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Coronavirus Research by the European Children's Rights Unit

The Impact of COVID-19 on Asylum Seeking Children

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Coronavirus (COVID-19) #LivUniCOVID
Research and response

Briefing Paper #6

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Context

Pandemics affect all people, but they disproportionately devastate those who are already vulnerable, legally and socio-economically, such as asylum-seeking children.

Recent asylum data reveals that, by the end of 2019, there were 35,566 asylum applications made in the UK, a significant proportion of which involved families with dependant children and 10% (3,651) of which were by unaccompanied children. Having come from countries with poor human rights records and ongoing conflict, most arrive destitute and often have complex mental and physical health needs. Since there are limited ways of entering the UK to seek asylum legally, many are smuggled in through the ports, whilst others are trafficked by organised gangs. Over half of asylum claims, including those involving children, are rejected in the first instance, leaving children and their families reliant on emergency support (equivalent to approximately £5 per person per day) and charity whilst they go through lengthy and complex appeal processes. Unaccompanied children fall under the care of the Local Authority who have an obligation to provide them with care, support and accommodation. Ideally they should be placed with foster families, but many older children are placed in unregulated, shared housing with more limited support.[1]

The United Nations Committee on the Rights of the Child, in a recent statement and series of recommendations, urges states to respect the rights of the child when tackling the public health threat posed by the

S.17(1) Children Act 1989 provides that: "It shall be the general duty of every local authority…to safeguard and promote the welfare of children within their area who are in need… by providing a range and level of services appropriate to those children's need.

COVID-19 pandemic. It highlights, in particular, the disproportionate impact of the pandemic on asylum seeking and refugee children and calls for 'targeted measures' to protect them.[2] There is limited evidence, as yet, that the UK Government's Covid-19 measures relating to asylum have taken this recommendation on board.

Asylum Application and Decision-Making Process

- **Registering claims for asylum and screening interviews:** Those who wish to claim asylum, including children, must do so in person. This usually (but not always) involves informing the immigration officials that they wish to claim asylum immediately upon entering a UK port, and is followed by a screening interview. The purpose of this initial interview is to gather basic information about the claimant and forms an important part of the asylum claim. The Home Office has set up **a number of** temporary regional Asylum Intake Units (AIUs) to enable people to attend screening interviews in other locations across the UK. However, the requirement to attend such interviews in person poses obvious risks to children's safety and to the safety of the adults accompanying them, and presents claimants with a hobson's choice of minimising risk to their own health or delaying their asylum application.

- **Due process, transparency and fairness in decision-making:** all substantive asylum interviews (which form the substance of the asylum claim) have been suspended for the time being and all appeal hearings in the first-tier immigration and asylum tribunal are being conducted by telephone, video or decided without a hearing on the basis of the papers. There is no clarity as yet about how age assessments of unaccompanied children whose age

[2] https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/INT_CRC_STA_9095_E.pdf, Recommendation 7

is in dispute are being undertaken.

These changes raise significant questions about the fairness, timeliness and transparency of the decision-making process. Disputes concerning the age of unaccompanied children, in particular, have always been notoriously controversial in the UK due to the general approach of disbelieving child refugees to be 'children' (House of Lords, 2016: 15). Time is of the essence in such cases, as many unaccompanied children are liable to 'age out' of protection if assessments are delayed for too long (see below). Such changes also raise serious challenges to children's meaningful participation, the rigour of best interests assessments, and to the possibility of gathering vital evidence from other countries affected by Covid-19 to support asylum claims.

There is, therefore, a need for clearer guidance on whether justice can be appropriately achieved for children through remote alternatives to face to face hearings.

Lessons might be drawn from the guidance emerging from the family courts in this respect. Specifically, in *Re P (A Child: remote hearing)* [2020] EWFC 32, the president of the Family Division of the High Court, Sir Andrew McFarlane, has stated that "…*establishing that a hearing can be conducted remotely, does not in any way mean that the hearing must be conducted in that way."* [para 8] and "*The Court should be mindful, even where all parties appear to consent to proceed by way of remote hearing, whether any particular case can proceed properly or fairly without the physical presence of a lay party in the courtroom.*" [para **29**].

- **Temporary closure of or limits on advice and representation:** The possibilities for (already overburdened) immigration and asylum specialists to provide advice and representation for child asylum seekers and their families have been significantly limited by Covid-19. Most have been

forced into lockdown while smaller legal firms and civil society organisations providing specialist advice and support for unaccompanied children face acute financial and staffing challenges as the contingency plans of the Legal Aid agency and other funders remains in flux.

- **Delays and Lack of information about progress on their asylum application:** The Home Office has **suspended** substantive asylum interviews and decisions relating to 'vulnerable' asylum seekers for the time being until alternative ways to conduct these are determined. Whilst this is a necessary measure, it will add significant pressure to a system already characterised by acute delay. The total backlog in asylum cases pending an initial decision increased from 35,043 at the end of September 2019 to **40,018** at the end of December 2019. Of these, **22,549 (52%)** had been waiting for more than 6 months. Asylum decisions involving dependant children tend to take longer. Media reports have revealed that in September 2018 there were 6,214 dependant children who had been waiting more than six months for an initial decision, representing nearly a 50% rise over the course of the previous four years. Covid-19 will inevitably worsen delays in decision-making, which in turn will delay vulnerable children and families' access to associated housing, financial and health related support. Research has also revealed how uncertainty around immigration status impacts profoundly on children's mental health, education and social integration. This begs questions as to how this backlog can be managed in a way that will prioritise the needs and interests of these children.

- **The potential to 'age out' of protection –** Specific statutory safeguards are in place to protect children during the asylum process, including a requirement to safeguard and promote their welfare (s.55 Borders, Citizenship and Immigration Act 2009). Children's best interests, as enshrined in Article 3 of the UN Convention on the Rights of the Child, are 'a primary consideration' in all immigration decision-making, including in

the determination of their parents' claims (*ZH Tanzania v SSHD* [2011] UKSC 4). Children who are unaccompanied remain in the care of the state and can apply for a special asylum status until they reach the age of 18, protecting them against deportation. Delays in the asylum process have dire consequences for children whose age is in dispute (approximately a third of all unaccompanied children) or who are approaching the age of 18 insofar as they are liable to 'age out' of these statutory protections. This will further have knock-on effects for the type of services and support that these children can access, including the possibility of being refused asylum altogether.

Social and Welfare Provision for Asylum Seeking Children

- **Housing/accommodation** – child asylum seekers are entitled to accommodation either as dependant family members (under the Care Act 2014 or under Section 95(1) of the Immigration and Asylum Act 1999), or as children in need (including unaccompanied children) under Section 17 of the Children Act 1989. Covid-19 impacts on asylum seekers' accommodation in a number of ways. Ordinarily, asylum seekers whose claims have been refused or who have been granted leave to remain and can access mainstream support are asked to vacate emergency asylum accommodation. At the end of March 2020, the Home Office introduced measures to protect all asylum seekers from being evicted in this way and to maintain asylum support payments at least until the end of June 2020. Whilst such temporary measures are welcome, asylum accommodation remains unsuitable for many seeking families with children. A significant proportion of unaccompanied children, for instance, are accommodated in unregulated housing (including hostels, foyers, flats, shared housing and supported living) which is not subject to Ofsted scrutiny. Organisations representing the interests of asylum seeking children have highlighted that despite unaccompanied asylum seekers only forming 6% of the

looked after children population, they constitute approximately 40% of children living in (unregulated) independent or semi-independent accommodation. The sub-standard nature of this accommodation has been compounded by Covid-19, where social distancing may not be possible, where the health and safety of children is not subject to any scrutiny or additional protection, and where children have had to endure confinement with strangers and limited family or social support.

- Accessing appropriate **educational materials and support during lock down.** Many asylum- seeking children have limited access to computers and the internet to enable them to maintain contact with schools and engage in appropriate home schooling. Materials prepared for pupils may be ill-adapted to respond to the specific needs (linguistically etc) of such children, compounding existing interruptions and damage to their academic progression.

- **Social support for unaccompanied children:** many of the frontline organisations supporting unaccompanied children's recovery and integration have closed temporarily and the future of some smaller voluntary organisations is uncertain. The current gap in support is exacerbated by legislative changes that allow local authorities to 'relax' or temporarily suspend support for children in their care. Specifically, the new **Adoption and Children (Coronavirus) (Amendment) Regulations 2020** amends 10 sets of regulations in order to "assist the children's social care sector" until at least September 2020 (but this is likely to be extended for longer). These include:

    - removing the obligation for social workers to visit children in care every 6 weeks (or for the first week after a new placement); enabling less frequent visits to occur remotely (eg by phone or video call);

- removing the obligation to review looked after children's care every 6 months;
- removing the requirement that Ofsted inspect children's homes twice a year;
- extending emergency foster care placements from 16 to 24 weeks;
- relaxing processes for examining the suitability of foster carers, including the requirements to perform full health information and criminal records checks

Withdrawal and suspension of this provision, coupled with extended uncertainty over their immigration status poses particular risks to the health, education and welfare of asylum seeking children. It also makes them especially vulnerable to exploitation and abuse both during and in the aftermath of C-19 lockdown.

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