Contributions by topic

1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)

1. 2019 saw 10,295 applications for asylum made by children (as first time applicants) in the UK, with 3651 applications made by Unaccompanied Asylum Seeking Children (UASC).
   Source: https://www.gov.uk/government/publications/immigration-statistics-year-ending-september-2019/how-many-people-do-we-grant-asylum-or-protection-to

2. There is no data specifying exactly how many Take Charge Requests were made in 2019 by UASCs, so it is therefore impossible to say exactly how many of those UASCs had access to the UK via the Dublin III system. However, the total number of transfers that took place in 2019 to the UK pursuant to the Dublin procedure was 714. This includes adult applicants.
   Source: https://bit.ly/39sFbWD

3. A real problem for UASCs in the UK are the very long waiting times recorded for deciding their claims. In a Court case (*R (MK) v Secretary of State for the Home Department [2019] EWHC 3573 (Admin))* decided in 2019 and challenging the systemic delays in deciding UASCs asylum claims evidence was laid out before the Administrative Court in relation to these delays.

4. As of 30 June 2019, only 39% of the asylum claims made in the UK by UASCs were decided within 6 months. The remaining 61% of the cases where decided after more than 6 months from the day the claim was made, with 10% of the children having to wait more than 2 years for an initial decision on their asylum claim.

5. The average waiting time for an initial decision on a UASC asylum claim in the UK for the first quarter of 2019 was 586 days.

   Sources: https://www.bailii.org/ew/cases/EWHC/Admin/2019/3573.html and https://www.bailii.org/ew/cases/EWHC/Admin/2019/3573.html#secanA

6. Unfortunately, the decision in the case of MK v SSHD does not look like things will improve for UASCs in the UK in this regard. In fact, the Judge in that case found that delays in UASCs asylum decisions were not the Home Office's fault and were therefore not unlawful.

2. Access to information and legal assistance (including counselling and representation)

1. The UK welcomed a positive change in its legal aid provisions for unaccompanied minors in 2019. SPI hope this will broaden the access to free legal assistance for unaccompanied children.

2. The Legal Aid for Separated Children Order 2019, which came into force on the 25 October 2019 brings non-asylum immigration and citizenship matters into the scope of legal aid for under 18s not in the care of a parent, guardian or legal authority.

3. The government decided to bring these cases into the scope of legal aid following a judicial review brought by the Children's Society.

4. Before the order was introduced, legal aid was only available to unaccompanied children for non-asylum immigration related issues if an application was successfully made to the Legal Aid Agency for exceptional case funding.

5. Applications for exceptional case funding are only granted if strict criteria are met. These included demonstrating that the child's human rights or European Union rights would be breached if they were not given legal aid. In practice, this meant that a legal practitioner had to argue the merits and strengths of the case with the Legal Aid agency before they even knew if they were going to be paid for the work in the case.

6. The strict criteria and long waiting time for Exceptional Case Funding applications meant, in practice, that legal practitioners preferred not to work on this cases, work on them pro bono or charge the clients money to carry out the work on a private basis. This clearly limited the access to representation of these children.

Source: https://www.gov.uk/government/news/separated-migrant-children-given-better-access-to-legal-aid

3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)

4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)

1. As of the 31st January 2020, the UK is no longer a member of the European Union. This implies significant changes for the Dublin procedures for UACs that wish to join family members in the UK pursuant to the Dublin III regulation.

2. In general, EU law continues to apply to and in the UK during the "transition" or "implementation" period, pursuant to Article 127 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the "Withdrawal Agreement").

3. The Dublin Regulation (No. 603/2013) and the Implementing Regulations (No. 1560/2003 and 118/2014) will continue to apply to the UK in exactly the same way as they do now during the transition period

4. The transition period at the moment will last until 31 December 2020 (Article 126 of the Withdrawal Agreement)

5. The transition period could be extended for up to 1 or 2 years if the UK and EU agree (Article 132 of the Withdrawal Agreement)

6. A decision on whether there will be an extension must be made before 1 July 2020.

7. The UK Prime Minister Boris Johnson has said he does not want an extension.

8. To manage changes to Immigration and Asylum law following the UK's withdrawal from EU membership, the Immigration, Nationality and Asylum (EU Exit) Regulations 2019 will come into force on 31 December 2020

9. Regulation 54 provides for the revocation of direct EU legislation listed in Schedule 1. In Schedule 1, paragraphs 3 (c), (h) and (i) of Part 2 specifically revoke the Dublin Regulation and the two Implementing Regulations

10. The Home Office will still consider Take Charge Requests made before 31 December 2020 under Articles 8, 9, 10, 11, 16 and 17.2 of Dublin on which a final decision has not yet been made. This is pursuant to the Saving and transitional provisions at paragraph 9 of Part 3 of Schedule 2 of The Immigration, Nationality and Asylum (EU Exit) Regulations 2019

11. The provisions that continue to apply are Articles 3, 4, 5.1, 6, 11.2 and 11.2 and 11.3 of the Commission Regulation (EC) No 1560/2003 (Implementing Regulations) and Articles 2, 6.1, 22.1 to 22.5, and 25.1 of the Commission Regulation (EC) No 604/2013 (the Dublin Regulation)

12. It is important to note that certain important provisions have not been "saved" and therefore will cease to apply as soon as the transition period ends:

    a. Article 5.2 of the Implementing Regulations on re-examination of refusals if Take Charge Requests. This means that if a Take Charge Request is refused after the 31 December 2020, there will no longer be the possibility to ask for reconsideration of that refusal;

    b. Article 22.7 of the Dublin Regulations on default acceptance – This means that if the 2 months limitation period for making a decision on the TCR ends at some point after the 31 December 2020 without he UK Home Office have reached a decision, the case will no longer be considered as accepted by default by the UK.

13. Section 17 of the EU (Withdrawal) Act 2018 did require the UK to seek to negotiate an agreement with the EU under which unaccompanied asylum seeking children would be able to join relatives in the UK in the same way as under the Dublin Regulations (and vice versa).

14. However, Section 37 of the EU (Withdrawal Agreement) Act 2020 has removed this requirement.

15. Section 37 requires the Home Office to lay before Parliament a statement of policy in relation to any future arrangements between the UK and the EU about unaccompanied children who claim asylum in the EU coming to the UK where it is in their best interests to join a relative who is a lawful resident of the United Kingdom, or who has made a protection claim which has not been decided (and vice versa)

16. The Home Office needs to make this statement to Parliament before 23 March 2020.

17. UK Home Office says that despite section 37 of the EU (Withdrawal Agreement) Act 2020, its policy position in relation to unaccompanied asylum seeking children in the EU with family in UK has not changed, but we are still to see how the UK will ensure that the rights of these children are safeguarded.

Sources: http://www.legislation.gov.uk/ukpga/2020/1/contents/enacted and http://www.legislation.gov.uk/uksi/2019/745/contents/made

Legal Developments

In 2019 there have been a number of reported and unreported cases on the Dublin process for UASCs who wish to join family members in the UK. Below we have reported the most important cases:

R (on the application of FA & ors) v SSHD JR/5523/2018 (unreported)

1. This case concerned three UASCs living in France, seeking to join their siblings living in the UK under the provisions of the Dublin III regulation.

2. The Home Office failed to respond to the Take Charge Requests in this case within the 2 months deadline. The case concerned therefore the applicability of article 22(7) of the Dublin III regulation and the meaning of Default Acceptance in the context of UASCs, keeping in mind the best interest of children principle.

3. The Home Office attempted to argue that in cases involving UASCs, Article 12(2) of the Implementing Regulation means that the timeframe for Take Charge Requests in cases of minors is flexible and that default acceptance does not take place in cases where the best interests of the child have not been assessed.

4. The decision of the Upper Tribunal in this case concerned the lawfulness of the Home Office's delay and failure to accept the Take Charge Request made by the French Authorities, within the time limit specified in article 22(1) of the Dublin III regulation.

5. The tribunal found in this case that the Home Office's delay in contacting the local authority in order to carry out an assessment of the family situation and the sponsor in the UK may have contributed to the failure to accept the Take Charge Request within the two month time frame.

6. The Tribunal further found that the Home Office had failed to properly investigate any safeguarding issues and whether unification was in the child's best interests (§65).

7. The Tribunal found that the Home Office has acted unlawfully in these cases, for the reasons above.

R (on the application of FwF & FrF (by his litigation friend NF)) v SSHD -
Case link - https://tribunalsdecisions.service.gov.uk/utiac/jr-01626-2019

1. This was a case concerning two children that had applied to join their brother in the UK, under article 8.1 of the Dublin III Regulation.
2. The Home Office failed to respond to the Take Charge Request made by the children within the 2 months deadline, engaging the applicability of article 22(7) and the concept of default acceptance of the children's claims. Instead of confirming that acceptance in the cases had occurred by default, the Home Office issued a refusal letter rejecting the Take Charge Requests.

3. The Home Office attempted to argue that in cases involving UASCs, Article 12(2) of the Implementing Regulation means that the timeframe for Take Charge Requests in cases of minors is flexible and that default acceptance does not take place in cases where the best interests of the child have not been assessed.

4. The case looked at:

    a. whether there was a failure by the Secretary of State to disclose reasons for the Take Charge Request (TCR) refusal and/or to correct the misimpression of the French authorities;

    b. whether the respondent's delay and failure to accept responsibility for the applicants' asylum claims was unlawful and in breach of EU law, common law and Article 8 ECHR; and

    c. whether the applicants' fundamental rights were breached as the United Kingdom was the Responsible Member State by default from 15 January 2019

5. The Tribunal in this case found that the Home Office had acted unlawfully by not taking sufficient steps to investigate before refusing the Take Charge Request and by failing to carry out within the 2 months steps to ensure that transfer was in the best interests of the children.

6. The Tribunal found that the UK authorities had breached their investigative obligations under Dublin III in numerous respects in refusing the Take Charge Requests in circumstances in which they were not satisfied of the family link but did not take sufficient steps to investigate before refusing the Take Charge Request.

7. In summary, the Tribunal found that article 12(2) of the Implementing Regulation cannot be used to reject the applicability of article 22(7) of the

Dublin Regulation (and to deny that default acceptance had taken place) in circumstances where there was a blatant failure of the Home Office to carry out their duties within the 2 months following the submission of a Take Charge Request.

R (on the application of KF) v SSHD [2019] UKAITUR JR016422019
Case link - https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKAITUR/2019/JR016422019.html&query=(JR/5523/2018)

1. This judgement, which involved a UASC seeking to reunite with a family member in the UK, confirms that under Article 22(7) of Dublin III a receiving state's failure to respond to a Take Charge Request within 2 months results in default acceptance.

2. The UK Upper Tribunal found that there is no mechanism by which the operation of Article 22(7) Dublin III can be cancelled and that there is no basis on which default acceptance can be disregarded due to a later reconsideration request.

3. This judgment confirms and adds to the decision of the Upper Tribunal in *R (FA and Others)* (see above), in which it held that holding letters cannot be used to prevent responsibility for transferring; that the UK authorities cannot rely upon Art. 12(2) of the Implementing Regulation in such cases where there are no best interests reasons preventing acceptance.

4. Alongside a range of further investigative failures, the Tribunal again found that the UK Home Office had acted contrary to her policy including by her failure to engage with the Local Authority. Had the Home office complied with their written policy and engaged with the Local Authority, the Local Authority's findings may have been of relevance in determining the family relationship.

R (on the application of BJ & Ors) v Secretary of State for the Home Department (Article 9, Dublin III; interpretation) [2019] UKUT 00066(IAC)

Case link – https://tribunalsdecisions.service.gov.uk/utiac/2019-ukut-66

1. This case concerned the applicability of article 9 of the Dublin 3 Regulation and whether refugees who had subsequently acquired British Nationality could benefit from this provision to have their family members reunite with them in the UK.

2. The facts of the case are fairly straightforward and involved a woman and her children in Greece who wished to be reunited with her husband in the UK. The husband had been granted international protection by the UK authorities in the past but had now naturalised as a British Citizen.

3. The Greek Dublin Unit submitted a Take Charge Request to the UK for the family.

4. The Home Office tried to argue that Article 9 of the Dublin III Regulation only applied to people that had refugee status or humanitarian protection at the time of the Dublin Take Charge request was made and that it excluded Sponsors who had acquired British nationality.

5. The Upper Tribunal in the UK held that article 9 applies to both current and former beneficiaries of international protection.

KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 (IAC) (11 December 2019)

Case link - https://www.bailii.org/uk/cases/UKUT/IAC/2019/413.pdf

1. This case is not a Dublin family reunification case but concerns an application for family reunion under the provisions of the UK Immigration Rules. It is worth mentioning here because of the implications that it will potentially have for family members trying to reunite with their children in the UK.

2. The case involved an 18-year-old Syrian refugee in the UK who sought to sponsor his parent and younger siblings under the UK family reunion rules. Due to delays to his asylum claim in the UK, the Sponsor in the UK turned 18 4 weeks after he was granted asylum. His family had applied for family reunion under the UK Immigration Rules 6 days before he turned 18.

3. The Tribunal concluded that in applications for entry clearance, the starting and significant point in applications for entry clearance is the Article 8 rights (right to family life under the European Convention on Human Rights) of the sponsor or others in the UK. A fact sensitive analysis is essential.

4. It also held that there is no blanket prohibition on the relatives of refugees other than a spouse and / or children but the fact that the appellants in an application for entry clearance do not meet the Immigration Rules is an adverse factor.

Practical developments

1. Safe Passage International (SPI) is aware of at least three cases dated between the end of 2019 and the beginning of 2020 in which the UK authorities (the Home Office) refused reconsideration requests of refused Take Charge Requests in the case of UASCs pursuant to the application of the ECJ judgment in the case of C-47/17 and C-48/17 (X & X - http://curia.europa.eu/juris/document/document.jsf?text=&docid=207681&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=489741)

2. It is relevant to note that X & X was a case in the context of a Take Back Request, rather than in the context of a Take Charge Request.

3. What happened in the cases that SPI has been made aware of, is that the Home office rejected a re-examination request submitted by the sending state authorities following an initial refusal of the Take Charge Request *without actually having substantively considered the re-examination request at all, including the further evidence submitted with it, addressing the initial reasons for refusal.*

4. It is the first time that SPI has seen the UK authorities use the case of X & X in the context of a Take Charge Request.

5. The UK Home Office is using the X & X judgment now to say that if they do not manage to reply within 2 weeks of the re-examination request being sent by the sending state, then responsibility for the UASC reverts back to the sending state, i.e. Greece.

6. SPI is very concerned about this new development and believes it is wrong to rely on a case that was decided in the context of a Take Back Request, to decide Take Charge Requests, especially when they concern UASCs.

7. This approach fails to take into consideration the Right to Family Life and the Best Interests of the Child principle that should govern State decision making when it comes to Take Charge Requests.

Effect of litigation in the UK Courts on recent cases

1. Following the Tribunal decisions in the default acceptance cases (see above), SPI has recorded a change in the amount of cases that are decide within the 2 months deadline by the UK authorities.

2. In 2018, SPI had recorded that in 26 Take Charge Requests of unaccompanied minors that were made to the UK, only 5 were decided by the Home Office within the 2 months deadline. 19 requests were responded to after more than 2 months and no data was recorded for 2 cases.

3. In 2019, SPI recorded 32 Take Charge Requests made by unaccompanied minors to the UK. The Home Office responded within the 2 months deadline in 18 of those cases, while no data was recorded in 3 cases and in the remaining 11 cases, the UK failed to respond within the 2 months deadline.

5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)

6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)

7. Detention of applicants for international protection (including detention capacity – increase/decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)

8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decisionmaking, timeframes, case management - including backlog management)

9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)

10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)

11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)

12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)

13. Return of former applicants for international protection

14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)

1. At the end of 2018 through a Freedom of Information (FOI) request, Safe Passage uncovered evidence that the UK government had admitted only 20 unaccompanied children through the flagship Vulnerable Children's Resettlement Scheme (VCRS).

2. Although Safe Passage welcome the government's efforts to relocate children with families under the VCRS, it was extremely worrying that so few unaccompanied children had been able to access this route.

3. The findings of Safe Passage's investigation were covered exclusively in the Observer newspaper and used to evidence advocacy work in 2019 regarding the low numbers of unaccompanied children able to enter the UK through safe and legal routes.

15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)

‘Our Turn’ campaign

1. In order to evidence local authority capacity and public support for giving sanctuary to more children, Safe Passage launched the Our Turn campaign.

2. In 2019, local authorities up and down the country pledged to offer homes to child refugees from Europe and conflict zones.

3. To date, the campaign has secured pledges for over 1,400 places, but these can only be filled if the government agrees to welcome more children. There is currently no mechanism to allow to fill these places and turn the pledges into actual places for children.

4. Safe Passage continues to engage with the government on this and advocate for routes, for example through the Global Resettlement Scheme, that would allow children to relocate safely to the UK and take advantage of the pledges made.

5. At the same time, Safe Passage continues to encourage local authorities to make a pledge.

Dubs scheme

1. Section 67 of the UK Immigration Act 2016 required the UK government to relocate a specified number of unaccompanied child refugees from within Europe.

2. Safe Passage were closely involved in securing cross-party support for section 67 (commonly known as the Dubs scheme).

3. The UK government capped the scheme at 480 places.

4. In 2019, having been made aware of lengthy delays in filling those places, Safe Passage advocated directly with local authorities across the UK and secured places for approximately 30 children.

5. Although the government has not released recent figures, our understanding from agencies in France, Greece and Italy is that the majority of the 480 Dubs scheme places have now been filled.

Global Resettlement Scheme

1. In the summer of 2019, the UK announced a new 'Global Resettlement Scheme', intended to consolidate the country's various resettlement programmes into one new scheme.

2. Whereas previous programmes (e.g. the Vulnerable Persons Resettlement Scheme and Vulnerable Children's Resettlement Scheme) had focussed on resettlement from the MENA region, the new scheme will broaden the geographical focus and respond to wherever the need is greatest.

3. In light of this, Safe Passage have been campaigning for the UK to offer places under the scheme to unaccompanied and vulnerable children who have made it to Europe.

4. With the Dubs scheme coming to an end once the 480 places have been filled, the new Global Resettlement Scheme could provide safe passage to the UK for child refugees who would otherwise have no legal route.

16. National jurisprudence on international protection in 2019 (please include a link to the relevant case law and/or submit cases to the EASO Case Law Database)

17. Other important developments in 2019

References and sources

Sources have been included above. The following sources were also used:

http://www.refugeecouncil.org.uk/wp-content/uploads/2020/01/Without-my-family-report-AW-Jan2020-LoRes.pdf

18. Please provide links to references and sources and/or upload the related material in PDF format

19. Feedback or suggestions about the process or format for submissions to the EASO Annual Report

Please upload your file

The maximum file size is 1 MB

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