

Submission of Evidence to the Home Affairs Select Committee

IMMIGRATION

1. ABOUT THE BRITISH ASSOCIATION FOR ADOPTION AND FOSTERING

The British Association for Adoption and Fostering is the leading charity and membership organisation in fostering and adoption in the UK. We:

- promote the highest standards of child-centred policies and services for children¹ separated from their families
- speak out on behalf of looked-after children
- influence UK-wide policy and legislation
- provide information and advice to members, governments and the general public
- promote greater public understanding of adoption and fostering
- support our members in their work

BAAF's main activities are the development, promotion and advocacy of best policy and practice; the provision of advice and information to our members and to the general public; training, consultancy and seminars; child placement services including the publication of our flagship monthly newspaper, 'Be My Parent'. We also publish a quarterly professional journal, 'Adoption and Fostering', books and guides for professionals, academics, parents and carers and research studies. The main users of our services are our members comprising local authorities across England, Scotland and Wales, voluntary adoption agencies, independent fostering agencies and also individual social work, legal and medical professionals and carers. We are currently developing our service to Northern Ireland and have appointed a Northern Ireland Director.

2. PRIVATE FOSTERING

BAAF have a longstanding interest and very actively campaigned for the introduction of a registration and approval system for private foster carers; it is our view that a requirement to simply notify private fostering arrangements is insufficient to protect children. BAAF has convened a private fostering special interest group of practitioners who work in the area of private fostering for many years to support their role and to assist us to identify the improvements needed. This group has been instrumental in bringing stakeholders together to share views and making recommendations about best practice.

BAAF actively campaigned for the inclusion of changes in relation to private fostering in the Children Act 2004, most particularly the establishment of a registration scheme. We were pleased that some measures were introduced but disappointed that registration was only the subject of a sunset clause. BAAF was awarded the tender by the Department of Education and Skills to undertake the development of

¹ The term child is used throughout this document but is intended to include those that are young people up to the age of 18.

draft minimum standards and to write a guide to assist local authorities in their duty to raise awareness of the need to notify private fostering arrangements as laid out in section 44 of the Children Act 2004 which came into force on 1 July 2005.

3. UNACCOMPANIED ASYLUM SEEKING CHILDREN

BAAF is in the fifth year of two consecutive projects to develop policy and practice in respect of unaccompanied asylum seeking children. The project has published a Guide for social workers on assessing and planning - 'Food, Shelter and Half a Chance', a selection of stories from unaccompanied Children - 'I Didn't Want to Come Here' and two Training Manuals, one for Social Workers and the second for Foster Carers.

BAAF's interest in private fostering has focussed on both the position of children with U.K. citizenship and children whose parents live overseas and send them to live with friends or distant relatives in the UK, as well as children from abroad who may be placed in private foster care arrangements by adult foreign nationals with visitor, work or student visas. The current scheme for private fostering covers children placed by foreign nationals and there is nothing to bar such placements provided they meet current regulatory provisions. Children placed by foreign nationals must accompany them when they leave the U.K. unless an application is made to the Immigration and Nationality Directorate before the current leave expires.

BAAF has a number of concerns about the current system that partly results from the private fostering regulations and partly from immigration.

4. PRIVATE FOSTERING - BAAF'S CONCERNS

4.1 The system of notification of a 'private fostering arrangement' in itself is reasonably robust but it is compromised because there are strong disincentives to making a notification. From a private foster carer's point of view they may see that they have very little to gain by complying with regulations or engaging with the local authority, particularly if they tend, perhaps as a result of previous experience or because of concerns about their immigration status, to mistrust statutory authorities. Although support, guidance and assistance may be made available to the private foster carer or to the child or the child's parents, the thresholds for actual service provision may be very high. Private foster carers may also run the risk of being prohibited whether they are proposing to become a private foster carer or where they are currently fostering a child privately (section 69(1), Children Act 1989).

4.2 In the year ending 31 March 2005, there were 730 notifications made to local authorities of children privately fostered in England. 68% of these children were aged 10-15 and 18% were born in Africa or Asia. Although any system will take time to become fully operational, these figures compare very unfavourably with a conservative estimate that, in 1991, there were 8-10,000 privately fostered children. It might be safely assumed that figures will increase in time as the requirements to notify become more widely known but serious concerns remain about whether the notification system is robust enough given the disincentives,

and as a result there are almost certainly a large number of children whose needs may well not be met and some who are not properly safeguarded.

- 4.3 Local authorities are required to raise local awareness of the need to notify but a national awareness raising campaign (as accompanied the introduction of registration of child minders) would have a much greater likelihood of success.
- 4.4 The notification system itself may also be compromised by a lack of expertise in some local authorities about the position and needs of children who are privately fostered. This may be particularly the case where children are foreign nationals.
- 4.5 Although the Guidance in relation to private fostering says that social workers should satisfy themselves about a child's immigration status and its legality, and consult with IND where there are doubts, these are just the kinds of situations where there is a strong disincentive for a private foster carer to notify.
- 4.6 In 2003, the Social Care Institute of Excellence undertook an evaluation of whether the introduction of the registration of child minders had been successful and to assess the benefits and disadvantages of applying registration to privately foster. The results were unequivocally in favour of registration.
- 4.7 There continues to be a lack of understanding by many staff working within education and health as to what private fostering is and what notification requirements mean. Professionals within these services are also concerned about reporting private fostering arrangements of which they become aware because of concerns about breach of confidentiality. There is no duty in the legislation on health and education to cooperate and to notify the local authority if they believe a child is being privately fostered.

5. BAAF'S CONCLUSIONS

- 5.1 That the requirement to notify in relation to a private foster care arrangement is not sufficiently robust because there is a strong disincentive to comply, the sanctions for non-compliance are weak and the gains for the private foster carer, birth parent and the child are marginal.
- 5.2 Notification is widely misunderstood by the public whereas a requirement to register and to be approved as suitable would give a clear and unequivocal message about the necessity to do this.
- 5.3 That children who may be most at risk are those who are most likely to be hidden.
- 5.4 That there is insufficient expertise in the children's workforce about the needs of children who are foreign nationals who are separated from their birth parents.
- 5.5 That there is a lack of understanding of private fostering amongst health and education staff and that confidentiality constrains sharing of information which can safeguard children.

6. BAAF'S RECOMMENDATIONS

6.1 That the inspection of private fostering due to be undertaken this year by the Commission for Social Care Inspection should have as one of its objectives to report on whether a registration system would better protect children and in that case, section 45 of the Children Act 2004 should be enacted.

6.2 That a programme of specialist training for local authority social workers, teachers and health workers on the nature of private fostering, the welfare issues of privately fostered children and the requirements of the current notification system be commissioned and delivered. In particular the risks to and needs of children who are not U.K. citizens should be highlighted.

6.3 That local Safeguarding Boards give urgent attention to the needs and welfare of children in their area who are privately fostered. In addition where children are not U.K. citizens and have limited leave to be in the U.K. and are privately fostered, additional measures should be taken to safeguard their welfare.

7. IMMIGRATION – BAAF’S CONCERNS

The purpose of immigration checks is to validate the identity and status of the person entering the U.K, and that the reason for their visit is compliant with the immigration rules. The welfare of any child at the point of entry and during their stay is not a primary immigration concern if their visit complies with the rules.

There are however, a number of situations where a foreign national child either at the point of entry or subsequently is or becomes a ‘separated child’. BAAF subscribes to the view that their formal status or the reasons that they have become separated is less important than the fact that they are separated from their birth parents or legal/customary guardians. ‘The Separated Children in Europe Programme’² identifies that these children are at risk from serious and long lasting psychological and social harm because their primary carer is not present or available.

There are a number of reasons that foreign national children become ‘separated children’.

- Those unaccompanied by any adult who then make an asylum claim
- Those that are accompanied by a principal carer who intends to place them in the care of others while they work or study. Some of these arrangements may be satisfactory and comply with current regulation but others may not. The circumstances of the carer may change during their stay and a previously satisfactory situation for the child becomes an ‘at risk’ situation.
- Those who are accompanied by a ‘relative’ who is not their principal carer. Some of these carers will plan to care for the child but then circumstances change and they cannot adequately do so. Others have no intention of caring for them once in the country and will abandon them or hand them over to other adults.

² ‘The Separated Children in Europe Programme’ is a joint initiative of some members of the International Save the Children Alliance in Europe and the United Nations High Commissioner for Refugees.

- Those that are accompanied by adults not known to them for reasons of exploitation
- Those whose parents or principal carers have made an asylum claim and reside in another country
- Those that are sent to the U.K. for education or for health treatment.
- Those whose parents' asylum claim is refused, do not comply with the requirement to leave the U.K. and where then the parents' right to any support is withdrawn and the child becomes 'looked after'.(Section 9, Asylum and Immigration Act 2004)

It is important to note that in many of the circumstances described above, the adult carers of these children will be in stressful and precarious situations themselves due to previous experiences before entering the U.K. and because of their status and position while in the U.K. Whatever their intentions to care for the child, they may not have the resilience or resources to care for them adequately unless appropriate support services are made available. It is equally important to note that some adults have no intention to care for the child at all and bring them to the U.K. for the purpose of exploitation.

Children may be in the U.K. because they are fleeing persecution and in that sense may 'wish to be here'. Others may have been brought here against their will.

In any of these circumstances, children may become the responsibility of the local authority especially if they have the status of an unaccompanied asylum seeking child. Some may become notified to the local authority where they are privately fostered. Others may become known to education or health or other public services although their precise circumstances, status and welfare may be unclear.

There are other children who are unknown or disappear because they are -

- trafficked children or young people where the plan is that they enter the U.K. for domestic or manual labour, the sex industry or other reasons that put them at significant risk,
- children who disappear after making an asylum claim or when their claim fails or children who are abandoned by their carers who leave the U.K.

Because these children easily fall outside the regulatory system of immigration control and the children's welfare system, they easily become 'invisible'. Ascertaining their status and needs at any point where they do enter the system – through school or health – can be very difficult. The problem was widely debated by Lord Laming in the Inquiry in relation to the death of Victoria Climbié and the Inquiry's recommendations have given rise to significant changes in the structure of children's services.

The numbers of children in these different categories is not known.

The Immigration Service and immigration officials face considerable problems in identifying children at risk in any of these categories. The service's primary purpose is the determination of eligibility to enter or to remain in the U.K. as prescribed by the rules and these do not have a primary children's safeguarding function. There are

general principles for the discharge of immigration functions in relation to separated children set out in the 'Statement of Good Practice' published by the Separated Children in Europe Programme and the 'Guidelines for Best Practice in Working with Children and Young People Subject to Immigration Control' published by the Immigration Law Practitioners' Association.

However, the rules themselves and especially those that determine and manage asylum claims put many parents/relatives who have responsibility for children in positions of great difficulty. Uncertainty over their future stay in the U.K. or a failed asylum claim plus lack of resources and lack of information make any arrangement they need to make for the children a high risk arrangement. They are likely to draw on people who themselves may not be suitable to care for children and pose a risk to the child. The operation of the immigration system itself can therefore generate practices that put children at risk – section 9 cases having become the most well known. (see *Inhumane and Ineffective - Section 9 In Practice*³)

There are other situations where insufficient attention is paid to the risks that a child may face upon entry to the U.K. For example, where a young person makes an asylum claim at a Port of Entry and intends to join a relative already in the U.K., that young person would not have the status of an unaccompanied young person and would not be referred to social services for an assessment of their needs. The adult they were joining would be assumed to have the resources and capacity to care for that young person with no status checks being undertaken to ascertain the relationship or parenting capacity.

The solutions to these problems are complex. Creating secure U.K. borders and a fair and transparent asylum system inevitably involves compromise. However, the paramountcy of the welfare of children separated from their parents and families and from their cultures and countries of origin must be a driving principle within the immigration and asylum system. Children are drawn into an adult world not of their making and that adult world has a responsibility to ensure that children are appropriately protected from it.

8. BAAF'S RECOMMENDATIONS

8.1 Where an adult enters the U.K and is accompanied by a child and they respectively claim asylum, checks must be undertaken to establish the relationship of the child to the adult. Where that status is verified, preliminary inquiries should also be undertaken to establish the capacity of the adult to care for the child during the processing of the asylum claim. Services must be made available to comply with the provisions of the Children Act 1989 where a child is assessed to be in need.

8.2 Local Authorities should establish close links with local communities to help identify children at risk because their status is provisional or marginal. The responsibilities of communities to work with Safeguarding Boards and local

³ *Inhumane and Ineffective - Section 9 in Practice; A Joint Refugee Council and Refugee Action Report on the Section 9 Pilot* (January 2006)

authorities should be emphasized with clear routes and procedures for identification and referral.

- 8.3 Visa and entry officers should be required to inquire whether an adult intends to maintain the full care of the child during their stay in the U.K.
- 8.4 Immigration officers should be trained to understand the importance of identifying potential risks to those children entering the U.K. where the plan for the stay and the care of the child is unclear.
- 8.5 Immigration Officers should be required to notify local authorities where a child's carer has a plan to place them in a private foster care arrangement during their stay.
- 8.6 Where an adult enters the U.K. and is accompanied by a child and they respectively claim asylum, checks must be undertaken to establish the relationship of the child to the adult. If the adult is not a close relative within the definition of relative contained in the Children Act 1989, then that child is being privately fostered and the immigration officer must notify the local authority. Where that status is verified, preliminary enquiries should also be undertaken to establish the capacity of the adult to care for the child during the processing of the asylum claim. Services must be made available to comply with the provisions of the Children Act 1989 where a child is assessed to be in need.
- 8.7 Where an adult asylum seeker has a failed claim and leaves the U.K., inquiries should be undertaken if that adult previously had the care of a child about the care or whereabouts of that child.
- 8.8 Section 9 of the Asylum and Immigration Act 2004 should be repealed.