

REFUGEE CHILDREN'S RIGHTS PROJECT EVALUATION

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The logo for the Princess of Wales Memorial Fund, featuring the name 'Diana' in a purple, cursive script.

Princess of Wales Memorial Fund
THE WORK CONTINUES

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INTRODUCTION

Purpose of this report

In this report, we present a review of the Refugee Children's Rights Project (RCRP).

The purpose of the report is to set out some of the project's main achievements and to describe and comment on the approach taken. It is not an attempt to capture and summarise every element of the programme to date.

Findings and conclusions presented here are based primarily on interviews with 18 external stakeholders from Non Governmental Organisations [NGOs], mostly refugee and children's rights organisations, the legal profession, local government employees and other officials. All interviews were conducted on a non-attributable basis. Further information about project progress was obtained from RCRP staff as part of a formative evaluation process.

In addition to our own investigations, Nadine Finch of Garden Court Chambers has produced an expert legal perspective on the project's legal work as a formal contribution to the review. This report draws on and quotes from her analysis.

The evolution of the project

RCRP is a project that has been funded by The Diana, Princess of Wales Memorial Fund. The project was initially housed within Refugee and Migrant Justice [RMJ]. The circumstances of RMJ's precipitous closure in 2010 (due to a funding crisis) were particularly problematic. The fact that an emergency resolution was put in place to ensure RCRP's continuation was a credit to the dedicated effort by The Diana, Princess of Wales Memorial Fund and to others' flexibility and commitment to the project.

The project's two co-directors Baljeet Sandhu and Syd Bolton are based respectively at the Islington Law Centre and the Children's Legal Centre (now Coram Children's Legal Centre). The focus of this paper is on the outcomes of the project rather than its model of operating. It is worth noting however that existing working arrangements have represented a pragmatic response to the crisis that hit RMJ. In its forthcoming phase (with ongoing financial support from The Diana, Princess of Wales Memorial Fund) new, more sustainable structures and ways of working are being put in place to establish an arrangement for the long term effectiveness of the programme. The fact that RCRP has achieved significant results (as illustrated below) in spite of difficult circumstances bodes well for its future prospects.

Headlines

In summary, findings from this review:

1. strongly validate the rationale for, and theoretical underpinning of, the project

As outlined in more detail below, the underlying strategic approach has been shown to have a compelling logic, encompassing:

- strategic litigation casework;
- providing bespoke second-tier advice in relevant legal cases (that is, advice to other advice agencies and lawyers);
- building capacity & knowledge;
- promoting and embedding coordination.

As one interviewee said, summarising the strategy,

"it's not just about getting the law changed, it's about making sure that it gets down to improvement in practice on the ground ... it's about linking people up, finding those people who want to work strategically in support of children and linking up with others ..."

Another interviewee noted how, by operating in this way, *"[RCRP's] work is highly valued by lawyers, officials and NGOs alike"*.

2. reveal that practical implementation of the project has been highly effective

As noted below, evidence points to important impact achieved in many of the areas of project focus, which indicates that RCRP's contribution to these outcomes has been considerable.

In helping to ensure the success of the approach, RCRP has exhibited the following characteristics:

a. Strategically astute, operationally sensitive

Notably, an ability to communicate sensitively, with insight and understanding as shown in the following illustrative quote,

"[co-director] Baljeet is very knowledgeable and combines this with being approachable and this is really important not just for young people but for social workers, people in children's charities and lawyers who may not be particularly aware of children's issues ..."

According to interviewees, staff have the rare talent of being able to combine persuasion and pressure, *"the skill of being able to switch from adversarial litigation to persuasive collaborator with officials"*, and the ability both to see and to pursue the main line, *"both the technical skill and the personality to be able to see the interconnections of the issues, scale them up and use them to affect policy"*.

b. Tenacious

"They have an amazing commitment to find out information and get it, which is easier said than done because there are lots of brick walls - but they do get to the bottom of what's happening on the ground".

"There are always so many battles we think we have won that then come back around again later. That's why a project such as this, that is gathering

information, identifying trends and gaps is so vital".

c. Child centred

RCRP staff were described as being *"fully and totally committed to the children"*, having *"energy and commitment"* and *"infectious passion"*. They also have the knowledge to back up the commitment, and are able to impart this to others:

"It is very difficult to take instructions from children, you have to work very hard to talk to them on the level they understand. There's not real guidance on this ... Having someone you can go to who has practice at their fingertips ... and who gives you practical guidance about what to do next. Brilliant".

An immigration lawyer noted during an interview that RCRP help to bring the focus back to the child:

"You start seeing things through a prism of how is UKBA dealing with this, rather than thinking a child is a child and how is this child being treated under the law. RCRP has pushed and pushed that these are children and not being treated with the high standards demanded for children".

3. highlight the overall importance of the project in the challenging current climate for refugee children's rights

The United Nations Convention on the Rights of the Child [CRC]

The CRC has been at the heart of RCRP's work, with attention on exploring how its concepts could be developed within domestic law. In doing so, the project has had a primary focus on:

- Article 2 (prohibiting discrimination);
- Article 3 (that the best interests of children must be a primary consideration in making decisions that may affect them); and
- Article 12 (the right to participate and be heard in decision making).

One interviewee described it this way:

"The project makes the sector more dynamic. The whole field of child rights has been diminished by the cuts. RCRP has re-galvanised it again".

Nadine Finch's own assessment is that, *"the Project has had some very notable successes ... The work being undertaken by the RCRP continues to be at the cutting edge of the development in domestic law of jurisprudence relating to refugee children's rights".*

Another interviewee stated simply, *"It would be a tragedy if [RCRP] did not continue".*

LEGAL TEST CASES

AN & FA V SECRETARY OF STATE FOR THE HOME DEPARTMENT

This legal case - along with the associated evidence-building and influencing activity - has comprised a major element of the RCRP's work, and has, according to Nadine Finch,

"confirmed the effectiveness of bringing test litigation in tandem with the initiation of discussion on policy when tackling a particular breach of refugee children's rights".

Concern initially emerged about the treatment of unaccompanied children at port directly through the voices of children represented by RMJ's casework teams in Kent. The narrative of children about their experiences on arrival raised serious concerns for RMJ staff. Pre-litigation investigations uncovered the potentially unlawful procedures that children were being subjected to on arrival at Dover. These included searching, fingerprinting, detention at port and interviewing without the presence of an independent responsible adult or any legal representation, and the subsequent use of such interviews in asylum decision-making. Immediate humanitarian needs were also identified, including concerns over the emotional, physical and mental wellbeing of children on arrival and the failure of the UK authorities to address such needs.

RCRP sought to challenge the lawfulness of procedures and processes children were subjected to and the use of information gained in this way. More widely, RCRP also challenged the UK Border Agency's (UKBA's) interpretation of its responsibility to uphold the best interests of children subject to immigration control. Drawing on evidence gathered, RMJ published a report, *Safe at Last? Children on the frontline of UK Border control*. Initial attempts to resolve problems at a policy level were unsuccessful. Litigation was initiated in December 2009 and the

work continued when RCRP funding was transferred to its new hosts.

Pre-litigation: a key phase in strategic litigation

RCRP conducted a wealth of preparatory work for the case, prior to the case going to hearing, including:

- Interviewing RMJ case work teams around the UK to establish the extent and/or systematic nature of the practices subject to potential challenge.
- Analysing over 180 individual case files to scope the issues involved in any potential challenge.
- Interviewing 44 children on their experiences on arrival, the treatment they faced, their understanding of what happened, and the impact that this had on their health and well-being.
- Analysing case files relating to each of the young people, including UKBA files, GP records, Kent Police files, Kent Social Services files.
- Interviewing NGOs, charities and community groups working with those young people who may have arrived at the port of Dover.
- Collating case work examples from other lawyers in the field, interviewing them on their experiences and evaluating their relevance to the litigation.
- Discussing with health care professionals, who work with children and young people, specific evidence that would help ensure that all parties understood the impact of treatment on the health and wellbeing of young people and their understanding of the asylum process.
- Gathering statistical data from the Refugee Council and evaluating their experience of working with young people arriving at Dover.

- Preparing extensive and detailed statements from leading child care practitioners who have worked in the sector and with this client group, in order to provide evidence in the litigation.
- Preparing statements and evidence from 23 children and young people who agreed to have their cases filed as evidence in the litigation.

The case of AN & FA was heard before the High Court in July 2011 as a test case. The Judge, Mr Justice Mitting, held that it was unlawful to fingerprint unaccompanied children or ask them any asylum-related questions without the safeguard of an independent responsible adult.

Beyond the important benefits to the individual children represented (for example, through providing psychological and medical support previously unavailable to them), RCRP's involvement in the case - and the subsequent ruling - means that asylum claims will, in future, be based on information given by children that are prepared for an interview, rather than when they may be exhausted, hungry and confused.

However, RCRP's assessment was that, although they are significant, these safeguards did not go far enough to provide the practical and effective protection of the rights and best interests of all children arriving into the UK alone. RCRP appealed the decision in part to the Court of Appeal. Judgment is currently pending. On the fundamental and overriding principle of best interests the pronouncement could have ramifications far beyond the scope of Illegal Entry Interview (IEI) cases.

Alongside the progression of the legal case, RCRP's efforts helped persuade the Office of the Children's Commission (OCC) to conduct an enquiry into the matter, and evidence and work of the RCRP played a pivotal role in the OCC's investigations.

A visit to the Port of Dover by the OCC uncovered further evidence of unfair treatment of children and

young people, with evidence and recommendations set out in two OCC reports, *Landing in Kent* and *Landing in Dover*.

Witness testimonies from children and young people included puzzling accounts relating to their arrival and departure to France, this coupled with the OCC's investigations led to the exposure of the existence of a secret 'gentleman's agreement' between the UK and France - which resulted in unaccompanied children who arrived at Dover without formally articulating claim for protection under the Refugee Convention being returned to the French port from which they had embarked. Once uncovered, the OCC's successful political dialogue with the immigration minister led to the so-called 'gentleman's agreement' no longer being applied to children. The minister also concluded that - at the point at which a child makes an asylum application, and when it is their first point of contact with UKBA - the child will be immediately referred to the local social services, with a period of up to four days to allow for recuperation and arrange for legal representation, before an asylum screening interview takes place.

As a result of both the case and later investigations, systemic changes to policy and practice are slowly being introduced by UKBA. For example, as described by Nadine Finch,

"The Upper Tribunal of the Asylum and Immigration Tribunal is now considering the lawfulness of decisions where IELs have been relied upon in previous immigration judges' decisions. In remedial responses, UKBA has agreed to information from the interviews in these cases being wiped from the records, with cases reassigned to a new UKBA caseworker, so they are not prejudiced by the previous unlawful process".

The work has also influenced Kent social workers' understanding of the need to consider best interests standards throughout all stages of the asylum

process, including on arrival. As one interviewee put it,

“it has been interesting over the past year to see the improvements in the way that Kent is dealing with such cases. They are no means a beacon of good practice but there are pockets where improvement is definitely happening”.

Still-unresolved issues are being pursued through policy and/or litigation. RCRP is also active in providing training, advice and guidance to lawyers and practitioners so that results, and their implications, are understood and embedded.

By all accounts, these are significant outcomes, and widely attributed to the *“amazing work done by [co-directors] Baljeet and Syd”*. As one interviewee noted, for example, *“Without the project, the illegal entry interview case would not have happened”*. It isn't just that nobody else identified or took up the issues; no one else was even in a position to do so: *“The IEI work raised issues that almost certainly wouldn't have been raised by anyone else”*.

This case exemplifies the multi-track approach at the heart of RCRP's philosophy:

“The IEI case is a perfect example of how the strategic litigation linking with policy model gets results, and also fed into the [OCC's] enquiry into border agency activities in Dover. So rather than policy people talking direct to governments, and others batting away on the front line, the project was a way in, linking all together for a bigger impact”.

And demonstrates the benefits that can come from exploiting multiple routes to change:

“Although they won to some extent on the case in the High Court it has been a platform to getting much more significant concessions in policy terms than they have so far achieved in court”.

Tenacity has been key:

“RCRP were absolutely tenacious in their approach, they didn't just go one step further but so many steps further in even getting the agreement that children who had had an illegal entry interview, and been discredited, can have their cases reviewed”.

And all achieved on a relative shoestring:

the case “was enormous ... and given the amount of resources [dedicated to it] is really quite unbelievable”.

But, as was stressed, continued vigilance is needed:

“It is very important for people like Baljeet, who has already got under the skin of this issue, to monitor this in the future because the Home Office ... will try to get out of it sometime further down the line. That's why the issue of engaging with the Home Office, discussing with them directly, is critical because otherwise you don't get a change”.

MALLA V THE UNITED KINGDOM

In the case of Malla v UK in the European Court of Human Rights, RCRP were notified of an unrepresented mother who had been removed from the UK without her child. The mother had made an application in person to the European Court of Human Rights to challenge her removal and separation from her child. RCRP arranged for the mother to be legally represented by the AIRE Centre and then made an 'application to intervene' (under which a third party may join an ongoing lawsuit). This enabled RCRP to make submissions on the negative impact on children of removal and separation from parental care caused by immigration detention and expulsion from the UK, and to argue that this was a violation of children's rights.

The case history was that the mother's asylum claim had failed, with all appeal rights exhausted.

Mother and daughter were detained by UKBA for the purpose of removal together. However, in detention, the mother experienced a mental health breakdown and was sectioned under the Mental Health Act. The child, a British citizen, was placed with the Local Authority and a foster carer until the child's father – who was separated from the mother - was located. The child was subsequently placed with the father, and the mother was removed from the UK without her child.

For technical legal reasons it was not possible to intervene to represent the child directly. The intervention by RCRP was therefore made on a principled basis, on behalf of all migrant and refugee children generally as a class. The intervention addressed the child's right to maintain contact with their parents unless it was not in their best interests, and to enjoy family life and development without unlawful interference contrary to Article 8 of the European Convention on Human Rights (which enshrines a right to respect for private and family life).

The case did not proceed to a hearing and instead was negotiated by way of 'friendly settlement' between the UK government and the applicant (an agreement between the parties to make remedial arrangements and pay compensation rather than the case proceeding to trial and judgment). As part of the settlement, the mother was granted leave to remain in the UK for three years, and enabled to re-enter the UK in order to be reunited with her daughter and was also awarded financial compensation.

Under the court's rules, interveners are not permitted to engage in a settlement process, which remains a matter privately negotiated through the applicant, the state and the court. Unfortunately, therefore, RCRP was unable to make submissions on behalf of the rights of the child as would have been liked. As a result, the settlement reached did not include some of the provisions the RCRP had sought

for the child. For example, no actual measures were agreed to assist the mother to be reunited as soon as possible with her child. Instead the mother had to commence further legal proceedings once she arrived in the UK to seek family reunification with her daughter. On her return to the UK, she was referred by the RCRP to the family law department of the Coram Children's Legal Centre for legal representation in proceedings before the family courts.

Although the case settled out of court, the judgment is a public record and clearly establishes that the UK government (and other governments) will need to take far greater care to protect the interests of children in cases where they are seeking to expel a family from its territory, to prevent a violation of children's (and parents') rights in similar cases in future. As such, the intervention will have an impact beyond the facts of the individual case.

In its intervention, RCRP *"drew on both immigration and family law in a very comprehensive legal argument"* which, according to Nadine Finch's expert legal assessment, *"was likely to have resonated in the judgment if the parties had not reached a friendly settlement. It is likely that the written submissions prepared for this case will be a useful basis for interventions in future similar cases"*.

According to one interviewee, the case *"proved the point that best interests of the child are paramount. It will be useful for our work, everyone's work"*.

ZH (TANZANIA) V SECRETARY OF STATE FOR THE HOME DEPARTMENT

This was a key judgment by the Supreme Court concerning whether (and when) it would be permissible to remove a non-citizen parent of a British child from the UK if that meant the child would have to leave the UK and be denied their rights as a result of what has been described as the "constructive deportation" of children.

The leading judgment, given by Lady Hale, identified that the best interests of the child must be a primary consideration, and that to ascertain this required involving children properly in decision-making affecting their lives,

*“the best interests of a child must be a primary consideration. This means that they must be considered first ... [this] raises the question of how [best interests of the child] may be discovered. An important part of this is discovering the child's own views”.*¹

Nadine Finch notes that, *“Lady Hale also found that Section 55 of the Borders, Citizenship and Immigration Act 2009 [which places a statutory duty on the UKBA to carry out their functions with regard to the need to safeguard and promote the welfare of children] echoed the best interests principle in Article 3 [of the CRC], in spirit if not in its precise language”* and that, *“in doing so she effectively incorporated Article 3 into ... domestic law”*.

The concurring judgment of Lord Kerr stated that,

*“[best interests] is a factor ... that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them ... it will require considerations of substantial moment to permit a different result”.*²

RCRP was asked for advice by the appellant's legal team in the preparation of their submissions to the Supreme Court and was also able to assist in formulating the detailed legal arguments and evidence that went on to persuade the court to make its landmark judgment. Manjit Gill QC, representing the appellant in the case, was able to draw on Syd Bolton's expertise when refining

his arguments. RCRP helped both in crafting the overall structure of the argument - essentially along the lines that citizenship might be a factor, but best interest was always the starting point - and in helping to provide the supporting legal and academic evidence for arguments establishing the weight to be afforded to the best interests of the child. Hence, RCRP was widely recognised as having been *“instrumental”* and *“centrally involved”*.

As one interviewee put it, the judgment *“has changed the territory seminally and could change it even more. It's an absolutely brilliant judgment to have under our collective belts”*. Another noted how, *“Within the children's rights world, people talk about the UNCRC all the time, but if you step outside it people aren't interested and think it has no teeth. But, after ZH Tanzania, the sceptics really thought 'wait a minute' and certainly in the Law Centres' world the penny really dropped”*.

In particular a key principle was locked down: *“it helped solidify that children's views really do need to be taken on board in decisions and that UKBA cannot simply rely on the assumption that the children's best interests are the same as the families”* with *“an impact well beyond refugee children”*.

As with the case of AN & FA, RCRP's involvement in the legal action didn't take place in isolation. ZH drew on existing experience and knowledge with RCRP assessing this issue to be 'the major sticking point' in policy discussions with UKBA; a priority issue in need of resolution.

1. JUDGMENT: ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent), February 2011, paras 33 & 34
2. JUDGMENT: ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent), February 2011, para 46+

MAJOR THEMATIC AREAS

STRATEGIC LITIGATION

As Nadine Finch described it, “RCRP correctly adopted a dual strategy of both encouraging reliance on the CRC in the courts and working at the equally important policy level.”

The premise of the strategic litigation ‘model’ is that systemic change requires a strategic approach to legal and policy work. Policy and on-the-ground knowledge is utilised to inform the selection of cases and the arguments advanced within them. Legal expertise and the results of legal cases feed into discussions around policy and practice.

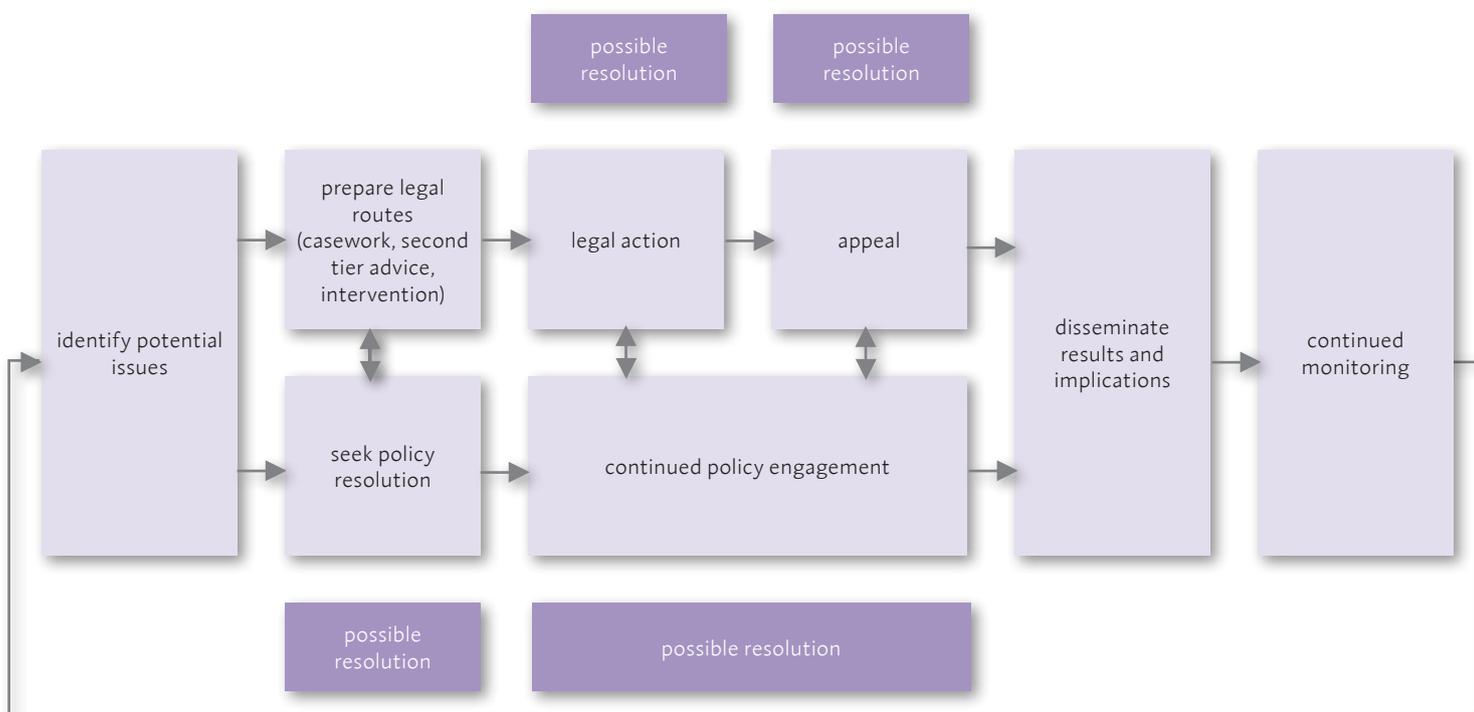
The overall approach can be represented visually, if schematically, along the following lines:

The project has been highly effective in astutely drawing on policy evidence, to determine the legal approach to be followed, and then feeding legal outcomes back into the policy mix:

“To be able to take all of our experience and knowledge to someone who we know will be able to use that to great effect, to do something about it at a higher level, through litigation that will have much greater impact, is brilliant”.

“having both policy and strategic litigation going on in tandem is very useful ... The sharing of information is crucial in terms of lobbying, because the front that UKBA and Home Office put up in meetings with officials is different from the cases they are actually taking to court behind the scenes”.

“[RCRP] have been able to use the legal proceedings as a real mechanism for change on the ground and are monitoring and enforcing it once they have got those concessions”.



The Strategic Legal Fund

RCRP has been a key partner in establishing the Strategic Legal Fund, an initiative also funded by The Diana, Princess of Wales Memorial Fund, which essentially comprises of a small fund to be used to finance test cases that will be likely to have wider resonance in law, policy and practice.

RCRP has been actively involved in helping to shape the overall range and areas of potential litigation. RCRP staff sit on the applications process panel, which enables them to input on what test cases would ideally be taken forward through the Strategic Legal Fund.

This responsive, test case approach to issues pursued through The Strategic Legal Fund complements RCRP's strategically proactive orientation. RCRP is well placed to add value to the Strategic Legal Fund model due to its capacity to link legal and policy strands within a multi-track strategic litigation approach.

POLICY DEVELOPMENT

Through its unremitting focus on best interests and the child's right to be heard, RCRP is seeking to change the framework in which asylum policy and practice is developed: *"the project has seated best interests at the centre of decision-making for children"*.

As one interviewee described it,

"[RCRP's] vision for refugee children's rights has been really inspiring, looking at ways we can set a high standard for these children ... The real value from RCRP is getting over to the mainstream services that it doesn't matter whether these children are refugees are not, they are children and under the law need to be treated the same as any other children. You can't underestimate the importance of emphasising this in terms of the practical outcomes".

The 'Roundtable on Best Interests' organised

by the RCRP in December 2011 has served as a catalyst for the further exploration of the issues of concern around child refugee protection and the many associated implications for asylum status determination processes and policies in placing best interests at the heart of the process. This built primarily on the findings in the ZH case (outlined above) amongst other expert evidence and viewpoints:

"they have done a good deal of work following on from ZH Tanzania on best interest for children [and] participation of children; the holding of the roundtable to which UKBA were invited and sent quite a number of people along, and which turned into a proper dialogue. It's a beginning, but a very good beginning ..."

This approach, according to many, is leading to political inroads. Evidence suggests that the approach is already beginning to permeate the way UKBA is thinking about children's rights in decision making: *"UKBA is getting a grasp on children's rights in general. For a long time they paid lip service but - because of the repetitive conversations and ZH Tanzania - are now beginning to act. RCRP has been instrumental in this"*.

One view suggests that this RCRP has built on opportunity, in the light of UKBA becoming more willing to engage: *"In the last five years UKBA has been in a much more listening mode, and been more responsive, they had made an attempt to get out of their offices and come into different fora and having people like Syd and Baljeet to help them work out what their position should be has been a practical benefit"*.

An alternative perspective suggests that progress has been made because UKBA in effect has less freedom to act with impunity: *"UKBA work with children is a disgrace ... The strategic litigation work is curtailing the unrestrained authority of UKBA to do what they like with young people when they arrive in the country"*.

There was a suggestion that RCRP's interventions are if anything too top level, with one interviewee identifying that, *"they need to be pushing progressive change but it also needs to be rooted in practicalities..."*

However, examples do exist – around the progress of the Legal Aid Bill for example and on forced removals to Afghanistan – where RCRP has engaged at a more practical and specific level. And on age assessments too, *"one recent example we've all been involved with is the perennial issue of age assessments, and UKBA's continual determination to use dental x-rays to determine age. ... it got reintroduced this year with no consultation and the sector, very much including RCRP, were able to mobilise to get UKBA to suspend the project"*.

Overall, there is a strong consensus that, in policy terms, RCRP has been an important player playing a key contributory role: *"We would not have won some of the policy gains if RCRP had not been in existence"*.

TRAINING AND SUPPORT

RCRP has, amongst other activities:

- worked with the Immigration Law Practitioners' Association (ILPA) on the rollout of a training programme for practitioners and non-practitioners regarding legal issues facing children and young people seeking protection in the UK, in the light of legal aid cuts;
- contributed to the training work of a wide range of other legal and child advocacy organisations;
- provided other one to one support and legal advice to lawyers, Local Authorities and NGOs;
- produced written information and guidance, for example in authoring a chapter on best interest for the ILPA publication Working with Refugee Children: Current Issues in Best Practice.

The training was universally commended, described

as *"brilliant"* and *"very successful"* with many interviewees making reference to the fact that, *"training is more important than ever because representation is not so good"*. It was noted that it was good that the training was so accessible: *"The free training at ILPA was very useful because it attracts the kind of people who don't want to pay as well as those who can't pay"*. Through training and one-to-one support, RCRP has been able to broaden knowledge of cases, providing information about the context around them, and the practical implications. It has emphasised the role that non-practitioners can play, in documenting evidence for example.

This support is much valued, and with positive impacts on individual cases, for example as one lawyer noted, *"just to have someone to discuss the strategy and put in some kind of historical context, particularly in relation to policy on Afghanistan and Section 55, was priceless"*.

In particular, RCRP has guided people through areas that they are not specialist in:

"There is no one else who specialises like this in the refugee children work who can offer "the same sort of hands-on, question fielding, strategy working out, kind of organisation [that] you could ... go to them randomly with questions".

From interview feedback, an area for development in the subsequent phase would be a greater focus on wider dissemination, including through web-based communications:

*"A **newsletter** would be good for the project, a **website** would be good. They do give updates at the various fora they attend, but ready-access information sheets ... could be useful. For example **briefing sheets** on the major strategic litigation cases, or even smaller cases of note, outlining the implications for practitioners who are not legal experts"*.

"A **website** would be very useful, when you could have **templates** and be able to feed back information ... Something on the website about ... the kind of evidence you need to gather etc would be really helpful".

"It would be fantastic the idea of having some **templates**, and **information about developments** in areas we don't know so much about - for example community care and social services - would be very useful. Having it all in one place would be great".

"... a **bulletin** sent out about what policy changes or policy lobbying was going on, to keep people abreast of what was happening. It would also be helpful to have a **website**. Some way of accessing not just publications and policy bulletins but case law and perhaps some standard representations on issues that relate to child refugees ... if you have a **template** you can use free ... [it] would really help to improve quality".

CROSS-SECTORAL COORDINATION

The defining characteristic of the RCRP has been its ability to maintain a bird's eye view and, from that position, to support and link to others. From this vantage point, RCRP has operated both as a hub and a bridge:

between lawyers and social workers:

"In the professions, the lawyers and the social workers go on parallel tracks, their work does not join up ... the only area [this has happened] has been through the IEI case"

between immigration and family lawyers:

"Immigration lawyers don't think about children, they are not trained on them ..."

between the legal profession and NGOs:

"There is a disconnect between lawyers and the NGOs and traditionally always has been" ...

"The project has absolutely and unequivocally helped to build better relationships between legal and children's and refugee sector"

within the legal profession:

The project has sought to promote strategic coherence by encouraging lawyers to coordinate and pool perspectives and develop shared approaches. Several made the point that this approach "*in private practice is very difficult to do*" with the consequence that, "*In the past legal wins [haven't] always been followed through in terms of change on the ground – or, if change has been made, it has not been maintained*". However, this may be changing as RCRP models good practice. One interviewee from the legal profession noted how "*the project is doing the policy and the litigation together and this is something that we have tried to draw on.*" And from the NGO side, a similar message, RCRP has "*helped shape amongst practitioners an awareness of how strategic litigation can work and of its benefits*".

Joining the dots

1. The Dublin Regulations

The Dublin Regulations are EU regulations whereby member states have agreed that if an asylum seeker passes through an EU member state, or has claimed asylum there, then that member state will be responsible for the assessment of their asylum claim. The Regulations enable any EU state to return an asylum seeker to the country through which the asylum seeker first entered the EU ('third country removal') to have their claim determined there.

The lawfulness of the Dublin regulations relating to children was challenged in the case *R (MA & Ors) v Secretary of State for the Home Department*.

In the judgment, the Court made some very favourable comments about the importance of Section 55 (the children's welfare duty) in relation to any proposed third-country removal of an asylum seeking child.

In support to the case - and as an example of its ability to link groups across professional disciplines – RCRP:

- helped to encourage the lawyers to draw upon expert evidence from various NGOs including through the Refugee Council Children's Panel;
- guided lawyers to a children's services team that was known to eschew removal of children under the Regulations, on the basis that this would not be in compliance with their own duties to ensure that they act in the best interests of children.

2. DS (Afghanistan) v Secretary of State for the Home Department

In this Court of Appeal case, RCRP disclosed evidence in correspondence - relating to UKBA's position on minimum standards for the return of children to Afghanistan - that supported the appellant's case. The case itself became a landmark judgment establishing the parameters of the Section 55 safeguarding duties, and also making clear the duties on the Secretary of State in respect of family tracing obligations.

The assistance provided to the court and the legal representatives involved in this case exemplifies RCRP's ability to bridge the worlds of legal action and policy dialogue.

3. R (on the Application of Medical Justice) v Secretary of State for the Home Department

Legal challenge was brought by the charity Medical Justice against the policy of no-notice removals, through which exceptions were introduced to the standard practice of giving

72-hours notice of removal from the UK. The UK Government applied this exceptions policy to a number of categories that they decided require little or no notice, including for example unaccompanied children.

UKBA claimed that the policy had in-built safeguards to ensure that individuals had access to justice; however, along with other NGOs, RCRP was able to cite cases in which the safeguards were inadequate or denied to the individuals involved. In a judgment that will have a significant effect on safeguarding children from harmful removal raids without warning, the Court ruled that no-notice removals failed to safeguard the right of access to justice.

The case demonstrated how multiple NGOs can effectively cooperate in providing comprehensive evidence, drawn from their particular areas of expertise, of the harmful nature of certain policies as they impact on diverse groups of asylum seekers and migrants, and shows the positive impact of strategic thinking in test cases.

These expert legal and policy-based advice inputs have all helped guide the construction of legal arguments and case-law towards a greater focus on best interests.

Cross-fertilisation within and across all these different stakeholders is a central precept of RCRP's approach. The Roundtable for example was described as "*pulling everybody together from different sectors*".

In his influential book 'The Tipping Point', Malcolm Gladwell describes the spread of ideas as occurring through what he calls "a small number of very special people":³

1. connectors (people who know lots of people, across different 'worlds'),

3. Malcolm Gladwell (2001), *The Tipping Point*, Abacus; description is in chapter 2; quote from p88

2. mavens (information specialists and disseminators) and
3. salespeople (persuaders, with powerful negotiation skills).

Gladwell characterises these roles as being typically discrete; the fact that RCRP directors exhibit strong characteristics of all three of these roles helps to explain how central they have become. Hence the view that, *“RCRP has established itself as a central prop in the furniture”*.

In order to maintain this overview and provide the added value that they do, staff operate in very fluid and flexible ways:

from the immediate to the long term:

RCRP's approach is based on taking a strategic long-term view. However it has also shown a much-welcomed propensity to be highly reactive, by responding quickly to calls from court requesting relevant policy information, for example, or being available to provide expert evidence in proceedings, or legal support – and a detailed response at a practical casework level - at short notice. As one interviewee noted, commending RCRP's flexibility, *“people might be removed today or tomorrow and as a practitioner the immediate response is [vital]”*.

from local to global:

One underlying reason that RCRP has been so effective is that it maintains links with the grassroots – local NGOs and social workers for example - and is able to link this level (in both directions) with national debate and best practice. RCRP also looks beyond the national, to an international scale, with links to the UNHCR as their specialist advisor on cases involving children's rights for example.

from individual needs to collective values:

Strategic litigation requires a balancing of the needs of individuals represented with the wider cause;

it is *“difficult to do because the main obligation is to the client, and with many ongoing cases they are not willing to talk about their situation lest it affects the outcome of the case. There is also the issue that ... if they put their head above the parapet in the UK this can go against them [if subject to return]”*. To navigate this successfully in the way that RCRP has done requires trust and sensitivity, and a strong commitment to both people and principle.

LOOKING FORWARD

Regarding the future landscape, RCRP's work will be even more needed. Key trends that suggest this include:

- the overwhelming challenge of *"how you maintain expertise in the sector with such a phenomenal drop-off in funding"*;
- forthcoming changes to Legal Aid: *"There are no guarantees about any of it and who will continue. Good firms are already withdrawing from legal aid"*;
- other specialist advice posts disappearing from within the sector, *"so there are no other focal information points"*;
- continuing scepticism by the Government of the rights emanating from the European Court of Human Rights;
- UKBA facing its own challenges - *"UKBA is going through a very difficult period with restructuring and cutbacks ... The result is a lack of institutional memory"*.

There were no shortage of suggestions as to where the programme could focus its efforts in the next phase; among those mentioned included:

- age assessments, cited by several interviewees, given that, *"The pressure on local authority budgets is so high now that they will be pushed into determining that young people are not children, so they do not have to pay for them"*; this being already current practice in some places according to interviewee input.
- returning children to Afghanistan; and other destinations, *"there are other countries that [RCRP] could be moving on to - to cascade information about how lawyers should be looking at cases from those countries"*.
- influencing and engaging more with social workers: *"The project would do well to examine*

what's happening in social work departments because this is where some of the biggest scandals are happening ... Perhaps [by] targeting geographically, so trying to influence social workers, councillors, lead members as well as lawyers in a poorly performing area. Make sure those players know the law because often they are flouting it and no one is challenging them".

- issues connected with children in care and leaving care, *"an area that needs much more specialist advice and support"*.

It was also suggested that there was opportunity for more crossover work between England and Scotland. As one participant noted, *"the Roundtable was very important because the majority of case law is English-based and in Scotland it is sometimes difficult to get up to speed with it. It's got people out of their silos and made the issues understandable"*.

A recommendation from Nadine Finch is that, *"it is likely that the RCRP could usefully develop its work on Article 12 of the CRC to ensure that refugee children continue to be represented in the Tribunal and higher courts"*. She goes on to recommend that RCRP *"could usefully base some of its future work on the improved rights for refugee children in the recast directives being discussed by the European Commission and Parliament and also within the Trafficking Directive when it comes into force. In particular, arguments about the need for durable solutions for these children could ensure that they are not left waiting for inevitable removal at the age of 18 or are not able to continue their education after that age"*.

Increased demands such as these risk exacerbating existing capacity issues.

A key question for the programme in its next phase is, *"What should be the balance of priorities?"* Creating a sustainable programme of work is likely to require clearer strategic prioritisation to allow for opportunistic involvement in initiatives, when necessary.

As the programme develops, it will also be important to consider how best to draw on the two host organisations' strengths and contributions, and their ability to interact and engage with, and disseminate and draw support from, wider constituencies.

A key component of this development will be to evolve ways of operating that are sustainable and deliverable beyond the current (over-)reliance on the very substantial talents of the two main individuals involved.

Continuation funding to be provided by The Diana, Princess of Wales Memorial Fund will allow the programme to carry on, and for sustainable structural arrangements to be developed and established. The decision by the Fund to provide follow-on financial support to the programme is very much welcome given the successes of RCRP to date and the widely acknowledged importance of it continuing.



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