Refuge and Asylum in Scotland

Social work support a human right not an administrative burden

A Guide for Members of UNISON Scotland and Scottish Association of Social Workers
Introduction

This guidance was first issued in October 2006 in order to provide a framework for ethical practice to UNISON and SASW members in Scotland who are social work and social care practitioners providing a service to asylum seeker families with children, or to unaccompanied asylum seeking children. Since then the issues that underlie the movement of peoples from their homelands to other parts of the world have escalated and increasing numbers of migrants are seeking refuge in Europe from wars and economic disaster – much of it created by the policies of governments in the richer nations. Many face death, harassment and exploitation on their journeys and the situation facing migrants is both complex and seemingly overwhelming. To keep all this in context, it should be stated that most of the estimated 59.5 million (2014 figures) refugees who are displaced, seek refuge in just five countries: Turkey, Lebanon, Jordan, Iraq and Egypt. The UK has estimated refugee numbers of just over 117,000, or 0.18% of the total population of the UK. Issues are often exaggerated in the mainstream press to bolster the views of populist right wing politicians who feed off the plight of the world’s most vulnerable.

Against this background it is increasingly common for social workers across Scotland to be asked to intervene in the lives of children who have come to this country from devastated areas of the world. Some arrive legally through government sponsored relocation schemes, some come with their families, some arrive as unaccompanied children, some arrive illegally through their own efforts, and some through deliberate trafficking to work in illegal settings such as cannabis farms or the sex industry, or even legal settings such as nail bars, hotels or private homes. All are vulnerable and in need of varying degrees of support.

This updated and very brief document will provide some underlying general guidance and signpost to other more detailed information sources. It should provide a useful tool for negotiating with employers to ensure that the right resources are put in place, including awareness training and staffing. The original guidance was focused on asylum seekers, but as refugees, particularly from Syria, are being relocated in Scotland, the document will also cover aspects of the support they too require. It will also touch on migrants from EU countries, who face uncertainities as well as increases in racism and hate crime, as a result of the Brexit process.

Principles

• Asylum seeking, refugee and migrant children in Scotland have the same rights under Scottish legislation as any other child, and the local authority has the same duty toward them.

• Social workers employed by local authorities to provide services to children and families have a statutory duty to protect the rights and interests of all children.

• Likewise Scottish legislation applying to the support and protection of vulnerable adults does not differentiate on the basis of immigration status or citizenship.

• The SSSC Codes of Practice for social workers and employers describe standards of professional conduct and the practice required of social service workers in Scotland. They also describe the responsibilities of employers to support and regulate these standards. The Codes inform ethical practice with all service users including asylum seeker children and their families.

• SASW members are also bound by the SASW/BASW Code of Ethics.

• All policies and procedures established by the Scottish Government and individual local authorities in respect of the welfare, well-being and protection of children apply equally to the children of asylum seekers, refugees, migrants and to unaccompanied asylum seeking children.

The Law

Children (Scotland) Act 1995

The Act states in its overarching principles that the welfare of the child must be paramount and that the child’s views should be taken into account in all matters affecting him or her. These principles are underpinned by the UN Convention on the Rights of the Child and apply to all children living in Scotland. The principles behind the Act have been incorporated into the general Scottish Government guidance for interagency working with children – GIRFEC (Getting it Right for Every Child) and other more specific practice guidance.

Because of their particular circumstances and vulnerabilities, asylum seeker children, whether unaccompanied or living with their families, should be regarded as ‘children in need’ under s93 of the Act. This is defined as:

a) being ‘in need’ is to being in need of care and attention because –

(i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services by a local authority;

(ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;

(iii) he is disabled; or

(iv) he is affected adversely by the disability of any other person in his family;

These children are therefore entitled to all the rights and services accorded to ‘children in need’ under the Act. The Children (Scotland) Act 1995 s22 places a duty on local authorities to safeguard and promote the welfare of children in need and so far as is consistent with that duty to promote the upbringing of such children by their families by providing appropriate services including assistance in cash or in kind.

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The Children (Scotland) Act 1995 provides for through-care support for children and young people leaving care—these are laid out in The Support and Assistance for Child Protection in Scotland 2014. These guidelines tend to inform local child protection procedures. Furthermore, it is recommended that that workers read the Scottish Government’s Inter-Agency Guidance for Child Trafficking (2013), which provides guidance and a toolkit for identifying victims of trafficking. Safeguarding Children in Scotland who may have been Trafficked (2009) also outlines Scottish Government guidance.

Details of these resources are in the list at the end of this guide.

Social Work (Scotland) Act 1968
Local councils have a duty under s12 of the Social Work (Scotland) Act 1968 to assess a person’s community care needs and decide whether to arrange any services. Any assistance should be based on an assessment of the person’s care needs and should take account of their preferences. This provision for assisting vulnerable adults applies to anyone resident in Scotland and, like s22 for children described above, enables local authorities to provide whatever support and services, including (arguably) financial support, they require for their needs to be met. The question of what constitutes ‘vulnerability’ and ‘need’ is of course open to a wide interpretation.

Human Rights Act 1998
Local councils also have an obligation not to breach individuals’ human rights. In making a decision to accommodate or support an individual or a family, or indeed in making a decision to/not offer support, or to disconnect such support, there is a possibility that vulnerable individuals can be made homeless and destitute, potentially inflicting a right to freedom from inhumane and degrading treatment under Article 3 of the European Convention on Human Rights 1950 (ECHR).

Similarly, a decision taken by a local council to separately accommodate family members, or to only accommodate some—and not all—members of a family could potentially breach an individual’s right to family life, which is protected by Article 8 of the ECHR.

The Human Rights Act 1998 and the ECHR also do not generally permit discrimination on the basis of nationality or migration status.

Definitions

Asylum or Refugee Status?
Asylum and Refugee legislation (and associated orders) changes all the time and can affect the status of adults and children coming to Scotland—many of whom are resettled under Westminster Government (Home Office) programmes. Others arrive under their own capacity (in official terms ‘illegally’) and present themselves as Asylum Seekers—who can happen in any locality. Unaccompanied Asylum Seeking Children must be accommodated and supported by the local authority in which they present themselves. Adults (unless they fall within limited exceptions) can only claim asylum at port or at Croydon and will be directed to Croydon if they present in Scotland. After initial processing in Croydon, some asylum seekers who fail to be housed by the responsible Home Office Department—the United Kingdom Visas and Immigration (UKVI), are then dispersed back up to Glasgow.

At the time of writing Asylum Seekers are placed for residence (whilst their applications are being processed by the Home Office) in Glasgow only in Scotland; but other local authorities have shown interest and this may change.

The information provided in this guide is necessarily short and is not a definitive statement on the current law or its application. A list of useful organisations is provided later.

Asylum and Refugee legislation (and associated orders) challenges, you should assist the individual to seek legal advice on this issue.

Asylum Seeker Status
Asylum Seeker is a person who has applied for asylum under the 1951 UN Convention definition of a refugee. People deemed to be refugees are granted five years limited leave to remain (LLR) and are entitled to apply for a UN Convention Travel Document and for some immediate family members living outside the UK to join them. At the expiry of the five year period, they are entitled to apply for ‘Indefinite Leave to Remain’ (ILR), which means there will then be no limit on the time they can stay in the UK. In most cases they are entitled to apply for British Citizenship after holding ILR for a minimum period of one year. They are entitled to the same economic rights as UK citizens i.e. full rights to work under employment law and full access to medical treatments, benefits, education and housing.

The UK also grants periods of Limited Leave to Remain (LLR), or Discretionary Leave (DL) in order to breach the human rights of some individuals, and for cases in which the Home Office wishes to exercise discretion on policy or other grounds. These grants of leave vary from short periods of 3-6 months up to 30 months. A grant of LLR or DL will include the right to work and may confer access to mainstream benefits or may be subject to a condition that the individual has “no recourse to public funds” (NRPF). Such a grant does not confer the right to apply for family members living outside the UK to join the holder in the UK.

Under the latest Home Office programme for the relocation of Syrian refugees in the UK, a number of Scottish local authorities have offered housing and this group is now widely dispersed throughout the country—usually in areas with a surplus of local authority housing—which may be into what is sometimes described as ‘hard to let’ accommodation: this can bring attendant problems to individuals and families already traumatised by their experiences.

Refugees and holders of HP are free to work and claim welfare benefits; those subject to LLR or DL are free to work and claim welfare benefits unless their grant of leave is subject to an NRPF condition (see below).

However, the imposition of an NRPF condition can be challenged and overturned if it is not logical or appropriate in light of the financial situation, personal responsibilities and capacity of the holder. For example, if the family were granted leave to remain out of regard for the welfare of the children, but the only adult family member is unable to work and therefore the NRPF condition is likely to force the family (including the children) into destitution. If you think an NRPF condition should be challenged, you should assist the individual to seek legal advice on this issue.

Asylum seekers who fall to be housed in the United Kingdom Visas and Immigration (UKVI), are then dispersed back up to Glasgow.
er forms of assistance under Immigration Legislation, but make a different status under asylum law. In certain scenarios (e.g., to provide for children). There is provision for SOME refused asylum seekers – known as Section 4 Asylum Support. However this is not available to all refused asylum seekers, just small number who are taking steps to leave the UK but cannot leave, or who are exceptionally vulnerable.

Dungavel Immigration Removal Centre in Lanarkshire is used to incarcerate up to 250 adults whose asylum seek- er applications have been refused, pending their removal from the UK. It is privately run by the US GEO Corpora- tion and operates alongside similar facilities in England including Yarl's Wood near Heathrow Airport. Since 2010 it has not housed any children but its presence and use in Scotland (where the Scottish Government has no jurisdiction as immigration matters are reserved to Westminster) remains controversial and the subject of regular protest. Its closure was announced in 2016, with replacement by a new facility near Glasgow Airport but after Renfrew Council refused planning permission, is now to remain open.

Unaccompanied Asylum Seeking Children (UASC) or Separated Children

The UN defines separated or unaccompanied children as those who are separated from both parents and are not being cared for by an adult who, by law or custom, has responsibility to do so.

The Home Office uses the term to describe a child under 18 (or if there is no proof, appears to be under 18) who is outside their country of origin who is not accompanied by a close relative (regardless of whether or not that rela- tive normally cares for the child). This makes it a more narrowly defined term than ‘separated’ children under the UN Convention. The UKVI does not consider a child ‘separated’ if they have an adult prepared to take responsibility for them. The Social Services are normally expected to determine, for instance, whether a child is enslaved or subject to trafficking. A ‘resting’ or ‘Refused’ Asylum Seekers

If unsuccessful the applicant can make an appeal to the UK Visas and Immigration (UKVI) on points to have their asylum seeker status changed to full range of support that can be made available to children under this and associated legislation and provisions. They should be allocated a social worker and be subject to the same Looked After Children processes as any other child looked after under that legislation. This includes access to the full range of health care and education opportunities.

‘Failed’ or ‘Refused’ Asylum Seekers

If unsuccessful the applicant can make an appeal to the UK Visas and Immigration (UKVI) on points to have their asylum seeker status changed to full range of support that can be made available to children under this and associated legislation and provisions. They should be allocated a social worker and be subject to the same Looked After Children processes as any other child looked after under that legislation. This includes access to the full range of health care and education opportunities.

UNISON Scotland & Scottish Association of Social Work

A guide for members

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The BASW/SASW code of ethics takes in the SSSC Codes but offers an additional framework for ethical practice. Its five basic values state that social work should promote respect for human dignity and pursue social justice, through service to humanity, integrity and competence. SASW will support members whose practice conforms to their Code of Ethics and where they have followed all the protocols of their employing agency.

Seek advice early; members faced with the issues outlined in this guide may wish to seek advice from their union or professional association. It is always better to seek advice from UNISON or SASW at an early stage in the process – in advance of perceived difficulties.

The SSCC Codes of Practice require Social Services workers to practice to a set of professional standards when providing a service. The following (updated from November 2016) standards may be particularly relevant in working with asylum seeker families and refugees in Scotland. (NB Whilst space considerations preclude detail, Health professionals working in Social Services settings – such as Occupational Therapists – will have similar codes of practice relating to their registration to practice.)

1. As a social service worker, you must protect and promote the rights and interests of people who use services and carers.

1.1 Treat each person as an individual.
1.2 Respect and, where appropriate, promote the views and wishes of people who use services and carers.

1.3 Support the rights of people who use services to control their lives and make informed choices about the services they use.

1.4 Respect and maintain the dignity and privacy of people who use services.

1.5 Work in a way that promotes diversity and respects different cultures and values.

3 As a social service worker, you must promote the independence of people who use services while protecting them, as far as possible, from danger and harm.

3.1 Promote the independence of people who use services and empower them to understand and exercise their rights.

3.2 Use established processes and procedures to report allegations of harm and challenge and report exploitation and any dangerous, abusive or discriminatory behaviour or practice.

3.3 Tell your employer, or the appropriate authority, about any resourcing or operational difficulties that might get in the way of providing care.

3.10 Recognise and use responsibly the power and authority I have when working with people who use services and carers.

3.11 Provide good quality induction, learning and development opportunities to enable social service workers to strengthen and develop their skills and knowledge.

3.12 Contribute to providing social care and social work education and learning, including effective workplace assessments and practice learning.

Both UNISON and SASW can support you to ensure that your employer is meeting their obligations under the Code if this is in doubt, and you should seek advice if you believe they are failing – examples might be in providing adequate resources and training for staff, or facilities and support for asylum seekers and refugees.

6. As a social service worker, I am accountable for the quality of my work and will take responsibility for maintaining and improving my knowledge and skills.

6.4 Ask for assistance from my employer or the appropriate authority if I do not feel able to, or well enough prepared to, carry out any part of my work or if I am not sure about how to proceed.

Employers also have responsibilities under the Codes: As a social service employer, you must have the culture and systems in place to support social service workers to meet their Code of Practice.

2.2 Effectively manage and supervise social service workers to promote best practice and good conduct and support staff to continuously improve their performance and make sure they are fit to practise.

2.3 Have systems in place to listen to and consider feedback from people who use services, carers and other relevant people, to shape and improve services and the performance of social service workers.

2.4 Have systems in place for social service workers to report inadequate resources or difficulties which might have a negative effect on the delivery of care. Work with social service workers and relevant authorities to tackle such problems.

2.5 As a social service employer you must promote learning and development opportunities to enable social service workers to strengthen and develop their skills and knowledge.

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serious harm, inhumane or degrading treatment under Articles 2 and 3 of the ECHR. Similarly, if the local authorites place a child to a situation in which they may be trafficked or retrafficked or subject to slavery or slave-like conditions, it is arguably responsible for breach of her right to freedom from slavery (Article 4 ECHR).

Other Issues Faced by Children Seeking Asylum

Turning 18: Children turning 18 who are or have been ‘looked after’ should be subject, as described earlier in this guide, to the same supports from that age as any other child in Scotland. However if they have not been looked after (which all unaccompanied asylum seeking children should have been) they may find themselves subject to the law as it is applied to their parents or carers: supports may be withdrawn if they have been refused asylum and appeals have been exhausted and they may face return to their country of origin.

Trauma and its Impact on Behaviour

Children and families may have experienced loss, bereavement, and separation, along with problems related to asylum itself and the arrival in a new country. Fears of being sent back, the stresses of poverty, culture shock, obstacles to integration, racism, unemployment and boredom are common issues. They have to adjust to a new culture, language and to construct a new sense of identity and belonging.

Youth are trying to manage these transitions at a crucial time in their own development. Many children may be suffering from trauma which might lead to perceived behavioural problems. Some may have guilt and have begun to recover their lives. Uncertainty itself is a crucial time in their own development. Many children may be suffering from trauma which might lead to perceived behavioural problems. Some may have guilt and have begun to recover their lives. Uncertainty itself might be enough to impede recovery.

Practitioners in the social work and social care professions are well equipped to help children and their families recover from all the effects outlined above. Practical assistance (where possible) and referral to specialist advocates is one part of this process but should not be the only forms of intervention.

Many families will need the individual and emotional support and therapy that social workers have traditionally provided. This may be at variance with current managerialist practice which is focused on computer friendly processes and outcomes, but should nonetheless be argued for at every level.

It is clear that progressive Scottish legislation, designed to meet and support the needs of children with the central principle that the child’s welfare is paramount, is compromised by immigration legislation. This is the greatest dilemma for social workers – acting as part of a system that seems intrinsically oppressive. Such dilemmas however are as old as social work itself and will not be new to those who aspire to progressive/radical practice within statutory settings.

UNISON and SASW have always lobbied for the interests and rights of children and against legislation that compromises those interests and the rights that underlie them. Practitioners should not collude with practices and processes that do not have children’s interests at their heart. It is not a social work role to put a humane face on inhumane processes – but where possible social workers should do all they can to promote a child’s interests. That should include using all the legislation we have at our disposal and being prepared to intervene and challenge within the parameters of the SSSC Codes of Practice, the UN Convention on the Rights of the Child and the Human Rights Act 1998. We should expect the support of our agencies in doing that.

This applies equally to vulnerable adults in need of protection and support.

All of this very complex field of practice has obvious training implications for staff and local authorities should be providing a range of broad and specific training opportunities.

Social Work Practice

Wider Campaigning

UNISON and SASW have made many representations to Government at Scottish and UK level to campaign for the interests of asylum seeking children, their families, and all other refugee families. At the time of the infamous ‘Dawn Raids’ involving the inhumane removal of families and children, meetings were held with senior Scottish Civil Servants. Such issues will continue to be pursued. UNISON has a policy of seeking amnesty for all asylum seekers who have been in the UK for more than a year, and has published information on the myths surrounding asylum for members and others who are interested. Such work, in conjunction with other organisations, has resulted in successes at Scottish level, including the ending of detention for children. Such work will continue and will be enhanced by information being fed back from members of both UNISON and SASW about abuses and poor organisational practices (at the time of writing practice in relation to NRFF is under scrutiny). We also campaign against racism more generally – very necessary work in the light of an increase in racist attacks (including murders) on asylum seekers, refugees and migrant workers in the wake of the Brexit Referendum (2016).

Some of our members in England are involved with Social Workers Without Borders – a voluntary association of social workers who, in their own time, have worked to secure entry to the UK of unaccompanied asylum seeking children stuck in refugee camps in mainland Europe. Efforts are in hand to step up our support for such activity. SWWB believe that the ‘refugee crisis’ in Europe is a result of structural oppression both here and overseas - and is a crisis of care, not a crisis caused by those who flee wars, extreme oppression and poverty in their homelands. We would endorse this view.


GIRFEC (Getting It Right For Every Child) http:// www.gov.scot/Topics/People/Young-People/gettin gright


Safeguarding Children in Scotland who may have been Trafficked (2009) http://www.gov.scot/Publica- tions/2009/02/18092546/0


Organisations and Sources of Help

Asylum Seeker Housing Project (Glasgow) https:// www.facebook.com/asylumseekerhousingproject

Children and Young People’s Commissioner Scotland https://www.cypcs.org.uk

JustRight Scotland (legal advice, representation and training) http://justrightscotland.org.uk/

Legal Services Agency Scotland (legal advice, rep- resentation and training) http://www.lsa.org.uk/

Scottish Refugee Council http://www.scottishrefu- geecouncil.org.uk/

Social Workers Without Borders (SWWB) : https:// www.socialworkerswithoutborders.org/

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• Legal Services Agency Scotland (legal advice, rep- resentation and training) http://www.lsa.org.uk/

• Scottish Refugee Council http://www.scottishrefu- geecouncil.org.uk/

• Social Workers Without Borders (SWWB) : https:// www.socialworkerswithoutborders.org/
UNISON Scotland & Scottish Association of Social Work

Three simple ways to join UNISON today and get essential cover wherever you work

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Call us on 0800 171 2193
Ask your UNISON rep for an application form

UNISON is one of the UK’s largest trade unions, serving more than 1.3 million members. We represent full-time and part-time staff who provide public services, although they may be employed in both the public and private sectors.

BASW is the largest professional association for social work in the UK. Whatever your background or specialism, we are here to support, advise and protect you at work because we know how challenging each day can be. We offer a free advice service and representation before your regulatory body.

Published by UNISON, UNISON House, 14 West Campbell Street, Glasgow, G2 6RX

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