



The Social Work Team for Separated Children Seeking Asylum in Ireland

The Irish Model of Care & Protection for Unaccompanied Minors Seeking Asylum

Child protection risk assessment 'including a dimension on age'.

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PRESENTATION OVERVIEW

- Legislation and Referral System in Ireland
- Social Work Service for Separated Children (SCSA) in Ireland
 - two primary service streams:
 1. Reception into Care of Unaccompanied Minors
 2. Family Reunification
 3. *...or both*
 - Quick look at service development, referrals history and responsibilities
 - Resolving the problem of age assessments within the Irish legal framework to the satisfaction of almost everyone.
 - The Irish High Court Case of Moke vs. Asylum Services and the UK High Court Merton Guidelines

LEGISLATION IN IRELAND

1. Child Care Act, 1991

Children are generally brought into care under Sec. 4 of this Act which is generally a ‘voluntary care’ situation and may also be used for abandoned children. Emergency, Interim and Full Care Orders may also be sought from the courts. (Gardai can take a Sec. 12 as well.)

2. Refugee Act, 1996 (*currently being replaced by the International Protection Act 2015*)

Sec 8.5 – Where it appears to an immigration officer that a person is a minor and unaccompanied by an adult they must be referred to the health boards. (Now TULSA, the State’s Child and Family Agency.)

No separated children have been deported or even transferred to another country involuntarily in (at least) the last 10 years.

***In regards to Separated Children in Ireland, while NOT legislatively speaking but certainly in practice, the Child Care Act takes primary consideration before the Refugee Act; however once the young person turns 18, the Refugee Act will generally take precedence.**
(Re: Accommodation and final determinations.)



Unaccompanied Minors and Family Reunifications

- All children are allocated a social worker upon being referred to our service. An Emergency Care Plan is completed on day of arrival to address any immediate health and safety concerns as well as accommodation, language, cultural and education needs.
- In accordance with National Guidelines for Children In Care, accommodation is provided in a standardized, regulated, monitored and registered children's home (with not more than six children) and staffed by professionally qualified childcare workers or social care workers. Other accommodation options include fostering/supported lodgings placement. Educational, social, emotional, religious/spiritual, psychological and medical needs all being met.
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- Conduct Family Reunification Assessments which may or may not require receiving the child into care as well as possible DNA testing if our social assessment is inconclusive.

# HISTORY OF SERVICE DEVELOPMENT

- **1996** – First separated child arrives in Ireland. One more in 1997. Ten in 1998.
- **1999** – Numbers of unaccompanied minors increases to about 97. Services are provided by 3 Social Workers.
- **2000 – CRISIS! 520 referrals are made to the Health Boards;** emergency hostel accommodation is provided by the Immigration service of the Department of Justice who hold responsibility for accommodation of asylum seekers.
- **2001 – CRISIS CONTINUES when 1085 Separated Children are identified!** Service becomes formalized. The children are finally removed from the adult asylum seekers' accommodation centres and are accommodated in hostels specifically for asylum seeking children aged 12 and up, while under 12s are fostered. The beginning of the dark decade!
- **2006 to 2009** – The team grows to 1 PSW, 3 SWTLs, 14 SWs, 14 PWs (**32 clinical staff**) – based in Dublin, but providing services to many UAMs nationally.
- **2009/2010** – Following years of campaigning, the development and implementation of an **EQUITY OF CARE principle** saw the closing of the children's hostels and disbursement of separated children to foster care families around the country (only residential homes or foster family placements are allowed) and the children's cases are allocated to local social work teams.
- **2012** – Established national service for Separated Children within the child protection services – now with **TUSLA Child and Family Agency** under the Minister for Children rather than the Health Service Executive under the Minister for Health.
- **2013** – Partnered on Pilot Projects on Unaccompanied Minors European Commission Directorate – General Home Affairs, Asylum and Migration. **1. SUMMIT** (Safeguarding Unaccompanied Migrant Minors from going Missing by Identifying Best Practices and Training Actors on Interagency Cooperation) **2. Durable Solutions for Separated Children in Europe.**

# REFERRAL SYSTEM for Separated Children in Ireland

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**GNIB** (Garda National Immigration Bureau – Irish Immigration Police)  
& **ORAC** (Office of the Refugee Applications Commissioner)

|                                     |           |
|-------------------------------------|-----------|
| 2012 referrals:                     | 71        |
| 2013 referrals:                     | 120       |
| 2014 referrals:                     | 97        |
| 2015 referrals:                     | 109       |
| <i>2016 year to date referrals:</i> | <i>30</i> |

Same time last year 20

*Compared with peak years of:*

- 2001 1085
- 2002 863
- 2003 789

## Referrals to TUSLA Child and Family Agency's Team for Separated Children Seeking Asylum 2000 to 2015

| Year | Total Referrals to TUSLA's Team for SCSA | Placed in care | Completed Family reunification service provided, regardless of placement in care status. | Other |
|------|------------------------------------------|----------------|------------------------------------------------------------------------------------------|-------|
| 2000 | 520                                      | 406            | 107                                                                                      | 7     |
| 2001 | 1085                                     | 846            | 231                                                                                      | 8     |
| 2002 | 863                                      | 335            | 506                                                                                      | 22    |
| 2003 | 789                                      | 277            | 439                                                                                      | 73    |
| 2004 | 617                                      | 174            | 418                                                                                      | 25    |
| 2005 | 643                                      | 180            | 441                                                                                      | 22    |
| 2006 | 516                                      | 188            | 308                                                                                      | 22    |
| 2007 | 336                                      | 130            | 185                                                                                      | 29    |
| 2008 | 319                                      | 156            | 157                                                                                      | 26    |
| 2009 | 203                                      | 126            | 66                                                                                       | 11    |
| 2010 | 96                                       | 70             | 21                                                                                       | 5     |
| 2011 | 99                                       | 66             | 31                                                                                       | 7     |
| 2012 | 71                                       | 48             | 31                                                                                       | 12    |
| 2013 | 120                                      | 62             | 43                                                                                       | 15    |
| 2014 | 97                                       | 86             | 49                                                                                       | 14    |
| 2015 | 109                                      | 82             | 32                                                                                       | 24    |

# CURRENT SOCIAL WORK TEAM IN 2015

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Following the restructuring of the service we now have

- 1 Principal Social Worker
- 2 Social Work Team Leaders
  - 5 Social Workers
- 4 After Care Project Workers

All specifically dedicated and responsible for meeting the statutory and ethical obligations regarding separated children in care of the State with a 0% staff turnover rate for the past 8 years.

*We're not sure but we think we have the most gender balanced and ethnically diverse child protection social work team in the country with a current make up from Ireland, Ethiopia, Canada, Zimbabwe, India, Australia, Nigeria, South Africa and USA.*

*Historically, we have also had staff from Germany, Japan, France, Finland, New Zealand, Spain, Switzerland, Austria, Portugal, Croatia, Rwanda, Brazil and Kenya.*

# SOCIAL WORK TEAM, *acting in loco parentis*, HAS RESPONSIBILITY FOR:

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- Child protection risk assessment including a dimension on age, looking at identity issues and exploration of any contacts in Ireland as well as screening for any trafficking indicators or other risk factors.
- Explore and assess appropriateness of possible family reunification within Ireland, a voluntary return home to country of origin or to a third country where the family may be, such as another EU member state *or not*.
- **IF and WHEN it is clinically appropriate**, enter the child into the asylum process
  - Attend all interviews and any appeal hearings and any court appearances related to asylum, residency or legal status in the country, even post 18 years.
  - When appropriate, make representations on the child's behalf to support their application for protection or permission to remain in the country.
- Interdisciplinary and inter-agency planning and follow up as well as referral to any specialist services if required.

# Joint National Protocol on Children who go missing from care

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The following measures were agreed:

- Collaborative interviewing at the ports or other appropriate location between social workers and Gardai (police).
- Fingerprinting of persons presenting as underage at the ports, for tracking missing children purposes.
- Planned Garda surveillance of those at risk of going missing from the point of presentation at ports to the initial placement period in hostels (now, children's residential units).
- Monitoring of the notification system of missing persons to local Gardai to be closely monitored by Garda Inspectors.
- Joint training of TUSLA staff and Gardai/GNIB staff in relation to children at high risk of going missing.
- Sharing of photographic evidence between the TUSLA and Gardai.
- These measures were implemented and existing processes improved throughout the first half of 2009. Links between local Garda stations in whose areas the hostels were located and HSE/hostel staff were strengthened. The GNIB mounted several surveillance operations with the collaboration of social workers on the high risk group as profiled and successfully tracked some children who went missing.
- **81 of 846 (9.6%) children went missing from the service in 2001. 2 of 48 (4%) children went missing in 2012. 1 or >1% of 86 in 2014!**

# Some Challenges when working with and for Separated Children

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- Lack of awareness from service providers such as schools, hospitals, and community projects about separated children and presence of possibly trafficked children in the community
- Discrimination, racism, xenophobia (fear of others)
  - *Fear-mongering and sensationalised media reports about migrants, trafficking, social welfare and benefit fraud.*
  - *Acts of hostility, violence and aggression against foreigners.*
- Cultural, social and religious differences (including issues related to money, gender, leisure, work, sexuality, personal agency).
- Explaining negative asylum decisions to a child; the legal process and the endless waiting for a decision on their residency status.
- Life in State care (residential care or foster care).
- The ‘mandate. ’The shadows...all of the unknowns including age.

*All of these can challenges can lead to increased risk for children.*

# MOKE Compliance

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## *IRISH Case Law*

### AM v Refugee Applications Commissioner

Moke

Applicant/Plaintiff: A.M.

Respondent/Defendant: Refugee Applications Commissioner of Ireland

Citation/s:[2005] IEHC 317

Court/s: High Court

High Court

Judgment Date/s: 06 October 2005

Judge: Finlay Geoghegan

Category: Refugee

An asylum applicant claimed he was a minor at the time of his asylum application. The Refugee Applications Commissioner interviewed him to assess his age and assessed him to be not under 18 years of age. The applicant was thereafter processed by the Commissioner as an adult and was in due course issued with a negative asylum determination. The applicant challenged both the age assessment and the refugee status determination.

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## **The Court quashed the decision assessing the applicant's age finding that minimum procedural requirements for such a procedure include:**

- *that an applicant be told the purpose of the interview in simple terms;*
- *that an applicant is entitled to be told in simple terms the reason or grounds why the interviewer considers the claim to be false and given an opportunity to deal with such matters;*
- *that the applicant is entitled to be told of any reservations held by the interviewer with regard to identity documents and is given an opportunity to deal with the matter;*
- *that if the decision is adverse to the applicant that he is clearly and promptly informed of the decision and its reasons; and*
- *that the possibility and procedure of reassessment is communicated orally and in writing.*

**The Court found that these requirements were not met in the instant case.  
(EMN Ireland)**

# PRINCIPLES of the MOKE Judgement:

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- Minimum procedural requirements for age assessment of minors in the asylum process include (i) that an applicant be told the purpose of the interview in simple terms; (ii) that an applicant is entitled to be told in simple terms the reason or grounds why the interviewer considers the claim to be false; and to be given an opportunity to deal with such matters; (iii) that the applicant is entitled to be told of any reservations held by the interviewer with regard to identity documents and is given an opportunity to deal with the matter; (iv) that if the decision is adverse to the applicant that he is clearly and promptly informed of the decision and its reasons; and (v) that the possibility and procedure of reassessment is communicated orally and in writing

# The MOKE Judgement – Aftermath

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While the Irish Asylum Services could adhere to the principles of the judgement in the Moke case, they realized that they were not the professionals best placed to attend to the best interests of the child.

Child protection social workers with their child development training and experience were deemed to be the most appropriate. (Social servants rather than civil servants.)

The child protection risk assessment includes a dimension on age and the Social Work Dept forms an opinion which the Immigration Dept can either accept or reject.

Principals of child-centred, child-friendly, non-oppressive practice and an application of benefit of the doubt in borderline/indeterminate cases in line with international best practice recommendations are in place. Not being an exact science with either a medical model or a psycho-social model, we are able to avoid violating the integrity of the body of the young person.

# The UK based MERTON Guidelines

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The text for the following two slides are from “A new approach to age assessment of Unaccompanied and Separated Children: Current practices and challenges in the UK” by Christine Mougne & Amanda Gray

In March 2003 practice guidelines were published by the London Borough of Hillingdon and Croydon that were thereafter approved by the High Court, resulting in the legal standard for formal assessments known as the Merton compliant age assessment.

- The guidelines were devised in 2003 by Judge Stanley Burnton in the case of *B v Merton London Borough Council*. They state that in a case where age is not clear, and no reliable documentary evidence exists, the credibility of the applicant, physical appearance and behaviour must be assessed. The assessment must also include general background of the applicant, including ethnic and cultural considerations, family circumstances, education and history over the past few years. The Court in *B v Merton* found that a medical report was not necessary.

# MERTON Guidelines - Conclusion

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The Merton standard has drawn various criticisms. First of all, the differing capacity of local authorities to make such assessments inevitably results in a variation in the quality of age assessment. Given its largely subjective nature, the process depends entirely on the ability of the local authority and individual social worker charged with the task. Secondly, the Merton standard encourages disproportionate weight being given by social workers to the perceived credibility of the individual, a factor that can also have serious consequences for the asylum claim.

Due to the limitations of the Merton standard, legal practitioners commonly rely upon paediatric reports to improve accuracy of age assessments. In A v Croydon, however, the UK Supreme Court clarified that since these medical reports have a margin of error of two years, they cannot be considered as conclusive evidence of age, and should only be taken into consideration with all evidence presented.

# Do you need to undertake this assessment?

2014 British Association of Social Workers Age Assessment Guidance  
Guidance to assist social workers in completing age assessments in the UK

- Is it absolutely necessary to undertake this assessment?
- A needs assessment should be separate from an age assessment (though the age assessment may help to inform the needs assessment)

Statutory guidance on the care of unaccompanied children states that 'Age assessments should only be carried out where there is significant reason to doubt that the claimant is a child. Age assessments should not be a routine part of a local authority's assessment of unaccompanied or trafficked children.'

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf)

*This guidance is also relevant where all parties accept that the young person is a child but where the age of the child is not clear.* Many young people will not be able to provide evidence as to their age, and some may not even know their own chronological age. In these circumstances an assessment will rarely produce significant information which will lead to a conclusive and certain decision, so the assessment can be unhelpful and unnecessary. Any assessment should be limited to the minimum necessary to ensure the young person is getting the appropriate services and educational support. In other circumstances the young person will be able to produce clear information about their age for example from documents or from reference to education. **Lengthy assessments which ask young people difficult and distressing questions should be avoided unless you are clear that this is likely to be helpful and productive.**

# Do you need to undertake this assessment?

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However, there may be occasions when you do not feel that an age assessment is necessary but the Home Office are requesting an assessment before they will treat the young person as a child in the immigration process. In these circumstances you may need to negotiate with the Home Office to explain why the young person should be treated as a child without further assessment, or conduct an assessment sufficient to satisfy the Home Office without forcing the child to go through a repetitive and distressing process. Where this is necessary it may be possible to use information which you have already gathered, for example as part of your LAC Child in Need assessment, rather than conducting further interviews.

Dunning says: What about DUBLIN 3 Protocols? Can this function be shifted to deal with requests from receiving countries demanding medical age assessments? Advocacy is likely to be required. Advocacy is a core function of social work practice – even if you're a State social worker; its part of your job and one of the reasons the State hired us! Irish SWs work with Irish D3 Unit to keep the child at the centre.

# Suggested Readings on Age Assessments for Unaccompanied Minors

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**Separated Children in Europe Programme (SCEP) – Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012**

<http://www.scepnetwork.org/images/16/163.pdf>

**Separated Children in Europe Programme (SCEP) – Position Paper on the Use of Biometric Data, October 2006**

<http://scep.sitespirit.nl/images/16/191.pdf>

**Christine Mougne & Amanda Gray – A New Approach to Age Assessment of Unaccompanied and Separated Children: Current Practices and Challenges in the UK (December 2010)**

[http://www.refugeelegalaidinformation.org/sites/srlan/files/joomlaimages/Mougne\\_Gray\\_AgeDisputeinUK.pdf](http://www.refugeelegalaidinformation.org/sites/srlan/files/joomlaimages/Mougne_Gray_AgeDisputeinUK.pdf)

**The Association of Directors of Children's Services Ltd. (ADCS) Age Assessment Guidance; Guidance to assist social workers in completing age assessments in the UK (October 2015)**

[http://adcs.org.uk/assets/documentation/Age\\_Assessment\\_Guidance\\_2015\\_Final.pdf](http://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf) ~ This can also be found on the British Association of Social Workers' Website.

[http://cdn.basw.co.uk/upload/basw\\_35330-3.pdf](http://cdn.basw.co.uk/upload/basw_35330-3.pdf)

*Thank you for your time and attention.  
Vielen Dank für Ihre Zeit und Aufmerksamkeit.*

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