that, despite ample guidance from the Crown Prosecution Service, Association of Chief Police Officers (ACPO) and the Home Office, the issue of offences attaching to trafficked children's conduct whilst being exploited is still viewed through the prism of criminal justice, rather than the child protection issue it actually is.

There is a known profile of Vietnamese boys of a certain age being enticed, recruited and trafficked to work in the dangerous conditions of cannabis cultivation in the UK. We urge that their vulnerability as exploited children should be the first concern, in accordance with existing Home Office and CPS guidance. The need to deal with any offences they are made to commit on their traffickers' behalf should not override the fact that first and foremost they are children.

We were satisfied that now the two young people were at Millbank their needs – including their continuing need to be protected from their traffickers – were being properly considered. We would point out that the security around Millbank (closed circuit TV cameras, visitor logs, properly staffed reception arrangements, etc) offers a protective shield to such children. We would be concerned if they were living in the community without close monitoring and support, given their histories.

Shortly before the visit we were told by a manager in the Refugee Council's Children's Panel that a few weeks previously, six Vietnamese boys had been sent back to France by Dover Immigration Service. As we asked but have remained unable to speak to Dover Immigration Service staff, we do not know many further details. We suspect that, like the two boys we met at Millbank, these six knew nothing about 'claiming asylum' and in the absence of articulating a protection need were simply returned as illegal entrants. The action of sending them back across the Channel is in breach of UKBA's duty to safeguard and promote the welfare of the children they encounter.

We therefore have concerns over these young people's fate. Dover Immigration Service staff should have referred these children to KCC in line with the guidance given in the General Comment No. 6.<sup>32</sup> As we had no response to several requests to meet with them ahead of our visit to Millbank, we do not know whether they knew about their duty to refer to safeguarding services and did not do so, or did not know they were under this duty.

## Recommendation

**10.9** Unaccompanied children should never be returned from entry ports without first being fully assessed by the local children's services authority, or without assurances on the arrangements for their safe transfer and reception. In the absence of such assurances they should be accommodated until arrangements can be made and the children legally advised and represented.

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<sup>32</sup> *"States should refrain from referring unaccompanied and separated children into asylum procedures if their presence in the territory does not raise the question of international refugee protection needs. This is without prejudice to the obligation of States to refer unaccompanied or separated children to relevant procedures serving child protection, such as those foreseen under child welfare legislation."* CRC/GC/2005/6, paragraph 32.

## 11. Conclusions and final comments



The time after an unaccompanied or separated child's arrival in a new country is crucial in rebuilding their life after the difficulties of separation from family, departure from the familiar and often a dangerous and traumatising journey. They may not know how their families are faring back at home, adding to their anxiety at the point of their arrival in the receiving country.

Against this background, we were impressed with the arrangements we observed and heard about from Kent County Council (KCC) and various partner organisations' staff, and from the young people themselves. The standards of care, support, supervision and security on offer represent the best practice we have seen concerning the reception and assessment of newly arrived children. We commend KCC for establishing the centre, and would urge other 'gateway authorities' to which such a model may be particularly relevant, to visit Millbank and see exemplary practice in action.

The accounts we heard from the young people at Millbank raise important issues about the consistency with which these children are treated across the European Union. All member states, as well as others operating under the Dublin Regulation must ensure that the reception of unaccompanied and separated children in their territories reflects the standards set out in the United Nations Convention on the Rights of the Child, with particular reference to Article 22 relating to Refugee Children as well as the guidance provided by the Committee on the Rights of the Child which assist with interpretation of states duties in the General Comment No. 6. There is also a binding European Union Directive, 2003/9, which lays down minimum standards for the reception of asylum seekers in member states ("the Reception Directive"). This establishes Europe-wide standards for the treatment of children. Because of the concerns we have about children's treatment in some EU countries, we now urge the UK Government to re-think its current blanket policy of returning children to their first-encountered European country under the Dublin Regulation (see recommendation 6.1) as this conflicts with the primary duty to take the child's best interests into account.

The treatment of unaccompanied children by the immigration authorities and police on entry to the UK also informs our recommendations. We can only report on the young people's views, as we were unable to speak to the immigration service to gain their perspective. The report from RMJ published in March 2010<sup>33</sup> raised significant concerns. However, we were pleased to find that, particularly amongst newer entrants, the overwhelming majority had been treated well in what we appreciate are

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<sup>33</sup> 'Safe at last – Children on the front line of UK border control', Refugee and Migrant Justice, March 2010.

challenging circumstances for all concerned. They reported instances of sensitive, prompt action by the authorities, ensuring these young people were settled expeditiously into care arrangements. There were, however, also matters raised with us which indicate there is continuing room for improvement. We reaffirm our continued commitment to having in depth discussions with the immigration authorities about their arrangements for processing children who arrive on our shores.

Overarching the specific recommendations made in this report is our request to the relevant UK authorities to assess, and where necessary to review, arrangements concerning the treatment of asylum-seeking children who come into the UK alone. We expect all arrangements to comply in full with UKBA's duty to safeguard children and promote their welfare, as well as fulfilling our international obligations. We are happy to offer our assistance and ongoing support to UKBA in this work.

## Appendix 1

### Summary of recommendations made in this report

No.	Page	Recommendation	To
6.1	14	The policy of returning children who arrive in the UK to some other European countries where they have not been able to access an acceptable level of care and/or access the asylum procedure should be reviewed against the duties required of states under the 1951 Refugee Convention, the UN Convention on the Rights of the Child (and the associated guidance provided in the General Comment No.6) and Council Directive 2003/9 ('the reception directive'). Where a planned return is unsafe against these benchmarks, the UK Government should derogate from the general rule under the Dublin Regulation utilising the 'sovereignty clause' and assume the responsibility for examining the claim here.	United Kingdom Border Agency (UKBA)/Home Office
6.2	14	The UK Government should press for urgent action within the European Union to equalise the treatment of asylum-seeking children in line with the standards set out in the UNCRC, and the guidance on the protection, care and proper treatment of unaccompanied and separated children given by the UN Committee on the Rights of the Child's General Comment No. 6.	UK Government
7.1	17	Telephone interpreting is a new experience for most children entering the UK. Interpreters should provide reassurance and information about what is going to happen to the child next. This should be done at the earliest possible stage in addition to establishing basic information about the child's identity. Given these children are likely to be anxious, such information may need to be repeated at each stage in order to give them reassurance.	Dover Immigration Service/UKBA



7.2	17	The mobile phones brought in by children may contain the numbers of family and friends as well as contact details of those assisting clandestine entry. Where phones are confiscated by the police or immigration authorities, arrangements need to be in place to ensure that children can maintain contact with their relatives and friends. Phones must be returned where they are no longer required as evidence in a criminal prosecution.	Dover Immigration Service/Police
7.3	17	Children should not be interviewed about substantive matters that bear on their asylum claim or about their method of entering the country in the absence of Police and Criminal Evidence Act conditions <sup>34</sup> and legal advice and representation. Details sought to establish identity and to provide information about the next stage of the process should be conducted in the presence of an appropriate adult.	Dover Immigration Service/UKBA
7.4	17	Any document brought by a child and handed to the immigration authorities or police should be kept safe and properly recorded. A copy should be made and handed to the child or their social worker on their release. This should be passed to their legal representative.	Dover Immigration Service/Police
10.1	23	Children should only be returned to Afghanistan when it is safe and if it is in their best interests. The General Comment No. 6, states that <i>"in the absence of availability of care provided by parents or members of the extended family, return should not take place without secure and concrete arrangements of care and custodial responsibility upon return"</i> . <sup>35</sup> These conditions have not as yet been demonstrated. <sup>36</sup> We draw the Government's attention to the recent Aide Memoire from UNHCR relating to returns of children to Afghanistan. <sup>37</sup>	UKBA

<sup>34</sup> See the codes made under the Police and Criminal Evidence (PACE) Act, 1984.

<sup>35</sup> CRC/GC/2005/6, paragraph 85. See also paragraphs 84-88.

<sup>36</sup> UKBA has discussed with those in the sector what the policy might look like and how it could be implemented, but has not yet concluded, either in these forums or publicly, what the intended arrangements are. Therefore it is not possible to assess whether the conditions outlined in the General Comment No. 6 have been taken into account in the proposed arrangements..

<sup>37</sup> *Special measures applying to the return of unaccompanied and separated children to Afghanistan*, UN High Commissioner for Refugees, August 2010, available at: <http://www.unhcr.org/refworld/docid/4c91dbb22.html> [accessed 1 February 2011].

10.2	23	There is a need for UKBA to provide up-to-date, clear, regular and detailed information to all local authorities accommodating Afghan 16- and 17-year-olds as the policy develops and if it is implemented. The current lack of reliable information allows rumours to spread, and this is causing unnecessary fear and falsehood to endure.	UKBA
10.3	23	Social workers need to be helped to consider how accurate information, rather than rumour, can be communicated to young people who think they might be affected, as well as to those who certainly will be affected if the change in policy comes into effect.	Local authorities/ Association of Directors of Children's Services
10.4	24	KCC staff should review the arrangements for assisting young people to access an immigration lawyer both while at Millbank and after they have been placed in the community. Consideration should be given to using any available space at Millbank for legal representatives to take instructions from both residents and ex-residents, or other unaccompanied children in KCC care.	Kent County Council
10.5	24	UKBA's third country unit should have in place arrangements that are subject to timescales for informing both the local authority and a child's legal representative on the progress of arrangements to return unaccompanied children who are 'third country cases'.	UKBA/Third Country Unit
10.6	26	Accurate height and weight measurements should be taken by either trained GPs or paediatricians when unaccompanied children first enter care. These should be recorded on a growth chart and the measures repeated regularly throughout the care episode. Paediatricians should be involved in interpreting the resulting data.	Local authorities/ Kent County Council
10.7	26	UKBA should consider abandoning the practice of putting any age on the ARC before an assessment being conducted by the local authority.	UKBA

10.8	28	Teaching the skills of independent living should include teaching sensitively about racism and the possible hostility that might be faced as a young immigrant. This should include strategies for dealing with or challenging such behaviour as well as information on who to complain to and how to do so. This recommendation, relating directly to Millbank, would apply elsewhere in the country wherever young people like those at Millbank are cared for and educated.	Kent County Council
10.9	29	Unaccompanied children should never be returned from entry ports without first being fully assessed by the local children's services authority, or without assurances on the arrangements for their safe transfer and reception. In the absence of such assurances they should be accommodated until arrangements can be made and the children legally advised and represented.	Dover Immigration Service/UKBA

## Appendix 2

### How we prepared for and structured the visit

It is in the nature of Millbank that occupancy levels can vary quite considerably. Office of the Children's Commissioner staff made a brief visit at the end of June 2010 to help consider how the young people might be engaged with during the Commissioner's visit in August. At that time occupancy levels were fairly low. By the time of the visit on 6 August occupancy levels had risen dramatically and the Centre was at full capacity at 31 residents, all of them male unaccompanied asylum seekers judged to be aged 16 and 17.

We wanted the young people to have an idea of who the Children's Commissioner was, and her role, prior to the visit. Information was sent to staff beforehand, along with a DVD in which the Commissioner speaks about her role. It was felt important to make clear to the young people in advance that the Children's Commissioner is unable to advocate for individuals in relation to their immigration status.

In discussing the visit with staff in the asylum service before the event, it was agreed that ex-residents of Millbank should also be invited back to meet the Commissioner during her visit, as we were interested to find out how they were now faring after moving out, and how well Millbank had prepared them for living independently.

We supplied each resident and ex-resident attending the visit with a disposable camera and a request on what we wanted them to do with it. Their photographs were developed prior to the visit, and distributed back to their owners during it. These images were used to encourage them to talk about the importance they attached to the subject of the photograph, aiming to establish what was important in their lives, whether at Millbank or in the community. Millbank staff did an excellent job in briefing the young people, from whom the visit consequently generated a lot of interest and enthusiasm.

Seven staff from the Children's Commissioner's team attended the visit. The visit took place over six hours between 10am and 4pm. Some time was set aside for talking to staff from the centre and from the wider asylum and children's service in Kent.

There were two group sessions led by Children's Commissioner staff. During these sessions the young people were split into three principle groups according to the languages spoken. In addition to the group sessions there were opportunities built in for the young people to speak in private to the Commissioner or a member of her staff.

Given the range of languages spoken by the young people there were either one or two interpreters attached to each group. Each group had at least two Children's Commissioner staff leading, so where necessary in relation to interpretation, we were able to sub-divide the group. The languages for which interpretation was required were Dari and Pashtu (one interpreter), Arabic, Tigrinya, Sorani and Bahdini (one interpreter) and Vietnamese.

## Appendix 3

The following articles, or parts of articles, from the United Nations Convention on the Rights of the Child, to which the UK is a signatory, have been referenced in this report.<sup>38</sup>

### Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier

### Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child

### Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

### Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

### Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

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<sup>38</sup> Taken from: *Convention on the Rights of the Child*, Office of the United Nations High Commissioner for Human Rights, September 1990, available at: <http://www2.ohchr.org/english/law/crc.htm> [accessed 1 February 2011].

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

## **Article 22**

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

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

## **Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- a) Make primary education compulsory and available free to all;
- b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- d) Make educational and vocational information and guidance available and accessible to all children;
- e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

### **Article 29(1) (c)**

1. States Parties agree that the education of the child shall be directed to:
  - c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own

### **Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - a) Provide for a minimum age or minimum ages for admission to employment;
  - b) Provide for appropriate regulation of the hours and conditions of employment;
  - c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

### **Article 35**

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

### **Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

### **Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.



3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

## **Optional Protocol on the involvement of children in armed conflict**

### **Article 2**

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

### **Article 3**

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

- a) Such recruitment is genuinely voluntary;
- b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- c) Such persons are fully informed of the duties involved in such military service;
- d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United

Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

#### **Article 4**

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

