

By email to: [NewPlanforImmigration@homeoffice.gov.uk](mailto:NewPlanforImmigration@homeoffice.gov.uk)

29 April 2021

## **ADCS response to the Government's New Plan for Immigration – Policy Statement**

1. The Association of Directors of Children's Services Ltd. (ADCS) is the national leadership organisation in England for directors of children's services (DCSs) appointed under the provisions of the Children Act (2004), and their senior staff. The DCS acts as a single point of professional leadership and accountability for services for children and young people in a local area, including children's social care and education. ADCS welcomes the opportunity to submit a response to the government's consultation on its policy statement outlining the government's new plan for immigration. This response covers aspects of the proposals in the policy statement which are most pertinent to the safeguarding, protection and wellbeing of children and young people.

### **Family reunion rights**

2. The right to settle in the UK for unaccompanied asylum-seeking children via family reunion was enshrined in the Dublin Treatise to which the UK is no longer a signatory in the wake of Britain's exit from the EU. The Dublin Treatises provide a legal route into the UK which has now been removed. It is vital that unaccompanied children can come to the UK legally if they have family members in the UK and thus an alternative scheme is essential, otherwise we risk increasing the number of spontaneous (clandestine) arrivals via illegal routes.

### **Community Sponsorship scheme**

3. Community sponsorship enables local volunteer groups including charities and faith group to directly welcome and support refugees, including helping with accommodation. This is an important aspect of support for refugees, however support for refugee families with children, or unaccompanied minors must be co-ordinated by the relevant local authority to ensure that the placement of any child in these circumstances is appropriate to meet their needs and is registered and regulated in accordance with the requirements of the Regulator, Ofsted for placing children under the age of 16. Moreover, it is a matter of good safeguarding practice that a refugee child has a school place and is on-roll at a legal school and that school place must be organised by the responsible local authority which has corporate parenting responsibility for unaccompanied minors through S20 of the Children Act 1989.

### **Quicker immigration decisions**

4. Late and delayed immigration and asylum decision-making is not in the best interests of children and young people. Not having a decision as a child approaches the age of adulthood (18) can be a factor in young people going missing from their placement, which in turn puts those young people at heightened risk of exploitation. However, a "good faith" requirement and an expanded "one-stop" process may be detrimental to children whose needs and protection concerns may only come to light fully after a period in stable accommodation and after receiving support services. The policy statement indicates that decision-makers including judges will only give "minimal weight" to any evidence an individual brings after they have been through the "one-stop" process. ADCS members would urge the government to consider making exceptions for children's cases.

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## **Reforming the asylum system**

5. The policy statement indicates the government's intention to take forward reforms to ensure those who arrive in the UK, having passed through safe countries, or have a connection in a safe country where they could have claimed asylum, will be considered inadmissible to the UK's asylum system. Unaccompanied minors may well be unaware of the 'safe' countries they have passed through on route to the UK. An unaccompanied minor's asylum claim should not be ruled inadmissible on the basis of having passed through 'safe' countries.

6. Plans to expand the government's asylum estate, by creating more reception centres to provide basic accommodation while processing asylum claims, are somewhat fraught and linked intrinsically to a more effective approach to age assessment. The inadvertent placing of a child in adult reception centre has very serious safeguarding risks. So too does the inadvertent placement on an adult into a child's placement (be that foster care, a children's residential home, or semi-independent living arrangements/ shared lodgings etc). Please see paragraphs below for further comment on the proposals in relation to age assessment. There is little detail in the policy statement as to how such reception centres would operate, who would be responsible for running them, how access to wider support services such as health and education would be accessed and where legal, corporate parenting responsibility for a child in such a facility would lie. It is also unclear as to whether children would be detained (i.e. deprived of their liberty) in such centres or if they would be free to come and go. This lack of clarity in relation to children and young people is of deep concern to ADCS members.

7. **Temporary Protection leave** which may be granted after an inadmissible claim could have a deleterious impact on children and young people, particularly if the leave needs to be regularly reviewed, and the ever-present risk of being returned. This set of circumstances will also make it extremely challenging for local authorities to undertake pathway planning for children and young people. ADCS seeks assurances that children and young people, would not have the NRPF condition imposed if they are granted Temporary Protection leave whilst in local authority care. Temporary Protection Leave may also disadvantage children living with their families if their parents are unable to integrate effectively, risking destitution if their leave is subject to the NRPF condition.

## **Age assessment**

8. The policy statement indicates the government's intention to bring forward plans to introduce a new National Age Assessment Board (NAAB) to set out the criteria, process, and requirements to be followed to assess age, including the use of scientific methods to support appropriate age assessment. ADCS supports the establishment of the new NAAB. The NAAB must be driven by a child-centred approach to its work, rather than by an immigration focus. The operation of the NAAB will have to be closely integrated with the operation of the revised National Transfer Scheme (NTS). Much detailed work is required to flesh out this proposal including in relation to robust governance mechanisms for the Board. For example, how will it be 'staffed' – social work expertise will be essential to the effective running of the NAAB; indeed, social work- led assessments are uniquely positioned to incorporate holistic multi-disciplinary assessments. We know however from previous experience that the Home Office struggled to recruit agency social workers who had real expertise in undertaking age

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assessments; what size will it be; where will its work take place; how will it be funded – will there be any charge to LAs referring age assessments to the NAAB, whether (and under what powers) the NAAB could compel a local authority to undertake or indeed reverse a local authority age assessment. We recognise that no single method, nor combination of methods can provide absolutely certainty in age determination. However, a decision on age, as noted above, can have profound implications for the individuals concerned as well as those working with them. Children are entitled to statutory support under various pieces of relevant legislation.

9. ADCS supports the introduction of codified age assessment criteria, including enabling future use of scientific methods, subject to agreement and thorough research evidence as to their efficacy. As the government's policy statement notes, the UK is one of the only countries in Europe not to use or commission scientific methods of age assessment. Use of dental X-rays appear to be most common in Europe. At the same time, the current 'Merton-compliant' assessment should be reviewed as there is an increasing sense that it is no longer fit for purpose. In addition to providing more clarity on what a comprehensive age assessment should entail, the codification should helpfully also include additional clarity on the circumstances in which a shortened age assessment could be legitimately undertaken. This proposed codification should also allow for the use, alongside other evidence, of scientific age determination techniques.

10. We believe that those local authorities where significant expertise in age assessment has been developed (largely 'entry' authorities) should if they so wish continue to be able to undertake their own assessments. We would expect however most authorities to refer individuals to the NAAB if its work is seen as fair, robust, and transparent by local authorities. There may be unintended consequences however, whereby an age assessment from the NAAB becomes the 'Gold Standard' and consequently age assessments undertaken by LAs may be valued less.

11. Secondary legislation should make clear that initial age assessments conducted by immigration officers should revert the pre-BF(Eritrea) judgement i.e. an individual shall be treated as an adult where their physical appearance and demeanour is such that they are significant over 18. This is probably more important than ever given that the UK no longer has access to EuroDac information for making enquiries of other European countries for them to share any documentary evidence they may have to support of an individual's age assessments.

12. In tandem, it will be important for immigration officials to be thoroughly trained. Consistency in decision-making at the initial stage and indeed by the NAAB, will be vitally important if we are to reduce the volume of legal challenge.

13. It is proposed that the NAAB assumes responsibility for conducting Merton-compliant age assessments. Merton-compliant age assessment needs reviewing. Assessments undertaken by the NAAB must be thorough but also timely as whilst age is under dispute the individual concerned will most likely be cared for, supported, and accommodated as a child. The NAAB will need therefore to be sufficiently resourced to undertake the significant number of age disputes that we see on an annual basis. Between 2017 and 2020 there were just over 3,000 age disputed cases.

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14. ADCS supports the intention to consider creating a fast-track statutory appeal right against age assessment decisions of the NAAB (and indeed for those LAs which may wish to continue to undertake their own 'Merton-compliant' age assessments) to avoid the excessive use of judicial review litigation. The latter is time-consuming and extremely costly for local authorities and for the Home Office. A first-tier Immigration Tribunal, with statutory provision for onward appeals, would be a more appropriate forum in which challenge to an age assessment can be made, providing quicker access to legal recourse for individuals. Importantly, legal aid is available to appellants.

### **NRM/ modern slavery**

15. The National Referral Mechanism (NRM) plays an important role as part of a package of measures that safeguarding and protect people who are believed to be victims of modern slavery. First Responders (LAs, police and immigration officers) make referrals to the NRM for children and for adults. Increasingly, referrals in relation to children involve UK citizen children involved in criminal exploitation including 'county lines'.

16. ADCS members have long been of the view that a referral to the NRM in relation to a child is of limited value given the well-established child protection mechanisms and local safeguarding children arrangements that exist. The NRM is too distant from local arrangements and takes too long to reach a decision.

17. Providing increased support for victims of modern slavery is welcome. The policy statement indicates that the government will consider embedding specialist workers within police forces to support victims and law enforcement officers on investigations. In relation to a child who is thought to be a victim of modern slavery, it will be important to ensure there is no duplication of effort between the child's social worker and the specialist.

18. It is to be welcomed that the government is committed to ensuring that modern slavery victims receive ready access to specific mental health support to aid their recovery. This will require a significant investment in local mental health services for all children and young people.

19. The roll-out of Independent Child Trafficking Guardians (ICTG) service is welcome but the advice and support they can provide to trafficked children is limited because ICTG numbers are so small. The policy statement indicates that there will be a pilot scheme for new ways of identifying child victims of modern slavery. This would be welcome **if** it dovetails with decisions taken by existing local safeguarding structures and arrangements (multi agency safeguarding partnerships). Identifying child victims of modern slavery is very clearly within the remit and priorities of each of the three Statutory Partners in each local area (LA, Police, health).

20. Local areas have developed tailored responses to manage and reduce the risks associated with criminal (and sexual) exploitation such as county lines, including specialist workers and teams; multi-agency initiatives to disrupt criminal activity; and the use of sophisticated risk assessment and screening tools to support identification. These teams might work only with CSE, or CCE or both. In parallel, local areas have developed their own arrangements to record and quantify the number of children and young people thought to be victims of exploitation.

## **Individuals who are Appeal Rights Exhausted (ARE)**

21. Individuals who are Appeal Rights Exhausted (ARE) have no further grounds on which to appeal their decision on leave to remain in the UK. Children in families where this is the case are left particularly vulnerable. Local authorities provide financial and accommodation support to people through no recourse to public funds support to prevent their destitution. This is an unfunded burden placed on LAs, alongside their prevention of destitution and prevention of homelessness duties.

22. The policy statement indicates the government's intention to consult with LAs and stakeholders on implementing provisions of the Immigration Act 2016 (Schedule 11) to remove support from failed asylum-seekers who have no right to remain. In addition, Schedule 12 allow for no recourse to public funds support for ARE/ over-stayers and care leavers to be taken out of scope of the Children Act 1989 and set out a new legislative framework under which support **may** be provided. It is unclear from the Plan whether the government also intends to implement these provisions. If these provisions are imposed broadly, rather than in a targeted way, they will have significant implications for local authorities.

23. The policy statement indicates that working with local authorities and partners, Home Office will seek to enforce returns of failed asylum-seekers. We need to understand what work is being undertaken now to encourage take up of voluntary return when a family becomes ARE. What is the role of the Home Office family returns team? Data show that return is rarely the final outcome and there is limited, if any, involvement from family returns team when families are ARE. Further clarity for local authorities on their role here is needed.

24. Neither the government nor the Home Office has provided any evidence that 'switching off' asylum support leads to more voluntary (or enforced) returns. More likely, switching off that support will drive ARE families below the radar of public services, creating further and significant safeguarding risks for the family. Consideration of implementing the measure to remove asylum support should only be made once the Home Office has established more robust return arrangements.

25. If asylum support is withdrawn and return is not taken up or if enforcement is not pursued, there will be an impact on local authorities – whether support is provided under section 17 (Children Act 1989) or paragraph 10A, Schedule 3 of the Nationality, Immigration and Asylum Act 2002. If Home Office is also considering implementing paragraph 10A then there needs to be full evaluation as to the extent to which this would reduce the burden on councils, particularly since intervention is likely to be needed to prevent homelessness on public health grounds for the foreseeable future whilst we live with Covid-19.

26. ADCS members look forward to working with central and other government colleagues and stakeholders on the detail of the proposal to create a National Age Assessment Board and the associated necessary secondary legislation.

Any queries in relation to this consultation response should be directed in the first instance to Sarah Caton, Chief Officer, ADCS. Email – [sarah.caton@adcs.org.uk](mailto:sarah.caton@adcs.org.uk)