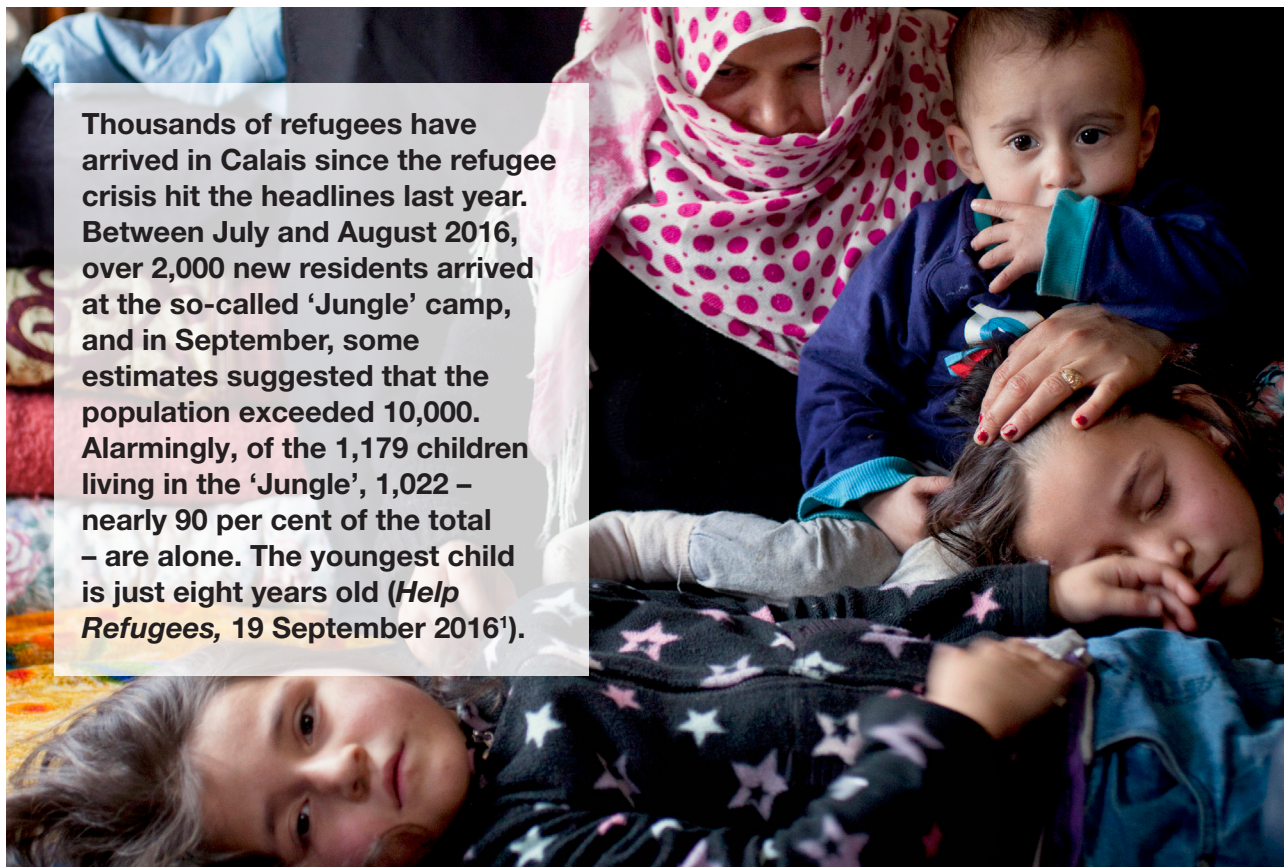


# No place for children





## What are Dublin III and the Dubs amendment, and why are they important in Calais?



Thousands of refugees have arrived in Calais since the refugee crisis hit the headlines last year. Between July and August 2016, over 2,000 new residents arrived at the so-called 'Jungle' camp, and in September, some estimates suggested that the population exceeded 10,000. Alarming, of the 1,179 children living in the 'Jungle', 1,022 – nearly 90 per cent of the total – are alone. The youngest child is just eight years old (*Help Refugees*, 19 September 2016').

Photo © Abbie Trewler-Smith/Paros Pictures

There are few child protection measures in the 'Jungle'. Children as young as eight or nine live alongside adults, in tents providing scant shelter from the elements. They rely upon charities to provide food, water, sanitation and education, and with no accompanying adults looking out for them. They are at ever-present risk of abuse, exploitation and even trafficking. Many are struggling psychologically with the trauma they have been through along their journeys. They also face the threat of eviction from the French authorities planning to shut the camp.

What makes their situation all the more frustrating is that many of these children have a legal right to be in the UK. Under EU law, the Dublin III regulation is designed to protect the internationally recognised right to an intact family unit – 'an essential right of the refugee' (Final Conference of Plenipotentiaries at the 1951 Convention).

Dublin III states that asylum seekers with family members already under international protection, or in the process of seeking asylum, have the right to be transferred to join their family members and claim asylum in the same country. In August 2016, Safe Passage UK counted more than 170 unaccompanied children in the 'Jungle' with a legal right to join family members already in the UK, where 'family members' under Article 8 of the regulations includes parents or legal guardians, siblings, aunts and uncles or grandparents. Under Article 17, the 'discretionary clause' can also be used to request transfers to live with other family members, if the asylum seeker can be shown to be especially vulnerable and in particular need – as all unaccompanied children are.

Further, the so-called 'Dubs Amendment' to the UK immigration bill, led by Lord Alf Dubs, saw the British government legislate to offer safe refuge in the UK to unaccompanied children if

it is in their best interests. It is also worth noting that the Dubs Amendment, and the debates surrounding it, have focused on children who may not be 'straightforward' Dublin III cases, not having a clear and close family link in the UK.

The 'Dubs amendment' was interpreted by the UK government as applying to those who entered Europe on or before 20 March 2016, without requiring family links to the UK, but prioritising those with family in the initial identification. Safe Passage UK counted at least 200 children in Calais who meet this criteria in August 2016. Yet not one child has been transferred to the UK yet under the Dubs Amendment, who had not already qualified for family reunion under Dublin III. Again, the discretionary clause of Article 17 could be used to transfer these children legally, even without family links, based on humanitarian need.

#### **This report will outline:**

- > why the law is not working for these children,
- > why they have so far been unable to claim their legal right to be transferred to the UK – either under the Dublin III regulation, or the new Dubs amendment – and,
- > what needs to change.

So far, voluntary organisations and lawyers working *pro bono* have been able to facilitate the transfer of just under 100 unaccompanied refugee children to the UK under the Dublin III Regulation, the majority of whom came from France. However, with conditions so dire in the 'Jungle', and so many children missing out on their education, a safe, loving home and proper support to deal with their trauma, that this simply is not enough.

## **Methodology**

A brief review of existing literature – research on family reunification, the Dublin III regulation, and unaccompanied children in Calais – was carried out, prior to a research visit to Calais. In Calais, in-depth semi-structured interviews took place with members of voluntary organisations. These included organisations processing Dublin III cases as well as those working to support and protect children within the camp. Where volunteers could not be met during the trip, phone interviews were conducted at a later date. An interview also took place with one minor living in the camp, whose case is being handled by Safe Passage UK. In addition, a visit to the 'Jungle' camp took place, in which the researcher was able to view camp conditions, including accommodation and volunteer-run youth, legal, women and children's services.

<sup>1</sup> <https://www.facebook.com/HelpRefugeesUK/posts/306615809699099>

# Main findings

**Overall, our report found that the current processes in place to look after and transfer unaccompanied children are insufficient.**

**They are:**

## Inaccessible

- > A lack of age and language-appropriate information to help children make decisions.
- > A lack of human resources, including administrative staff and interpreters, to enable children to access asylum services, and then to make the transfers once approved.

## Unsafe

- > A shortage of safe accommodation for unaccompanied children, despite the state being obligated to provide it.
- > A lack of safeguarding provisions in the camp, leaving children living alongside adults with inadequate shelter, nutrition, healthcare, education or psychosocial support.

## Restrictive

- > From appointments in France, to Home Office responses, and getting a final transfer date, there are lengthy waiting times which vary from child to child. This leaves children disillusioned and losing hope.
- > Insufficient discretion or consideration is made for the child's vulnerability and circumstances.

## Not sustainable

- > Continued reliance on voluntary groups, including lawyers working *pro bono*, in processing Dublin III cases is not sustainable, and, without a significant injection of resources, will eventually lead to a standstill as voluntary organisations become saturated with increasingly heavy caseloads.
- > The lack of a process for children without family in the UK means that the spirit of the Dubs amendment – to assist the most vulnerable children in Europe – is not being met.

## Fact box

(accurate as of August 2016)<sup>2</sup>:

- > 1,022 (Help Refugees) unaccompanied refugee minors in Calais.
- > 178 children in Calais have family links to the UK and are likely eligible under Dublin III for transfer to the UK.
- > 72 children have been successfully reunited with a family member in the UK from the Calais camp, thanks to the work of voluntary organisations.
- > No children without family links to the UK have been transferred under the Dubs amendment since it was passed.
- > 10-11 months is the average time it takes to process cases under Dublin III\*.

(\*from the time a voluntary organisation identifies the child to them reaching the UK)



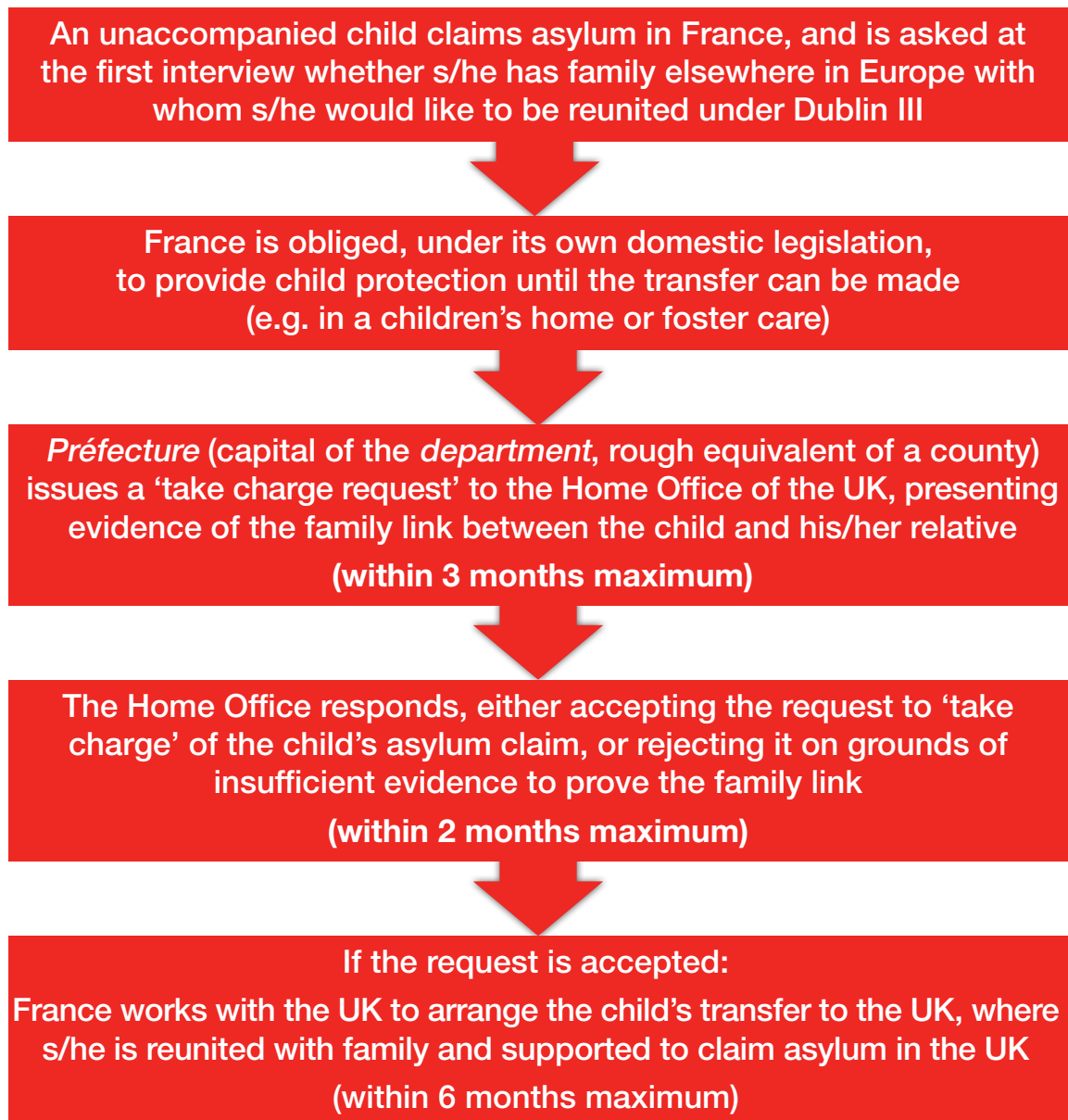
Photo © Mirva Helenius/Finish Red Cross



# How is the Dublin III process failing children with family in the UK?

---

## HOW IT SHOULD WORK<sup>3</sup>



## How children are being let down

Until March 2016, not a single child had been transferred from Calais to the UK under Dublin III. Voluntary groups had been working since September 2015 to help children access their legal rights. Following breakthroughs in early 2016, Safe Passage UK and other voluntary organisations have been able to successfully support unaccompanied children to access Dublin III, and 72 children had been transferred to the UK using the full procedure at the time of writing. However, the process has weaknesses and failings at almost every point, as this report will show.

<sup>2</sup> Safe Passage UK; Legal Shelter

<sup>3</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/docs/evaluation\\_of\\_the\\_implementation\\_of\\_the\\_dublin\\_iii\\_regulation\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/docs/evaluation_of_the_implementation_of_the_dublin_iii_regulation_en.pdf)

## Making the initial asylum claim and getting a ‘take charge’ request issued

---

Initially, when voluntary organisations arrived in Calais, children in the ‘Jungle’ had no idea about their eligibility for transfer. A lack of accessible, age and language-appropriate information meant that children believed they would be forced to apply for asylum in France if they made themselves known to authorities. Many hoped to reach the UK and reunite with family members, so were keen to avoid remaining in France. In addition, several had faced abuse while staying in the locality.

A mistrust of the authorities, along with pressure from the smugglers who profit by convincing vulnerable asylum seekers not to put their faith in the law, dissuaded children from applying for asylum. Voluntary organisations conducted outreach work with the children, translating information into appropriate languages – both written and oral, since many children have been out of school for some time – and working long and hard to gain the children’s trust and convince them that they could legally apply for asylum in the UK.

For those few children who did seek asylum in the early months, French authorities were not reliably asking them whether they had family elsewhere in Europe and wished to be transferred. Outside of Calais, we heard examples of cases in Dunkirk in which children were promised by OFII (French Office of Immigration and Integration) that their family in the UK would be tracked down and a take charge request issued, but this did not happen and the child ended up involuntarily seeking asylum in France. In one case, the voluntary organisation working in Dunkirk attempted to track down the boy to support him to appeal but, angry and upset, he had disappeared and was impossible to find. Voluntary organisations now support children to try to ensure these breaches do not happen anymore.

However, now that the children are beginning to trust the system, there is a severe lack of human resources available to handle the sheer volume of claims. An organisation called FTDA (*France Terre d’Asile*) has been mandated by the French

government to receive initial registrations to claim asylum and book formal appointments at the *prefecture*. However, with only a handful of staff, what should be a drop-in service has become hugely over-subscribed. There is a queue of 30 to 40 people outside the office every day, both adults and children, and a three-month waiting list for an appointment with FTDA, though minors are being fast-tracked. This is a lengthy wait for a relatively simple procedure – taking the child’s name, parents’ names and details of their journey to France – and often, when the child arrives at their allotted time, there is no appropriate interpreter available; children frequently resort to using friends or other camp residents as translators.

When they do receive an appointment at the *préfecture*, a similar story unfolds. Despite having made an appointment, voluntary organisations report a minimum three-hour wait for a ten minute interview, fingerprinting, taking a photograph and photocopying documents. Translators are often absent or speak the wrong language. One problem reported by everyone we spoke to was the severe shortage of *ad hoc* administrators – the adult legal representatives required by French law to accompany and represent minors throughout the asylum process. Without an *ad hoc* administrator, the appointment cannot take place and it can be a six-week wait for another one. In August 2016, there were only three *ad hoc* administrators and one coordinator, all voluntary, all recruited and trained by the French Red Cross. *Ad hoc* administrators must fulfil certain conditions: as well as being over 30, French and demonstrating a good moral character, they must have sufficient available time to take on an intensive caseload without pay. There is a backlog of cases, some of which were started as early as June, which the *ad hoc* administrators are simply too busy to take on, and so the children wait in the ‘Jungle’ in limbo until their cases can proceed.

Finally, once the take charge requests have been made, basic administrative errors often cause severe delays. We heard one report of a request

being submitted to the local council where the child's relative resides, rather than the Home Office; this case then stalled until a voluntary organisation chased it up to discover the delay. Another had been submitted under the wrong article within the Dublin III regulations so, even though the child had a legal case for transfer, the Home Office rejected the request until it was resubmitted correctly.

### Case study

"There was one 15-year-old Syrian boy we worked with – he was totally alone and terrified. He didn't have any of the family members in the UK covered by Article 8 (parents, grandparents, siblings, aunts or uncles). However, his father's cousin lived there so he could have been transferred under Article 17 as a 'vulnerable discretionary case'. He met with one of our *pro bono* lawyers at the start of March, and his documents were finalised for submission by mid-June. The take charge request was made two weeks later, but rejected at the end of July because it was sent under Article 8 by mistake. The Home Office gave a deadline of three weeks for the French authorities to resubmit – when we told the boy, he started crying and ran away; we found out that he went to Belgium and nearly tried to cross to the UK illegally with a smuggler. Thankfully he came back, and his take charge request was submitted in mid-August, but we know he's still trying to cross the Eurotunnel every night." Voluntary organisation member in Calais.

Understandably, these delays cause the children to become disillusioned, frustrated and desperate. They may have stopped trying to cross to the UK illegally when their cases were first taken up, but as they begin to lose hope, many resume their routine of sleeping during the day and risking their lives to reach the UK at night. Voluntary organisations know of at least three children who had a legal right to join family in the UK, but died trying to make their own way as they waited for their cases to proceed. The case of 15-year-old Masud from Afghanistan hit the headlines in January 2016 when he suffocated in a lorry crossing to the UK, having waited months to be reunited with his sister. One youth worker told us

how "some of the most mentally and emotionally fragile children, with the worst mental health, going through breakdowns, are those who have applied for Dublin III and are waiting. That glimmer of hope creates huge anxiety – they can't let it go; they ask every day if we've heard back from the lawyer yet. Not having a timescale makes it impossible to manage their expectations – we don't even know if their cases will work."

### Case study

"One boy, a 16-year-old from Afghanistan, had a legal case to join his dad in the UK and the stress made him a complete wreck. Another boy, a 14-year-old, had an uncle in the UK he was trying to reach. His uncle was so worried about his mental health that he travelled from Britain to the 'Jungle' and brought him to me. I took him in too: he was incommunicative, dissociative, and would wake up at night and start pulling his hair out. Thankfully, he was Syrian so he had all his papers in order, and Safe Passage UK worked with him to make his case successful." – Voluntary youth worker in the 'Jungle'

### Recommendations:

1. The British and French governments should proactively undertake awareness-raising outreach work around Dublin III – making sure information is age and language-appropriate.
2. *Préfecture* staff should be fully trained, aware of and accountable for undertaking asylum interviews and take charge requests correctly and accurately.
3. French authorities should ensure there are a sufficient number of trained *ad hoc* administrators to take on all current cases and attend all necessary appointments, investing additional resources if necessary.
4. French authorities should ensure interpreters are available, in the correct language, at the date and time of appointments at FTDA and the *préfecture* – prioritising the cases of children if necessary.
5. The British government should take proactive measures to meet remaining shortfalls – for example, by stationing Dublin officers in Calais to facilitate the process and providing more funding to meet capacity shortfalls.

<sup>4</sup> <http://www.defenseurdesdroits.fr/actions/protection-des-droits-libertes/decision/decision-mde-2016-113-du-20-avril-2016-relative-la>

<sup>5</sup> <http://www.defenseurdesdroits.fr/fr/actus/presse/communiques-de-presse/mineurs-non-accompagnes-le-defenseur-des-droits-salue-le-travail>

## Accessing the right to child protection as a declared unaccompanied minor

---

Once unaccompanied minors declare themselves to French authorities, they are legally entitled to safeguarding within French child protection services – in practical terms, this means either a place in a children’s home, or with a foster family. However, capacity is extremely limited: there are only 45 places within the Saint-Omer accommodation centre, run by FTDA on behalf of the French government, while another centre, Foyer Georges Brassens, has just five spaces for asylum-seeking children. 72 spaces for unaccompanied children have been promised within the existing Jules Ferry accommodation for women and children, but when these are built, they will not contain anywhere near the required amount of spaces to house the 1,022 children known to be living alone in the ‘Jungle’. Construction has yet to begin, though it was planned to be completed by the start of September 2016.

It is the responsibility of the state to find accommodation for unaccompanied children once they declare themselves and request protection. However, voluntary organisations report a lack of action by the French authorities. When a rare space does become available in one of these centres the authorities are not arranging transport but, instead, requesting volunteers to bring the children. One volunteer reported that the authorities turn away children over 14, claiming that younger children are more vulnerable and therefore higher priority – while this may be partly true, it remains a failure of French statutory child protection. “We say to them: if you don’t find them a place, then that means you’re happy to accept that children are living in the ‘Jungle’ with little or no protection, at risk,” we were told.

### Case study

“There was one boy who came to me – he’s profoundly deaf, he’d been attacked; he came to me with the blood still on his clothes. He didn’t feel safe in the camp with the way people treated him, and wanted safe accommodation. I phoned the authorities but they just told me there are no spaces available. In the UK, if I phone social services and tell them there’s a vulnerable child in need of care, even if there are no spaces in the immediate area, they’ll find a foster home somewhere, even if it means a two-hour drive.” Voluntary youth worker in the ‘Jungle’.

The volunteers do their best, running youth centres, keeping an eye out for particularly vulnerable children and referring them to relevant volunteer-run services, like healthcare and legal support. This is not easy work. As one remarked to us, “all the important work is being done by volunteers – this is real work; we’re taking on the responsibility of the state”. However, there is no denying that conditions remain dire. French Defender of Rights, Jacques Toubon, issued a statement of concern regarding unaccompanied children in the ‘Jungle’ in April 2016, urging the state to fulfil its responsibilities<sup>4</sup>. Three months later, he noted his regret that urgent action had yet to be taken<sup>5</sup>.

Plenty has been written about the appalling conditions in camp, but the words of one 14-year-old Afghan resident sum it up well: “Only animals live in the jungle – everyone knows humans shouldn’t live here. We don’t get regular food, regular sleep...there’s only one slot each day when we can get food or a shower, but if we miss it, we don’t get to eat or wash. There’s nothing to do in the camp; we just live in constant fear and anxiety. It stinks too – it’s very hard to keep clean, so everyone is sweaty, and the showers run on a ticket system.”

<sup>6</sup> <https://www.theguardian.com/world/2016/sep/02/calais-refugee-camp-running-out-of-food-as-donor-fatigue-sees-donations-dry-up>

<sup>7</sup> <https://www.theguardian.com/uk-news/2016/sep/02/france-vows-to-dismantle-'Jungle'-refugee-camp-calais>



Matters are only getting worse. In September 2016, for the first time in months, volunteers in the camp became concerned by a lack of food and children going hungry<sup>6</sup>. With no building materials allowed to enter the camp, and the French government's plan to evict and dismantle the camp<sup>7</sup>, children are facing the forthcoming winter with uncertainty and no assurance of adequate shelter to protect them.

Lack of adequate healthcare is also a problem, though voluntary organisations do their best. We heard from them how camp conditions – poor sanitation, unsafe food and cramped living spaces – mean that illnesses develop and spread rapidly, an assessment supported by a Médecins du Monde report in late 2015<sup>8</sup>. In addition, children suffer injuries in their attempts to access the Eurotunnel, including infected cuts to their hands from the barbed wire fence, wounds from police rubber bullets, and eye problems caused by police tear gas.



Photo © Tom Pfister

In addition to the lack of adequate food, sanitation, leisure and education activities, children also face severe shortfalls in child protection. The container accommodation, run by organisation La Vie Active on behalf of the French government, is only meant to host adult men – but children have been admitted too. There, they live alongside adults with no safeguarding in place; children report having their clothes stolen and being unable to sleep as the men are up late talking loudly or playing music. Elsewhere in the camp, children also live alongside adults, leaving them open to abuse – Unicef has reported instances of forced labour and sexual exploitation in the Calais camp<sup>9</sup>.

The risk of being trafficked or taken advantage of by smugglers is also ever-present. Smugglers

prey on children's mistrust of authorities and frustration with the cumbersome legal processes, persuading them to pay huge sums – often getting themselves into debt in the process – to be hidden away in the back of a lorry. Unaccompanied children have nobody looking out for them, and so make perfect prey for traffickers. Europol reports that at least 10,000 children have already gone missing since entering Europe<sup>10</sup>, with reports of missing children not being followed up adequately by authorities. One volunteer told us of phoning the police after seeing a child being dragged away by an adult, seemingly sedated. Another told of the limitations to current anti-trafficking measures: "When the anti-trafficking people come, they are visible; everyone knows and crowds around them. It's impossible to give information privately, so it's hard for people to speak up."

It is imperative that children are treated as exactly that: as children first, before asylum seekers or refugees. Their welfare is paramount, and the rights accorded to children under international agreements are universal, irrespective of a child's immigration status.

## Recommendations

1. French authorities should make sufficient safe accommodation rapidly available to unaccompanied minors who request it – and ensure appropriate arrangements for Dublin-eligible children who need to remain in touch with authorities during their transfer process.
2. French authorities should ensure enough social workers and other child protection measures are in place for children once in safe accommodation.
3. If the proposed demolitions and evacuations of the 'Jungle' go ahead, French authorities must not allow unaccompanied children to be left homeless – a reception centre should be set up until safe homes can be found for every child, and for those who have a right to be transferred to the UK, their cases must be expedited.
4. British and French authorities should provide funding for basic food, hygiene, healthcare and educational needs for children in the camp, in order to meet their responsibilities under international law.

<sup>8</sup> [https://www.doctorsoftheworld.org.uk/files/Calais\\_Health\\_Report.pdf](https://www.doctorsoftheworld.org.uk/files/Calais_Health_Report.pdf)

<sup>9</sup> <http://www.unicef.org.uk/Media-centre/Press-releases/Sexual-exploitation-trafficking-and-abuse-engulfing-the-lives-of-children-in-the-camps-of-Calais-and-Dunkirk/>

<sup>10</sup> <https://www.theguardian.com/world/2016/jan/30/fears-for-missing-child-refugees>

## Getting Home Office approval and arranging the transfer

---

In order for the Home Office to accept a take charge request, proof of the family link must be provided – this includes official papers (birth certificates, passports etc), as well as family photos, records of communication, corroboration between family members' asylum interviews and other forms of evidence. Voluntary organisations are getting *pro bono* support from lawyers to assist in this task. Understandably, for children who have undertaken long and dangerous journeys – including from conflict zones – access to paperwork and records can be difficult.

*Pro bono* lawyers spend on average “15 to 40 hours per straightforward case”, interviewing children with the help of voluntary interpreters – more complex cases, such as those where items of paperwork is missing, can take much longer. The most difficult conversations are those in which a lawyer has to tell a child that there is little hope of his or her case working out – not because they do not have a family member or a legitimate legal case, but because convincing the authorities of the relation will simply be too difficult. Sometimes the Home Office deems the evidence insufficient and requests a DNA test. However, these are illegal in France without a court order<sup>11</sup>, and voluntary organisations lack the time, funds and legal resources to go through the process of gaining judicial approval, making DNA evidence almost impossible to obtain. Safe Passage UK successfully litigated against the Home Office, winning their case to have one child applicant transferred to the UK and put into care while the DNA test took place in Britain, and hopes that this will set a precedent for future cases<sup>12</sup>. Other reasons for rejection include administrative errors, as outlined previously, or delaying a response in order to conduct a social assessment of the relative's home in the UK. Meanwhile, children are left vulnerable in the 'Jungle' for further weeks and months.

### Case study

“One 14-year-old boy from Afghanistan was completely undocumented, as so many are. He'd been in the camp for nine months when we began working with him, and his older brother was in the UK, though they hadn't seen one another for ten years. The Home Office disputed their family link as the older brother hadn't mentioned his younger sibling in his own asylum application to the UK, and demanded a DNA test. This was before the courts had ruled that a child can be brought to the UK for DNA testing, and the boy was so frustrated at the length of the wait, he travelled illegally via the Eurotunnel – thankfully, he made it alive.” Voluntary organisation member in Calais

In some cases, the Home Office has not responded to take charge requests, leading to voluntary organisations, including the Red Cross, to chase them up. In other cases, the Home Office has accepted the request, but there are no *ad hoc* administrators available to let the child know as per France's regulations, and it is again up to voluntary organisations to follow up.

Once the request has been accepted and the child is informed, the British and French authorities have up to six months (in the legislation<sup>13</sup>) to arrange the transfer, though some people we spoke to understood the French Government's policy to be closer to three months. As well as booking the train ticket, an *ad hoc* administrator must take the child to the station and an OFII staff member must accompany him or her on the journey; translators are not provided as a matter of course, but voluntary organisations are supplying these. Upon arriving at St Pancras International, a room must be made available in which the child's fingerprints are taken and they can make their asylum application. Lining up all these resource requirements can mean waits of weeks or months for transfer. While they wait, these are children not in safe accommodation; instead,



they are living each day in the ‘Jungle’. When we visited in early August, at least 13 children, as well as a couple with a young child, had been waiting in the camp for more than six weeks to be transferred. The UK government, in discussions with the French government, have made a commitment to speed up these waits, and Home Office officials often chase up transfers on behalf of voluntary organisations.

### Case study

“One 16-year-old Syrian boy had applied to join his family in the UK through Dublin III. Not only was he vulnerable because he was alone, but he had also been caught in the crossfire of a fight in the camp that was nothing to do with him – he’d been badly injured and was still recovering. When he didn’t get a response to the take charge request, we chased up the Home Office, who claimed it had never been received. We then turned to the French authorities, who provided proof of the date that it had been sent – the Home Office then admitted that it had been ‘misplaced’ and promised to prioritise it. The request was accepted over a month ago, but he still doesn’t have a date of departure. What would have happened if we weren’t around to chase up his application? How long would he have been waiting?”  
Voluntary organisation member in Calais.

### Recommendations

1. The Home Office should use more discretion when it comes to the evidence required to prove family links, given a) the extreme vulnerability of unaccompanied minors, and b) understanding of the context of their country of origin.
2. The Home Office should abide by their recent commitment to respond to all take charge requests within ten days<sup>14</sup>. If they are misplaced, cases should be prioritised and the child reassured and informed of the new timescale.
3. The Home Office should exercise discretion in responding to requests – for example, rather than rejecting a request due to an administrative error or lack of proof, instead requesting further information or correction of the mistake.
4. French authorities should speed up the transfer process – if there is insufficient capacity of OFII or too few *ad hoc* administrators, another organisation should be mandated to carry out these functions.
5. Once a take charge request has been accepted, and the UK is effectively responsible for an asylum-seeking child, the Home Office should explore ways of taking responsibility for the transfer process rather than it being a responsibility of the French government.



Photo © BHC

<sup>11</sup> Article 16-10 to 16-13, French Civil Code. [https://www.legifrance.gouv.fr/affichCode.do?sessionId=004CBD3DCCA0F482A837DCD60D65F317.tpdjo12v\\_1?idSectionTA=LEGISCTA000006136513&cidTexte=LEGITEXT000006070721&dateTexte=20120728](https://www.legifrance.gouv.fr/affichCode.do?sessionId=004CBD3DCCA0F482A837DCD60D65F317.tpdjo12v_1?idSectionTA=LEGISCTA000006136513&cidTexte=LEGITEXT000006070721&dateTexte=20120728)

<sup>12</sup> <https://www.ein.org.uk/news/upper-tribunal-grants-judicial-review-brought-unaccompanied-calais-children>

<sup>13</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/docs/evaluation\\_of\\_the\\_implementation\\_of\\_the\\_dublin\\_iii\\_regulation\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/docs/evaluation_of_the_implementation_of_the_dublin_iii_regulation_en.pdf)

<sup>14</sup> <https://hansard.parliament.uk/commons/2016-09-05/debates/1609052000010/FamilyReunificationEurope>



## What about the Dubs amendment?

---

The Dubs amendment, spearheaded by Lord Alf Dubs, who arrived in the UK on the Kindertransport during the Second World War, led to the British government committing in law to accept unaccompanied children who arrived in Europe before 20 March 2016. Campaigners were aiming to secure a guarantee of 3,000 children, but in the end, the amendment avoided specifying a total, and instead deferred to the capacity of individual local authorities to determine how many children they could accept.<sup>15</sup> However, despite being passed into legislation on 9 May 2016, not a single child has yet been transferred to the UK under this amendment – all arrivals have been under the pre-existing Dublin III regulations.

As an additional piece of law alongside Dublin III, the spirit of the Dubs amendment was understood by voluntary organisations to support children without family elsewhere in Europe, and no existing recourse to law for resettlement besides the underused discretionary clause of Dublin III. Safe Passage UK recently carried out its own headcount of unaccompanied minors in the ‘Jungle’, finding over 200 children without family elsewhere in Europe, who arrived before 20 March and are therefore eligible for transfer under the amendment (August 2016).

One possible option is to transfer children under the existing Dublin III system, utilising the discretionary clause for humanitarian reasons. However, this requires cooperation between the French and British authorities, as it is the French authorities’ responsibility to process and issue the take charge request. The UK must be more proactive in its efforts; voluntary organisations should not be relied upon to take the cases of the eligible children forward. British officials should be deployed to reach out to the children and support their cases, using Safe Passage UK’s list.

Alternatively, if the Dublin III process is not sped up and improved, another, faster, less bureaucratic system may be required to enable the UK to rapidly fulfil the spirit of the Dubs amendment. This could take place under a bilateral relocation arrangement between France and the UK, if not under the auspices of current

EU relocation schemes. In either case, it is vital that a best interest assessment is carried out for each child, to ensure that the transfer would not harm the child and would be for his or her overall benefit. Currently, there is no comprehensive assessment system in Calais, and so one must be put in place.

Whatever the solution, it is clear both governments must be more proactive in helping children who may qualify under the Dubs amendment. One voluntary group in the ‘Jungle’ told of how the news of the Dubs amendment gave hope to many children with no family elsewhere in Europe, that finally, there would be a solution for them. However, as the months have passed, they have begun to feel despondent again at the lack of clear path ahead of them.

### Recommendations

1. The British government should put in place a straightforward system as soon as possible for transferring unaccompanied children without family in the UK – providing it is in their best interests<sup>16</sup>.
2. British and French authorities should ensure that a comprehensive best interest assessment system is put in place in Calais.
3. The British government should adopt Article 10(3) of the EU Directive on Family Reunion, in line with the majority of European countries, to give refugee children with parents outside of Europe the right to be reunified in the UK.
4. The British government should advocate and cooperate with the French government to make the transfer process as smooth as possible.
5. The British government should ensure that all children entering the UK, both under the Dubs Amendment and as straightforward Dublin III cases, receive sufficient resources, akin to those provided to children arriving through resettlement programmes.
6. British social services and foster carers should be adequately supported, provided with the skills and capacity to give children the care they require, including cultural awareness, psychosocial support and mental healthcare.

## Conclusion and summary of key recommendations

---

It is clear that the situation for unaccompanied children in the Calais 'Jungle' is as untenable as it is urgent: physical conditions are wholly inadequate, children are missing out on an education, and the almost total lack of protection leaves young people vulnerable to abuse, exploitation by smugglers and trafficking. Children must be accommodated in a place of safety, with access to protection. Amongst these children, a large number have a legal claim to leave France altogether and be transferred to the UK – either to join family members under the Dublin III regulation, or to receive humanitarian protection under the Dubs amendment.

It is unacceptable that children are surviving in the camp alone, for months on end when, for many, existing laws offer a legal right to be in a safe home with family.

We believe that, if the requisite will and resources were committed, all eligible unaccompanied children could be here in the UK before the end of 2016, adequately protected along the way. In order to achieve this:

- 1.** Where the Home Office is aware of children who have a legal right to be here – either under the Dubs Amendment or Dublin III, through information received from the French authorities or voluntary organisations – the UK government should explore and agree with the French authorities a more streamlined, rapid procedure to relocate these children to the UK. The current Dublin III procedures are insufficient.
- 2.** More human resources are needed in France, within FTDA and the préfecture, including ad hoc administrators and interpreters. More caseworkers are also needed to support the preparation of evidence, and outreach workers to provide appropriate information to children. Such work should not be the sole responsibility of voluntary groups.

- 3.** Though Dublin III regulation time limits allow for an eleven-month process end-to-end, when dealing with children surviving alone with little or no protection, concerted efforts must be made to prioritise these cases and speed up the process, including the Home Office proactively taking charge of arranging transfers once take charge requests are accepted.
- 4.** The Home Office must be more flexible, efficient and proactive, responding quickly to take charge requests, setting reasonable requirements for evidence, and ensuring that once a request is accepted, the child is informed and transport arranged as soon as possible.
- 5.** French authorities must ensure that each and every unaccompanied child is provided with safe accommodation and adequate psychosocial support.
- 6.** All children who arrive in the UK, whether living with family or elsewhere, must be provided with psychosocial and mental health support as appropriate. Similarly, those looking after children must be supported to provide the care they need.
- 7.** The UK should adopt Article 10 of the EU Directive on Family Reunion to enable refugee children to be reunited with their parents.

### Thanks and acknowledgements

This report was researched and written by Louiza Chekhar of British Red Cross. Support and guidance was provided by colleagues Karl Pike, Lara Cumming, Anna MacSwan and Olivia Field.

British Red Cross would like to thank all those who supported and facilitated this research, including Safe Passage UK, Legal Shelter, Refugee Youth Services and the Women and Children's Centre.

<sup>15</sup> <http://www.helprefugees.org.uk/2016/05/09/dubs-amendment-passes-your-help-needed-to-bring-unaccompanied-refugee-children-to-safety/>

<sup>16</sup> UNHCR states: "Broadly, the term 'best interests' refers to the well-being of a child. It is determined by a variety of individual circumstances (age, level of maturity, the presence or absence of parents, the child's environment and experiences). States are primarily responsible for implementing the best interests principle." (<https://emergency.unhcr.org/entry/44309/best-interests-procedure-for-children>)