



**The Border and Immigration Agency Code of Practice
for Keeping Children Safe From Harm**

Joint response
by
Family Rights Group
and
the British Association for Adoption and Fostering

April 2008

Introduction

Family Rights Group and the British Association for Adoption and Fostering welcome in principle the introduction of a Code of Practice for Keeping Children Safe from Harm. However, we have significant concerns about the current content and format of the draft code.

We are concerned overall that the way this document is written is not as a code of practice accessible to users – but instead is a mixture of policy, statement and guidelines. As a code of practice, this document is insufficiently detailed and lacks clear instructions and guidance to staff. In our view, it should be closely modelled on the guidance issued under s11 Children Act 2004, and Working Together to Safeguard Children (2006).

In many instances this draft code states that it is to be supplemented by operating instructions, but these are not available for consultation and may well contain the most important aspects of safeguarding guidance. Yet at the same time, the code states that a breach may result in disciplinary action against staff – it is difficult to see how the code in its existing format could form the basis of a disciplinary action.

If it is to be supplemented by detailed instructions, these should be available publicly for consultation. Where references are made to operational instructions, these should be clear cross-references that enable staff to go straight to the relevant section of the relevant instruction.

Many of the questions set out in the proforma response are directed to matters that are not currently in the draft code. This would seem to be contrary to the normal process of consultation on a draft document. If the proposals in the questions are being considered by UKBA, they should be included in the draft code so that consultees can properly consider both the substance and processes for implementing them.

Section 11 Children Act 2004

Whilst we welcome the introduction of guidance for UKBA on safeguarding children while they are in the UK, we maintain that the better approach would be for the duty under s11 Children Act 2004 to be extended to apply to UKBA.

It is not accepted that there is any conflict between the primary function of UKBA and the duty as set out in s11. The current position is that other agencies, such as the police, are bound under s11 to safeguard and promote the welfare of children; this duty of care is not contradictory to the primary function of a police service. The duty affects the way in which the primary function is exercised. Section 11 would place a statutory duty on the UKBA, which is a more appropriate way to ensure both the safety and welfare of these vulnerable children.

The existing provision in s21 of the UK Borders Act 2007 provides for the publication of guidance 'designed to ensure' that the UKBA takes steps to keep children safe from harm, and staff are required to 'have regard' to this guidance. However, it does not introduce a statutory duty, either in respect of safeguarding or promoting welfare, equivalent to that in s11 Children Act 2004. Under the UK Borders Act, there is no statutory duty to ensure that their functions are carried out having regard to the need to keep children safe from harm.

It is submitted that there is no justification for treating children of asylum seekers or unaccompanied asylum seeking children differently from other children within the UK. If the Government is to maintain its commitment to all children, as set out in 'Every Child Matters: Change for Children' for 'every child, whatever their background or their circumstances, to have the support they need to: Be healthy, Stay safe, Enjoy and achieve, Make a positive contribution and Achieve economic well-being' then there is an unavoidable obligation to promote the well-being of, not just safeguard, children who are asylum seekers.

Sections 1-3 of the draft Code: The Framework for Keeping Children Safe

Q1. It is proposed that there should be a requirement for Border and Immigration Agency staff members to record and explain their reasons in writing if they have departed from the Code or from any instructions issued in support of the Code (section 1.4).

Do you think this proposed requirement should be introduced?

Response

We agree that UKBA staff should be required to record their reasons for departing from the Code in writing. However, the Code as drafted does not include a requirement for reasons to be recorded in writing.

What other suggestions do you have for the process that Border and Immigration Agency staff should follow if they depart from the Code?

Response

It is not clear from the Code as drafted to whom departures from the code should be reported. It states 'a senior official with responsibility for children's issues' but this does not identify a clear process or procedure to be followed. One of the key requirements of the statutory guidance issued under the s11 Children Act 2004 is that there should be

'A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children.

It should be clear who has overall responsibility for the agency's contribution to safeguarding and promoting the welfare of children and what the lines of accountability are from each staff member up through the organisation to

the person with ultimate accountability for children's welfare. It should also be clear with whom each staff member should discuss, and to whom they should report, any concerns about a child's welfare. Responsibilities for safeguarding and promoting the welfare of children can operate at three levels:

- i. individual, which can be encompassed within job descriptions;*
- ii. professional, which is governed by codes of conduct for different disciplines; and*
- iii. organisational, with clear lines of accountability throughout the organisation to senior officer level.'*

Although some accountability and inspection functions are set out in section 8 of the Code, the lines of accountability from each staff member upwards are not clear.

In particular, the Code should be clear that a process must be set up within each department of the UKBA for reporting and responding to departures from the Code. Each department must identify an office holder to whom reports should be made, and a structure for considering that report and, if necessary, for disciplining the original decision maker. The Code should also ensure that there is overall collation of all departures from the Code, in each department, to be reviewed by the Children's Code of Practice Programme Board (or equivalent). The Programme Board must have responsibility for reviewing all departures from the code and issuing additional guidance to staff as necessary.

Although it is implicit in question 2 below that some of these procedures should be introduced, the current draft of the Code does not set out clear lines of accountability nor does it impose an obligation on UKBA or individual departments to put in place a clear procedure for reporting or review. If reporting procedures are to be dealt with in a separate section of the Code, they should be clearly cross-referenced.

The Code does not currently include a requirement for the reporting of departures from the Code by a private or voluntary agency commissioned to provide services. There needs to be included some form of oversight of these agencies, along the same lines as that set out above.

Q2. If the proposed requirement is introduced (see question 1), who do you think should review these recorded departures from the Code?

Please indicate the most appropriate person or body:

Response

Again, if this is a matter which is being considered for inclusion in the Code, it is surprising that the draft does set out process of review for consideration by consultees.

In our view, the first point of report should be to the Assistant Director responsible for children's issues within the unit where the departure from the Code occurred. As set out in answer to question one above, it is submitted that the Code needs to impose a requirement on departments to establish a clear procedure for reporting.

The question of review is one for the UKBA as a whole. The Code should clearly identify an officer holder or body at senior level within the UKBA (with responsibility across departments - it may be that is one of the functions of the Children's Code of Practice Programme Board) who has responsibility to review all departures from the code and to report on the same to an external oversight body. This senior officer holder or body should also be responsible for issuing guidance to the UKBA, or to individual departments where inappropriate departures from the code are found to have taken place.

Q3. The Code reflects the view that the best people to care for a child and communicate decisions about his/her future, including the immigration process, are his/her parents (section 1.6).

Do you think the child's parents should have primary responsibility for communicating with the child about the immigration process?

Do you think that an explanation of the immigration process should ever be given to the child by Border and Immigration staff members?

In what circumstances would it be appropriate for Border and Immigration Agency staff members to explain the immigration process to the child?

In some instances an explanation offered by Border and Immigration staff members may be different to that offered by the parents. Do you have any suggestions about how such instances should be dealt with?

Response

Section 1.6 seems to be a statement, rather than any kind of guidance appropriate for a Code of practice. If the Code is to form the basis of disciplinary action against staff members who do not follow it (8.1) then it must consist of clear instructions.

The Code does not give any guidance on when or in what circumstances parents should be encouraged to communicate immigration decisions to children, nor does it outline circumstances in which there may be a conflict of interest between

parents and children, such that it may be appropriate for a child to be informed separately about decisions which affect them and have their wishes and views properly taken into account. This question is therefore directed to a matter which is not currently dealt with adequately or at all in the draft code.

The primary responsibility for communicating about the immigration process lies with the agency responsible for its implementation – UKBA. First and foremost, this communication should be to adults. The standard of communication should be such that adults clearly understand the process or are able to ask questions of clarification if not. Where children are involved, the parents should be consulted and consent sought before any communication takes place with children directly. Information should be made available in a child appropriate format that parents can use to help them explain the process to their children. Where decisions or indeed any aspect of the asylum process needs to be communicated to children directly by the UKBA, whether orally or in writing this should only be done by officers who have been specially trained to work with children and only then where there is no alternative e.g. if the child is separated from their parent or legal carer. Trained child specialists, e.g. social workers, in local authorities or voluntary sector projects are much better placed to communicate directly with children if necessary and can additionally offer support to family members who are experiencing difficulties in this area.

Q4. The draft Code indicates that the Border and Immigration Agency complaints system will be the appropriate route for complaints relating to the Code (section 8.1).

Should there be a dedicated complaints system for children to access?

If yes, what form should this complaints system take?

Response

Again, the second and third parts of this question do not relate to comments on the Code as drafted, but on matters not currently in the draft.

It is our view that there should be a dedicated complaints system for all complaints relating to the Code, for or on behalf of children. This complaints process should closely follow the process provided for under s26 Children Act 1989.

Q5. Section 3 indicates that the Code will be supported by operating instructions that cover all the main occasions when the Border and Immigration Agency has substantive contact with children.

The ones proposed in the Code are:

- Interviewing of children to substantiate their application and their circumstances;
- Children during enforcement activities;
- Children during detention activities;
- Children during escorting activities;
- Children and contractor-led or other commissioned services;
- Special groups – missing children; trafficked children.

Do you think that it is appropriate to draw up operating instructions for each of these occasions/groups?

Please list any other occasions or groups for which operating instructions should be drawn up?

Response

Operating instructions should be drawn up for all these occasions/groups, and these instructions must be made the subject of public consultation, since they form the substantive part of this Code of Practice.

Since the substance of the Code appears to be dependent upon the detail to be contained in operating instructions, these should be drawn up for all identifiable areas of interaction between the UKBA and children, whether they are living with their families or are unaccompanied.

Specifically, detailed instructions, drawing on existing statutory guidance Working Together to Safeguard Children (2006), should be drawn up for identifying children who may be at risk of harm.

Q6. Please include any further comments you have regarding sections 1 – 3 of the draft code:

Section 1.7

Comment

This statement should be put in context of the duty to safeguard children – in a similar way to the equivalent statement in the s11 Children Act 2004 guidance:

*“2.4. The duty does not give agencies any new functions, nor does it override their existing functions. **It, however, requires them to carry out their existing functions in a way that takes into account the need to safeguard and promote the welfare of children.**”[Emphasis added]*

Section 1.9

Comment

The definition of ‘harm’ should correspond exactly to the definition in the Children Act 1989, at s.31(9):

““harm” means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another.”

This is particularly relevant given that it may be the ill-treatment of a parent or family member that the child witnesses.

Section 3.2

Comment

There is no guidance in this paragraph for staff to be able to understand or identify when private arrangements for a child are ‘inadequate’. There is no guidance on private fostering, what it means or the existing regulations that apply to it, neither here not at any other part of the code.

There is a reference to paragraph 19 – which does not appear to relate to any part of the draft code. See further comment on section 5.5 below.

Section 3.4

Comment

In order for this consultation to be a valid process, the instructions mentioned in this section should be available publicly and should be part of this consultation.

Sections 4 – 6 of the draft Code:

Q7. A number of options are available at the time of being refused further residence in the United Kingdom, (for instance, appeal against removal, judicial review, making representations through others, voluntary departure, assisted voluntary departure etc.)

Please complete the statement below by indicating the option which you think is most accurate.

Response

This question does not relate to the Code of Practice. Sections 4-6 of the Code in fact address in limited detail the ‘framework for keeping children safe from harm’ as set out in principle in section 2. Our comments on these sections are set out in response to Q12.

We do not wish to comment on question 7.

Q8. Do you think that families that face removal could benefit from the provision of information and counselling on the conditions and prospects available to them in their own country?

Response

This question does not relate to the Code of Practice.

We do not wish to comment on question 8.

Q9. Families are detained as an alternative to separating children and parents in the time leading up to departure:

Do you think that this should remain the preferred approach?

In what circumstances should we consider splitting the family so that not all members are detained?

If splitting the family so that not all members are detained leads to family members being required to leave at different times, in what circumstances should we consider splitting the family?

Response

It is not clear how these questions relate to guidance set out in the draft Code.

Family Rights Group and the British Association of Adoption and Fostering are opposed to the detention of children for immigration purposes. Both detention and forcible separation from parents are inconsistent with keeping a child safe from harm and the child's right to respect for privacy and family life.

In so far as detention of children continues to be something which the UKBA engage in, this Code should reflect the view of HM Inspector of Prisons,

'The detention of children should be exceptional and for the shortest possible period, and the interests of the child should be fully considered and documented before detention is authorised.' (HM Inspector of Prisons –inspection of Dungavel 4-8-Dec 2006, HE.45)

This applies to all children, both in families and unaccompanied. The current wording in the draft 'last resort' does not give adequate guidance to staff as to whether this is taking into account the child's best interests, or the interests of the Home Office in furthering immigration policy. In addition the use of both 'last resort' and 'exceptional circumstances' is confusing. One expression, with clear explanation of what it means, should be included.

The detention of UASC (section 4.2) should only be where it is in children's best interests – within the meaning of s1 Children Act 1989. Whilst this would encompass safety, it also includes other factors that staff should take account of. The process for recording the circumstances of detention is not set out in any detail; it should for example include identifying an office holder to whom staff

should report and an officer holder who has oversight responsibility for detained children.

With regard to the effects of detention on children (section 4.9) the recommendations of HM Inspector of Prisons should be followed:

'Independent welfare checks should be carried out on all children detained for longer than seven days, and the results should be passed on to the immigration authorities immediately to inform reviews of detention.'

IND officials responsible for reviewing continued detention of children should always take full account of independent assessment information. This should be recorded and, if detention is maintained, the reasoned review should be notified to those with parental responsibility.'

(HM Inspector of Prisons –inspection of Dungavel 4-8-Dec 2006, HE.46, HE.47)

The draft code is not clear that the health assessment should be carried out by an independent person, there are no timescales for periodic review. Review of detention beyond 28 days is far too long.

Section 8.2 states that the UKBA will establish a record of children detained, but this does not correspond to any instructions to staff about method of recording, information to be recorded or where this is to be collated.

Q10. The Code sets out the requirement for the Border and Immigration Agency to be responsive to the needs of children while they are being dealt with in the immigration system. This includes when a child is being removed from the United Kingdom as part of a family.

Do you think that there should be a requirement for a written statement relating to the consideration of the effect of removal on the child?

Response

This question again refers to something which is not currently in the draft Code. The requirement to be responsive to the needs of children should be backed up by a process which makes staff accountable for their decisions. This would include a process by which staff are required to carry out an assessment of the effect of removal on the child, give written reasons for their decision based on the assessment, to report their decisions and a mechanism for reviewing all decisions to remove children.

Q11. When children are involved in Family court considerations should the Border and Immigration Agency simplify its approach to one of granting

residence to the child (if a care order is made) providing that this does not amount to condoning an abuse of the immigration system or lead to new entitlements to reside here by the child's relatives.

Do you think that the Border and Immigration Agency should amend its approach as described above?

Do you have any other comments on the approach of the Border and Immigration Agency when children are involved in Family Court considerations (please specify)?

Response

Again, this question does not relate to anything currently contained within the draft Code.

It is our view that children who are made subject to a Care Order should be granted status that allows them to remain in the UK for the duration of the Care Order. Further, where a child remains in care for the duration of their childhood they should be permitted to remain after 18 without further need to apply for leave.

We also consider that the UKBA should always take into account the findings of the Courts wherever children are involved in any family proceedings of any nature not just where there are s.31 Children Act 1989 care proceedings. The UKBA should give every assistance to the family courts including cooperating with the provision of accurate and timely information, permitting family members to stay in or to enter the UK to participate in those proceedings and to stay any actions until the final outcome of such proceedings. If permanent residence is the appropriate action to take for the child and other family members in order to give effect to the family court's decision about that child this should also be done without delay.

Q12. Please include any further comments you have regarding sections 4 – 6 of the draft code:

Section 5
Comment

UKBA staff need to be given detailed guidance on identifying and responding to indicators of harm to children. The current draft of the Code of Practice does not contain this detail. Instructions referred to in section 5 should be made available for public consultation, this is a key element of the proper safeguarding of children.

Section 5.2
Comment

There is insufficient guidance to staff on how to recognise private fostering arrangements or what obligations arise for adults who are private foster carers.

That staff should 'endeavour to seek further reassurances that a named adult is caring for a child' is far too weak as guidance. Staff should be instructed to refer these cases to local authority children's services wherever there is doubt about the identity/relationship of a carer.

Section 5.5

Comment

In order for UKBA staff to be able to respond appropriately to a private fostering situation, there needs to be a clear explanation of 'private fostering' that corresponds to the s66 Children Act 1989 (see below) and gives clear guidance to staff, in particular on the requirements of the Children (Private Arrangements for Fostering) Regulations 2005. There is, for example, no requirement to 'register' a private fostering arrangement with the local authority. There is however a requirement to notify the local authority.

'66. Privately fostered children.

— (1) In this Part—

(a) "a privately fostered child" means a child who is under the age of sixteen and who is cared for, and provided with accommodation in their own home by, someone other than—

(i) a parent of his;

(ii) a person who is not a parent of his but who has parental responsibility for him; or

(iii) a relative of his; and

(b) "to foster a child privately" means to look after the child in circumstances in which he is a privately fostered child as defined by this section.

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent;'

Section 6

Comment

There is insufficient guidance to back up the statements of circumstances in which referrals will be made, nor is there any guidance on which would be the 'relevant agency' in a particular circumstance. The list of indicators at the end of this section is again insufficient guidance to UKBA staff on child protection

issues. The list is accepted to be 'brief' but it is not clear where staff are to obtain comprehensive guidance on this aspect of safeguarding. The Code of Practice should reflect the guidance given in Working Together to Safeguard Children.

Section 6.2

Comment

In some circumstances, notification to the **local** statutory children's services will not be sufficient. UKBA should also have the contact details of local authorities where a child may be sent.

Section 6.3 – 6.8

Comment

Section 6.3 states that referral will be made using an officially agreed form. It is not clear who is responsible for producing this form. The use of an official form does not appear to be carried through to section 6.5, where reference is made to a 'written record' with some guidance as to what it should contain. It is not clear whether staff should be using the referral form to record, or if this is another record. Instructions to staff on these matters must be absolutely clear.

In section 6.4, the Code refers to 'formal instruction'. The distinction between 'operation instructions' and 'formal instruction' is not clear. The Code should be clear about where the formal instruction to come from and who is responsible for putting it in place.

Section 6.6 – timescales should be in place for any referral to the Local Authority, not just in respect of concerns about a carer.

Section 6.7 This section appears to give guidance to the Local Authority rather than to the UKBA staff. Since this guidance is not binding on Local authorities and may not be read by them, it is important that the Code of Practice gives guidance as to what UKBA staff are to do if they don't receive such a letter.

Section 6.8 does not give detailed enough guidance about the what kind of information should be passed to the local authority, nor does it cross-refer to any other operational instructions.

Sections 7 – 9 of the draft Code:

Q13. The Code indicates that the appointed Chief Inspector of the Border and Immigration Agency will look at the Border and Immigration Agency's performance in relation to children (section 8.4), and proposes particular areas that might be inspected.

Please indicate whether you think each of the following areas should be included in the list that might be inspected:

The reasons given for detaining families with children;

The way that this contributes to the outcome of the immigration process;

The nature and quality of recorded information about detention that is publicly available;

The health and well-being of a child throughout the detention process;

The transport of children from one immigration centre to another;

Are there any others that you would like to add? (Please specify)

Response

All these matters should be included in the list that might be inspected.

Q14. Please include any further comments you have regarding sections 7 – 9 of the draft code:

Section 7.1

Comment

The principles set out here do not replicate in full the guidance in the Information Sharing Practitioners Guide. If other Government guidance is to be followed it should be set out in full.

The indication that staff should follow these principles ‘as far as possible’ does not give any guidance on when it might be appropriate for staff not to follow guidance. The guidance issued under s11 Children Act 1989 states

‘Effective arrangements for safeguarding and promoting the welfare of children should include having in place agreed systems, standards and protocols for sharing information about a child and their family within each agency and between agencies. These protocols should be in accordance with Government guidance. All those whose work brings them into contact with children should understand the purpose of sharing information in order to safeguard and promote children’s welfare.’ (pg20)

The Code should include more guidance on the balance between applying these principles and possible interference in another investigation. As the Code is drafted, the implication is that a UKBA investigation would always take precedence over the information sharing principles. This is not in keeping with the Information Sharing Practitioners Guidance.

Section 8.1

Comment

It is our view that the Code, in its current form, is not sufficiently precise or comprehensive enough to form the basis of a disciplinary action. Whilst we support the idea that the staff who do not follow the Code of Practice should be subject to disciplinary action, this protection is undermined by the lack of substantive guidance in the current draft.

Section 8.6

Comment

The role of the Children's Code of Practice Programme Board is not clear from the guidance. It does not say who will be on the Board, nor does it outline its functions or powers. It does not state who this Board will report to.

Further the role of the manager responsible for children's issues is not set out. It does not state who they will report to nor the extent of their functions / responsibilities. We refer once more to the guidance issued under s11 Children Act 1989, which gives as a key requirement:

'A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children.'

Q15. If you have any further comments regarding the draft Code or your answers, please include them below:

UN Convention on the Rights of the Child

Q16. Should the UK withdraw its immigration reservation to the UN Convention on the Rights of the Child? This reservation allows the UK to apply its immigration laws without having them interpreted in light of the UN Convention on the Rights of the Child.

Please give reasons for your response.

Family Rights Group and the British Association for Adoption and Fostering agree fully with the response of the Refugee Children's Consortium on this question, which is set out in full below.

The RCC agrees with the many bodies who have criticised the UK's reservation to the CRC, including Parliamentary committees, individual

elected members and peers of all political parties, international human rights monitoring organisations and domestic NGO's.

The UKBA's justification for the maintenance of that reservation, as we understand it, is that its removal would create further legal challenges and obstacles to removal. That assertion¹ is not supported by evidence. Any potential obstacles are likely to be reasonable and legitimate ones if legal opinion² and prevailing case law are taken into account³. But the most likely event argues Drew, is that there would be no weakening of immigration control, however it would require the UKBA in all its dealings with or affecting children to fully examine and meet their welfare needs at every stage, including making substantive decisions and if necessary in the best interests of a child, return them safely to their country of origin. We believe this is the best way to effect the culture change desired.

It is that area which is in the view of the RCC weakened by adherence to the reservation. Procedural rights – especially Article 12 rights, are substantially lacking in the asylum process for many children, in particular those who are dependents on an adult's claim and whose experiences are not considered in UKBA decision making. Children do not have access to suitably skilled child specialist lawyers for the duration of their cases, nor a meaningful guardianship arrangement to make sure their best interests are met across the full array of asylum processes, from initial asylum screening to the point of removal.

There is a lack of coordination of statutory agencies working with children to ensure that they are able to understand and participate in the decision making process about their futures. Notably, the new asylum process correctly identified the need for greater interaction between UKBA and local authority social services but little or no regard was paid to the lack of resources and practical difficulties of expecting children to travel long distances to reporting and interview dates with a responsible adult. The accelerated timescales for the new process did not take into account the local authorities requirement to carry out a detailed child in need assessment under Children Act 1989 duties and in so doing risked exposing children to traumatic interviews before their needs had been assessed.

The "Planning Better Outcomes" programme does little to improve those aspects of the system and much to make matters worse for children if the specialist services are not in place to meet their needs in the designated specialist areas, as seems increasingly likely on current timetables. The

¹ Most recently Lord Adonis – see Hansard CYP Bill March 2008.

² Blake & Drew 2001 and now Drew 2007

³ S & others v SSHD , ID & others v SSHD , Uner v Netherlands ECtHR 2006 etc

RCC has made detailed comments about those plans but in this context, without adequate safeguarding arrangements, including representation at local safeguarding boards, the UKBA will not be able to understand a child's needs, much less plan for them. Formally recognising that children's best interests start at least equal to immigration controls means that large scale agendas like the Planning Better Outcomes policy would have to be much more rigorously and explicitly compliant with the UNCRC than has so far been evidenced. Indeed much of the PBO agenda actively places immigration control above the needs and best interests of the individual child.

Undue deference by other government departments and agencies to the Home Office assertion of the primacy of immigration control influences and negatively affects how children subject to immigration control are perceived by those agencies, leading to differential access to education, primary and secondary health services and leaving care planning.

A UNCRC structured and accountable operational and policy framework for the UKBA's work regarding children can only benefit its decision-making and lead to safer and more robust decisions. What is not acceptable is to use policy and practice in respect of children subject to immigration controls as a general immigration deterrence tool. Policies that actively discriminate and undermine children's rights as blanket policies i.e family detention and separation, denial of appeal rights on account of age or nationality⁴, implementation of the Dublin II regulation⁵ and UKBA's involvement in policy formulation relating to unaccompanied children through its '@better Outcomes' proposals cannot lead to effective safeguarding or to safe asylum decisions in respect of any individual child. The UNCRC gives rights to each and every child and it is for government to ensure that those rights are afforded to the individual child equally.

What is more, the government has committed the UK to a common European asylum policy in many respects, not least through the reception, qualification and procedures directives⁶. These all require adherence to the best interests principle and to the welfare of the child. That the UK signed these directives without reservation is evidence of its intention at that time to supercede its use of the reservation in respect of children within the refugee and subsidiary protection decision making process.

If the UKBA followed existing UK and ECtHR jurisprudence together with the minimum requirements of these EU directives little would in effect be left of the reservation practically or legally. But for as long as it remains on paper it provides a self denying ordinance to public policy makers and

⁴ i.e the UASC DL policy, certification of certain country claims, etc

⁵ European Council regulation EC 343/2003

⁶ Official Journal directive numbers here for each one

operational officers which in turn permits a systematic lack of regard for the core values and principles of the UNCRC.

Family Rights Group

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24/04/2008

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How did you find out about the consultation?

Through the Refugee Children's Consortium

We are replying by email.

We are responding on behalf of both our organisations which are charities (small organisations.)