



British Association of Social Workers (BASW) Response to the statutory guidance for local authorities’ consultation on the “Care of unaccompanied migrant children and child victims of modern slavery”

BASW is the UK professional association for social work, led by and accountable to a growing population of over 22,000 social worker members. Our members work in direct social work practice, management, research and academic positions in diverse social work settings across the UK. BASW members share a collective commitment to the professional Code of Ethics, core social work values and principles that will secure the best possible outcomes for children and young people, adults, and families and communities.

BASW has participated in formulating and is a signatory to the response submitted by the RCC (Refugee Children Consortium). Our stand alone response is to further and in greater depth address the social work issues experienced by our members.

BASW welcomes and supports the updating of the statutory guidance to address legislative change and agrees that the children covered by this guidance and consultation process are some of the most vulnerable in the country. BASW believes the overriding principles which must be applied to these children and young people and in keeping with the United Nations Convention on the Rights of the Child (UNCRC);

1. That these are children first and foremost and their immigration status whatever it may be should not be the primary or deciding factor which influences their Care Plan or their Pathway Plan.
2. That services provided are based on assessment of need and best interest decision making principles.
3. That decisions by all the responsible authorities must be made in a timely way that secures stable and permanent outcomes to avoid unnecessary delay and uncertainty which are deeply damaging for these children and young people.

Consultation questions

1. *Is there anything in the revised guidance which should be amended?*

Yes, please see the details in our response to relevant paragraph numbers as requested in your instruction.

2. Is there anything further which should be added to the revised guidance?

Yes, please see the details in our response to relevant paragraph numbers as requested in your instruction.

3. Do you have any suggestions for further links or resources that could be included at Annex A of the guidance?

Yes, please see the details in our response to relevant paragraph numbers as requested in your instruction.

General comments

Before the details of each paragraph are considered we would wish to provide some overall comments which apply to the guidance as a whole.

BASW believes it is important to emphasise that we welcome much of the good practice which is contained and reiterated in the statutory guidance.

BASW members' response however is that the guidance, however good it may be in the main, if not supported by the following it may not be implemented and adhered to, and risks instead becoming a tool for the legal profession to challenge local authorities on their failure to comply.

BASW therefore urges the following:

- 1) The adequate and full funding of the services for all the social work and social care elements and importantly also for education and health services. The funding at present is inadequate and has a serious detrimental impact on both provision and attitude.
- 2) Development work for senior management and Lead Members, which is essential for the implementation and sustainability of services.
- 3) In depth and ongoing CPD training for front line social work staff.
- 4) Interagency training and "buy in" to the guidance by all the agencies working with these children and young people.

A crucial and overarching aspect of the BASW response to the guidance is the interface between what is written and the reality on the front line. While the guidance has made many points well, it is disappointing that so much of the reality surrounding the implementation of this guidance, where it is good practice, does not then permit implementation and for it to be established as best practice. This is a recurring theme in this BASW response and one which we sincerely hope will be heard. No matter how often it is written, if the conditions, skilled staff and funding are not in place the implementation will be compromised. Taking this into account BASW strongly believes that a number of paragraphs need what we have called a reality check.

Structure and focus of the guidance

BASW is pleased to see the inclusion of a broad range of relevant topics in the guidance. However, the document as a whole needs greater cohesion, as there is repetition and inconsistency across some sections. Specific examples are referenced in the comments on individual paragraphs below.

The guidance rightly mentions the specific needs that may affect trafficked children, but also needs to highlight those which may be specific to unaccompanied asylum seeking children.

Use of definitions and language in the guidance

It is well documented that children's services and indeed the entire social work profession is under severe pressure both financially and in terms of staffing capacity to meet the ever increasing demands on its services. In light of this and the need for good guidance it is of significant importance that guidance is clear and avoids being unwieldy. The feedback from members is that use of the terms describing the children and young people "unaccompanied migrant and child victims of modern slavery" is unnecessary and repetitive. The definitions of the terms are helpfully included and the terms do not need to be repeated.

BASW believes the inclusion of and the differentiation between agents, traffickers and smugglers however does need to be included. It is important we believe for the guidance to help social workers as early as possible in the process to distinguish clearly between those children who have come to the attention of the authorities to claim asylum, and those for whom there is an ongoing abusive relationship. Members report that in this area of work with this service user group it is important to distinguish and avoid the risk of over or under identification of victims of trafficking and human slavery due to a lack of knowledge, understanding or indeed a fear and anxiety of getting it wrong. BASW is aware that with the demise of some specialist teams in the 'receiving' local authorities and the implementation of the National Transfer Scheme many social workers who have not had the specialist training or experience of working with these service users will be unfamiliar with many aspects of the work.

There are many places where the guidance uses the words should and may regarding as action the local authority takes, whereas BASW believes that with statutory guidance the word needs to be 'must'. Clarity is required to avoid doubt. One of numerous places is line one in paragraph 4.

Training provision

BASW has been involved in training and consultation with members, and with the social care sector more widely, and it is clear that the previous guidance on this topic was not widely known. It is vital that there is an ongoing commitment from government to providing and resourcing training to raise awareness of this guidance and reinforce its relevance for practice.

Additional topics for inclusion

Members have raised a number of questions about the care of unaccompanied migrant children that are not addressed within this guidance. These included:

- 1) In what circumstances a local authority should apply for a care order for an unaccompanied child rather than accommodating under Section 20 of the Children Act 1989. There is no mention of parental responsibility within the guidance.
- 2) The need for accommodation with a 24-hour adult presence, whether from staff or foster carers, for many children aged 16 and over, particularly those who are at risk of trafficking or with a high level of need in relation to mental and emotional wellbeing. Members report that children aged 16 and over are often being placed in semi-independent accommodation, regardless of need.
- 3) The need for specific guidance on local authority responsibilities in relation to children who have arrived under the Dublin III Regulation. The draft guidance refers to the Family and Friends Care guidance, but this does not respond adequately to the specific situation of children in these circumstances.

While these questions are arguably covered within existing legislation, policy and guidance, the specific circumstances of unaccompanied children are not those which seem to have been envisioned by these documents.

Timescales for the consultation

BASW recognises the urgency of providing guidance on this topic, but believes that the need for timely guidance should not mean that the quality of that guidance is compromised. The extremely short timeframe for the consultation period has limited the opportunity for members to contribute in the depth that is required for such a significant document.

Responses by paragraph

Paragraph 1:

BASW is pleased to see it is acknowledged that these children are some of the most vulnerable in the country.

We are concerned that the use of the word ‘likely’ in the document (in a number of places including paragraphs 1 and 2) implies that it is not always or almost always the case. Unaccompanied migrant children who by definition are separated from their families, all have known and in a different country from which they are familiar have undergone traumatic experiences. BASW believes that the guidance should recognise this and it is not helpful to use the word ‘likely’ rather it should say ‘will have undergone’

We are concerned that without sight of the full explanation of modern slavery and guidance to be published later in 2017 we cannot comment on some aspects of this guidance where it is referred.

Paragraph 2:

BASW is very pleased to see the concept of trust, crucial in the social work profession as a foundation for our work, introduced at the outset but sadly a reality check is certainly needed here as the movement of these children around the country, the multiple and repeat

questioning of these children which we know is the reality for them and the churn of staff mitigates against the establishment of trusting relationships. This is a crucial difference between what should be and how the reality is played out in practice.

Paragraph 3:

BASW believes that all these children by definition have complex needs rather than ‘often’ as written.

The 2014 statutory guidance was explicit that local authorities ‘should prioritise unaccompanied and trafficked children to provide the best likelihood that they will receive continuity of care and be able to build a sustained relationship with their social worker’. The phrasing in the current draft dilutes this provision; BASW suggests the previous wording is reinstated.

Paragraph 4:

This paragraph states that elements of the guidance will be relevant to trafficked children who are UK nationals, but should clarify that it is primarily focused on trafficked children who are also unaccompanied migrant children, if this is the case, to avoid ambiguity over which elements apply to whom.

Paragraph 8:

Definitions used. See above regarding the addition and distinction between agents, traffickers etc.

BASW fully supports and is pleased to see the inclusion of the Best Interest Principles Unicef & UNHCR ‘Safe and Sound’. However we question if all the services and guidance referred to throughout this consultation document meets these standards. One of many examples is on age assessment as noted on page 34. BASW believes that the ADCS guidance on this area of work does not meet these standards.

Local Authority Responsibilities

Paragraphs 9 to 15:

BASW fully support this section where best interest decision making is followed and would add that whereas it says in paragraph 11 that the ‘regulations apply to all children regardless of their immigration status nationality or documentation’ we believe this should be the default position for all children across all the regulations in the guidance. BASW recognises that there are different opinions on this and that it might be considered that this is seen as a ‘pull factor’ and attract children to the UK. BASW does not hold this view, we believe children are not sent by their families and embark on perilous journeys without justifiable reasons and believe that all children in need being given equal treatment as established by the UNCRC.

Paragraph 14 is of particular concern. The default position for too many of these children is that they will not be able to remain in the country, they are left in a position of long term uncertainty, they do not receive the therapeutic services they need, they are not able to

achieve their potential and the accumulative impact cannot be said to be in their best interests.

Training and Awareness

Paragraphs 17 to 23:

There can be no doubt that there should be training in this area as detailed in this section but to apply this to all the managers, practitioners and others connected in providing local authority services to a level and standard outlined here to all those who may come into contact with these children and young people in every local authority to enable them to respond in the necessary timescales with sufficient knowledge, skills and resources is simply unrealistic. Indeed to have statutory guidance which imposes such a duty on every local authority is setting them up to fail as to train to this level is not feasibly affordable in the current staffing and economic climate. BASW would advocate for regional specialist services.

It is right that social workers need to have knowledge of the asylum and immigration processes, and that unaccompanied children must have access to specialist legal advice. However, this raises the vital issue of the availability and regulation of this support, particularly in terms of specialist work with children.

When is a child a victim of modern slavery?

Paragraphs 25 to 26:

Without sight of the forthcoming statutory guidance on modern slavery, it is difficult to comment on this section at this stage.

Age determination

Paragraph 32:

BASW welcomes the statement that age assessments should not be a routine part of a local authority's assessment of unaccompanied children. However, BASW is concerned that when age assessments are carried out, social workers are being set up to fail with an expectation of single agency assessments being attempted as there is little option in practice. This is not a realistic task but guesswork with a professional veneer; it is maturity rather than age that is assessed. It is vital to emphasise that children mature at different rates, both physically and emotionally, and that there is no accepted method of accurately knowing precise age.

National Transfer Scheme

Paragraphs 33 to 34:

BASW recognises that the purpose of this section is to summarise the National Transfer Scheme. However, rather than outlining background information on why the scheme came about, it would be more helpful to make reference to the factors that need to be taken into consideration in transferring a child and for the full funding of services.

Assessment

Paragraphs 35 to 45:

BASW supports the guidance in paragraph 38 that the local authority should consider the best interests of the child in assessing whether to refer into the National Transfer Scheme. If a referral is made into the scheme, best interests must also be considered in assessing where a child should be placed, particularly as they need to be within reach of specialist services or have support networks in a particular area.

Paragraph 39 states that the local authority ‘should undertake such as assessment, where relevant, to the child’s needs as an unaccompanied child victim of modern slavery. Particular account must be taken during the assessment of any needs the child has’. This is a change of emphasis from earlier sections of the guidance (e.g. paragraph 12) which state that all duties must be fulfilled with regard to the child’s circumstances and needs **as unaccompanied or trafficked children**. The guidance should reflect this wording in this paragraph to take account of the importance of considering the child’s needs in relation to their circumstances as unaccompanied asylum seeking children, as well as for trafficked children.

Paragraph 41.

This paragraph is especially welcome. It needs to be emphasised and adhered to for all these children and young people. Again the reality for so many of the service users in these categories there are insufficient staff across disciplines to assess and meet these needs.

Paragraph 42

Emphasises the need for appropriately trained interpreters, but should also emphasise the legal duty to provide an interpreter where needed, for practitioners to be trained in working with interpreters, and the risks of using online or informal interpreting, especially when discussing with children their rights and duties. Further consideration is needed of what checks local authorities can realistically undertake to establish whether an interpreter is connected to traffickers. It is in practice a time consuming and not always smooth task to even obtain an interpreter with the correct language and/or dialect. To expect the local service to then undertake enquires to establish the connections this interpreter “has in any way” is not realistic.

Paragraph 45 rightly notes that it is difficult for children to recount traumatic experiences. It could also be noted that children should not be asked about these experiences unless it is necessary for their support and protection. The impact of trauma on memory, trust, wellbeing and behavior must also be recognised here.

Family reunification

Paragraphs 46 to 49:

As stated in earlier comments, the Family and Friends Care guidance does not adequately respond to the circumstances of children arriving under the Dublin III Regulation. Clear guidance is needed to address the children’s needs and local authority’s duties in these cases.

The last line of 46 is particularly important and problematic. The skills, time and funding to undertake this competently, effectively and safely for the child or young person are not available. BASW would like to see that they are but recognises the multiple constraints in the system. This must be reflected in the guidance to avoid social workers being set up to fail the children in our care.

Planning, protection and placement

Care planning

Paragraphs 50 to 56:

Paragraph 50 gives a clear outline of the need to record a child's status as an unaccompanied or trafficked child on their care plan, and to record how their specific needs in relation to this status will be met – this is much clearer than the points made in the assessment section.

Paragraph 51 again discusses legal advice – it would be clearer if this was addressed in one section as it seems repetitive as currently presented. It is also important to note that the availability of immigration legal advice for these children is not always available in the areas in which the children arrive in or are placed.

Paragraph 53 makes reference to the potential need for specialist mental health support for trafficked children to deal with the emotional impact of coercion. BASW supports this point, but would add that specialist mental health support is needed by most unaccompanied children to deal with the impact of loss and trauma, even if they have not been trafficked.

The reference to health and education plans being produced as part of the overall care plan is unclear. Health and education will always be considered within the child's care plan, but children will also have a looked after child health assessment, carried out by health, and a personal educational plan, put in place in partnership with the child, carers and school, which is subject to regular monitoring and review. From the phrasing, the guidance appears to refer to the former, but the content suggests it is the latter.

Paragraph 56 reads well but is far from the reality. Many of these children and young people have a thirst for education which outstrips the norm in the care system and some reach further and university level entry and are blocked from pursuing their education. Others simply never get beyond endless repetitive ESOL classes as this is all that is on offer in their locality. BASW believes it is disingenuous to say that the local authority should take steps "to secure the highest educational outcomes" without making the systemic changes which are needed to enable education provision to achieve these outcomes.

Protection and placement planning

Paragraphs 57 to 63:

Paragraph 59 makes reference to a heightened risk of children going missing in the event of a negative asylum decision, but also needs to emphasise the importance of the child

accessing immigration and welfare legal advice in this instance so they are aware of appeal rights and processes.

Paragraph 60 affirms the importance of taking account of the risk of exploitation in making placement decisions; mental wellbeing should also be a factor here. Specific reference could be made here to the need for careful consideration before placing a child in semi-independent accommodation without a 24-hour staff presence, particularly in the early stages of placement when the child does not know the area or how to access support and risks may not have been fully assessed. This is mentioned in paragraph 63, but it is not clear if this refers only to emergency accommodation or in the longer term as well.

Paragraph 61 gives a number of specific examples of measures that could in place, but needs to address the social work practice issues and the legal implications of taking these actions, particularly taking into account the age of the child, whether they consent to the measures, and whether the local authority has parental responsibility. It is not appropriate to advise a social worker or personal advisor to look inside a child or young person's clothing. It is simply not realistic to have 24 hour surveillance on a young person for up to 12 weeks. This could amount to deprivation of liberty. BASW is concerned that such points, though well intentioned, are included in statutory guidance.

Review, advocacy and wider support

Paragraphs 64 to 67:

Paragraphs 66 and 67 refer to the valuable role of independent advocates and visitors. BASW welcomes the introduction of specialist advocate for trafficked children; this would be equally valuable for all unaccompanied children. The roles set out for independent advocates in paragraph 66 do not seem to be commensurate with the current capacities of this service on a national level.

Planning transition to adulthood

Paragraphs 68 to 71:

It is important to stress in this section the importance of beginning transition planning at an early stage, and also the importance of parallel planning for the possible outcomes of asylum or other immigration processes so that the child is prepared for all possible eventualities – this is addressed to some extent in the section below on immigration status but BASW has serious concerns that the default position is that these children will not be able to remain legally in the country, that their lives are therefore characterised by uncertainty. A deeply worrying consequence of this is that fear of removal from the country drives many to 'disappear' into the 'underworld' and eke out an illegal and dangerous existence. This is often what further drives them into the paths of the very people the services are trying to protect them from. There is an inherent contradiction in the guidance on how local authorities are to avoid and support these children and young people from going missing and the policy to remove as many as possible and return them to their country of origin or a third country.

Advice and support**Paragraphs 72 to 73:**

Paragraph 73 sets out the need for immigration advice to be provided by a registered professional, but does not set out the local authority's responsibilities in terms of accessing and funding this advice. BASW believes that all service users should receive fair and equal treatment and these care leavers should be considered for 'staying put' and 'staying close' as opposed to being separated out and given a lesser service.

Immigration status and transition planning**Paragraphs 74 to 77:**

Point III refers to the child's ability to submit a further claim before their leave expires if they are refused asylum but granted UASC leave. It could also specifically state that a child can appeal their asylum refusal at the time of the decision.

Annex A: Association resources

The time allowed for this consultation process has not permitted full consideration of all the multiple specialist international, national, regional and local resources. BASW as stated above believes that regional specialist services are best placed to meet the complex specialist needs of these children and young people and each should provide information on these resources and local availability.

17th March 2017

Asylum Immigration and Trafficking Group

which is a sub group of the Policy Ethics and Human Rights Committee of BASW