

**Put Yourself in Our Shoes:**  
Considering Children's  
Best Interests in the  
Asylum System





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# Acknowledgements

"I am waiting.  
I am waiting for  
6 months now.  
I am sure they are  
not even looking  
at the papers"

## **Project Team**

- Tamzin Brown – barrister, P2P Project Manager at LCN
- Helen Johnson – Children’s Services Manager, Refugee Council, P2P Project Manager
- Noeleen Adams – Project Manager (maternity cover)
- Dr Kathryn Cronin – practising barrister and Joint Head of Garden Court Chambers
- Professor Ravi Kohli – Professor of Child Welfare at the University of Bedfordshire
- Baljeet Sandhu – a practicing solicitor and Director of the Migrant and Refugee Children’s Legal Unit (MiCLU), hosted by Islington Law Centre.

## **Project Advisory Group**

- Zoe Given-Wilson – Child psychology postdoc researcher at the Centre for the Study of Emotion and Law
- Karen Goodman – Professional Officer, British Association of Social Workers
- Helen Johnson – Children’s Services Manager, Refugee Council.
- Adrian Matthews – Principal Policy Advisor (Asylum and Immigration), Office of the Children’s Commissioner
- Sarah-Jane Savage and now Helen-Marie Fraher– Senior Protection Associate (UK Focal Point for Children), UNHCR.

## **Young people, the Legal Services Agency in Scotland and Kent Refugee Action Network (KRAN) in England**

The voices of young people were instrumental in giving a fully rounded picture of their experiences of going through a legal process imposed upon them and often traversed with little support and understanding at a time when their lives are in turmoil. Our thanks go to them, and to Kristy Thomson and Andy Sirel at the Legal Services Agency in Glasgow, and Juliette Wales at KRAN, who gave freely of their time in order to support the young people to share their views and experiences.

## **Law Centres and lawyers**

The dedication of lawyers is fundamental to ensuring that children who need international protection are recognised and kept safe. This Project would not have been possible without Law Centres offering their time and expertise in helping to plan and design, and without the hours spent by lawyers in honestly and thoughtfully commenting on their practice and on their perception of the experiences of the children they represented, in order to throw light on shortcomings, frustrations and successes in their own and others' practice. Our thanks go to the following Law Centres and their lawyers:

Avon and Bristol, Bradford, Bury, Coventry, Ealing, Hammersmith and Fulham, Harrow, Islington, Kirklees, Lambeth, Legal Services Agency Glasgow, Newcastle, Northern Ireland, South Manchester, Southwark, South West London, and Tower Hamlets.

The Project would also like to extend its thanks to Allen & Overy for its commitment to this Project in terms of pro bono legal support, the use of facilities for training purposes and supporting the production of this report. In addition the Project would like to thank Berwin Leighton Paisner and Hogan Lovells for the use of facilities for its launch event and training respectively. Additional thanks go to Rosa Coleman at LCN for her clarity and determined support in the production of the report.

The Project would not have been possible without the support of Unbound Philanthropy, the Metropolitan Migration Foundation and other generous funders.

**The development, implementation and synthesis of this Project required great dedication from a range of individuals and organisations whose contribution is gratefully acknowledged here.**



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## Executive Summary

"It's like the  
gate is  
wide open  
and you can  
come out"

**Principles to Practice Project's ambition is to improve the asylum process and decision-making for children by bringing child-centred principles and an understanding of child development into the process.**

**Principles to Practice Project's ambition is to improve the asylum process and decision-making for children by bringing child-centred principles and an understanding of child development into the process.**

For some time, lawyers and others concerned for the welfare of separated children seeking international protection have expressed concern that principles enshrined in other spheres of work with children are seemingly misunderstood or disregarded in the asylum arena.

The project recorded and analysed the experiences of 60 unaccompanied children who had applied for asylum over a one-year period, and those of their lawyers. It has found varying levels of understanding of children's rights across all those working with them and on their behalf. This variable quality led to children's voice and agency being lost in the asylum process, which effectively mainly paid lip service to child rights. On that basis, we recommend procedural improvements to the UK asylum process and training and skills frameworks for those working with children, to ensure that their best interests are well and truly paramount.

### **Approach**

The Law Centres Network led the project as the co-ordinating body for Law Centres across the country. Law Centres routinely provide skilled, nuanced and determined representation for separated children in their asylum applications and appeals – crucial for their protection and future life chances. The project was also extensively informed by the experiences of children seeking protection within the current asylum process in the UK.

**Clarifying child-centred principles:** To inform the examination of current practice in the UK, preliminary research work was carried out by Allen & Overy trainees and associates in London, Italy, Germany, Australia and the USA, investigating the inclusion of child-centred principles or child-adapted practices in relevant national and international jurisdictions. The findings were reviewed to ensure that any identified principles were reflected in the survey questions within the audit tools.

**Creating audit tools:** Participating lawyers were equipped with audit tools with which to collect information on current practice and challenges for Law Centres and for children in the asylum process. These have included a caseworker participation survey, indicating existing practice; a set of case-specific questions relating to children's individual cases; an additional set of questions for age-disputed cases; and a further set of questions for appeals.

**Data collection:** Throughout 2014, 11 participating Law Centres uploaded anonymised data on 60 cases which met these selection criteria:

1. The child's claimed age was under 18 years old at the point they claimed asylum
2. The Home Office treated the child as under 18 years old, even if local authority disputed this
3. The child was unaccompanied or separated
4. The child was seeking asylum alone, i.e. they were not a dependent on any adult's asylum claim
5. The child's substantive asylum interview took place between 1 December 2013 and 31 December 2014.

For each case over 600 questions were asked. In addition to this, the Project ran two focus groups to obtain the views of young people who had recent experience of the asylum process in the UK.

**Data analysis:** This focused on ascertaining a clear picture of the related experiences of children and their legal representatives as they work together through the complex process of claiming international protection. This was set against existing national and international law and custom, highlighted throughout the report, which provides a frame of reference for lawyers seeking to promote their child clients' best interests. Along with identifying areas of good practice by lawyers, immigration officials, statutory and voluntary care givers and other advocates, the analysis also suggested areas for improvement for those seeking to offer these children fair processes which will ensure their safety and long term security.

## Recommendations

The authors are aware of discussions of the limitations of the current system in the UK for deciding the future of children who arrive here on their own, and have deliberately restricted their recommendations to issues arising from information collected by lawyers working within the current systems and that are evidenced by the data collected.

For the Home Office:

- The Home Office and Department for Education must develop reliable and relevant statistical data concerning unaccompanied child asylum applicants, including where they are living, and when and by whom ages are disputed and accepted.
- The Home Office must immediately cease conducting 'visual age assessments' of young people.
- Separated children seeking asylum should be referred to an immigration lawyer as soon as possible after their arrival and/or identification, so they are represented by their assigned lawyer at the time of the screening interview.
- Home Office caseworkers should be trained to be supportive of the role of the Responsible Adult in interviews.

- The Home Office should establish a system of training and accreditation for interpreters working with children within the asylum/immigration system in the UK.
- All unaccompanied and separated children should be appointed an independent guardian.
- All professionals making life changing decisions on children should be provided with best interests training.

For the Legal Aid Agency:

- The Legal Aid Agency (LAA) must provide clear and accessible guidance on the funding and special measures in children's cases.
- Guidance on legal aid available to children and those representing them should be publicly available in accessible form so that those assisting the child, including local authorities and other advocates, understand the legal aid regime.
- The LAA should set up a system for considering urgent applications for case funding for unaccompanied children.
- An order should be made under section 9(2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to reinstate legal aid for all immigration related legal matters involving separated children.

For HM Courts and Tribunals Service:

- A working party including legal aid lawyers should be set up to work with the Upper Tribunal to develop an appropriate legal representation model or arrangements for these children's cases.

For local authorities:

- Young people must not be placed in adult or bed and breakfast accommodation pending an assessment of their disputed age assessment and need.
- Local authorities should take full account of the immigration processes that a child or young person faces when deciding to move separated children from one placement to another.

For lawyers:

- All legal representatives must attend asylum screening and interviews with their child clients.
- All immigration lawyers representing children should be required to have specialist training, and should be rewarded accordingly.
- Lawyers must proactively work to obtain relevant information from the child and from other professionals involved with him/her about the child's past life, their experiences before, during and after flight, their current hopes and fears, and their mental, emotional and physical health.

## Next Steps

- The Law Centres Network will make the report widely available and promote it with lawyers and to other professionals working to represent and protect children, and to all those with responsibility for making critical decisions about individual children's lives.
- We will provide masterclasses and support to Law Centre lawyers, for example on the special status and protections available to children and required for them; child-specific trafficking training; considering the best interests of a child; and the impact of child psychology and memory on child asylum claims.
- The Project looks to continue work over the coming months and to produce a second report with additional analysis of the data. The current report covers cases up to the point of first decision on applications for international protection. Further work is required to distinguish factors that led to those decisions; levels of mis/understanding applied; skills and knowledge utilised about children and the law; and opportunities missed to understand each child and their complex life.

## Toward A Shared Understanding

Principles to Practice project seeks to enrich professionals' understanding of the lives and experiences of separated children seeking asylum. It highlights the importance of lawyers taking into account the child's whole life, and of the child understanding the processes through which they are being channelled. It outlines the rigour and expertise needed by all parties for the children to benefit from the child-centred provisions afforded by national and international law. It is only through this shared understanding that lawyers and others can arrive at a full and proper assessment of a child's best interests.

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# Chapter 1

## Introduction

"something  
changed,  
and I felt  
my future is  
right in front  
of me"

War, civil conflict and persecutory practices have long forced children and young persons to flee their homes in order to find safety. In several important respects the recent migrations of unaccompanied and separated children into wealthier industrialised countries represent a new phase of these traditional migrations.

The numbers of separated children seeking asylum, travelling and arriving in Europe without family or carers in 2014

24,630

The numbers of separated children seeking asylum, travelling and arriving in Europe without family or carers, has fluctuated in recent years, although the trend is a steady increase. The young people separated from family and recorded as claiming asylum in Europe in 2014 were 24,075 or 4% of the total number of EU asylum applicants in that year.<sup>1</sup> It is generally accepted that these represent only a small proportion of the actual numbers of unaccompanied children in Europe. Many young people do not claim, advised or coerced by companions, smugglers or family to keep travelling to another destination.<sup>2</sup> Some are under the control of traffickers and are exploited in a range of ways, unable to access legal or other support and advice.

Asylum applications by unaccompanied children in the UK peaked at 3,976 in 2008, but this had been decreasing annually – at least to August 2014 when Kent County Council, in particular, began reporting larger numbers of separated children entering through Folkestone and Dover. Consistent with the changing trend, in 2013 some 1,265 unaccompanied children made protection applications in the UK; in 2014 the number rose to 1,945, and in the first six months of 2015, 1,016 applications have been made.<sup>3</sup> At 31 March 2015 2,630 unaccompanied children were looked after by local authorities in England,<sup>4</sup> and at September 2015 some 720 such children were being looked after in Kent.<sup>5</sup> UK data on unaccompanied children underestimates their presence, given that many of the trafficked children discovered in the UK are shown to have been living here controlled by their traffickers for some years, and the number of foreign children in private fostering is not counted.<sup>6</sup>

The separated child migrants currently arriving in Europe are also undertaking exhausting and dangerous journeys – generally under the control of agents – some of whom are in the employ of criminal networks. Many children experience frequent abuse, exploitation and severe privation on these journeys. They see companions die and may themselves have risked death. Numbers will have been confined for long periods in lorries or ‘safe houses’. Their living conditions will have been precarious and the pressure exercised on them by families and/or smugglers adds to the urgency to find accommodation, food, clothes and to get money to continue their journeys.<sup>7</sup> [Their journeys comprise a significant but much neglected interlude affecting the development and the mental and physical health of young asylum seekers.](#)

In addition the contemporary migrations of separated children take place within an elaborate legal and administrative framework. Many children are ill equipped to deal with such processes. They may be under the influence of their smugglers or traffickers,<sup>8</sup> other asylum seekers or irregular migrants or afraid to disclose information which they fear could hurt their families. Numbers suffer physical or mental health problems and their recall of traumatic events may be impaired or the events too painful or shameful to narrate. The UNHCR project *Protecting Children*

*on the Move* held it to be 'essential' that those seeking information from separated children were perceived by the children as legitimate and trustworthy.<sup>9</sup> Young people's resistance/confusion concerning administrative processes may also arise because the ordering and focus of these processes do not accord with young people's own reported priorities and concerns. [Professor Ravi Kohli recorded young people's own reported stages of integration as dealing first with the present, the future next and the past last.](#)<sup>10</sup> [Yet the age assessment and asylum procedures generally arranged within days of their arrival in the UK call for a focus on the children's past.](#)

Kohli identified this dissonance between the lived and created sense of time and priority experienced by young unaccompanied asylum seekers:

*Time may have been spent expansively in early childhood in the country of origin, with rhythms of living established over years. Crises leading to departure may have accrued over long periods, or may have happened suddenly and explosively. In transit countries, children may have worked their passages from one point to another, taking time and making time to gather enough resources to move on, waiting for connections, getting intermittent assistance from Non-Governmental Organisations ... and charities, and gleaning intelligence about routes to destination countries .... On arrival in destination countries, time is marshalled, as their administrative identities of asylum seeker, welfare applicant, school age child, refugee, "unaccompanied", "age disputed", and "trafficked" dominate within more diffused social categorisations of "victim", "bogus migrant", "foreigner", and so on. In part, time is segmented, with appointments for claim determination, seeking legal assistance, or appointments with social workers, doctors, and teachers. Time takes on a peculiar order ... meeting the need for practicalities, before being able to look forward or to look back.*<sup>11</sup>

The administrative processes may also be inexplicable to young asylum seekers because many facts which the children themselves may regard as unexceptional or irrelevant are accorded particular legal significance by UK officials. These facts include the young person's age, their interaction with officials on their journeys, contacts with their family and the precise sequence and detailed recall of events which prompted their flights. The young person's ability to remember, narrate, sequence and understand the significance which the UK gives to these facts can be critical in determining their futures.<sup>12</sup>

Many unaccompanied children are without identity documents and come from countries with limited birth registration arrangements, and the core initial evaluation will therefore be to determine if they are children. Age assessment procedures are now a key factor in the protection determination process. Children, and particularly separated children, are entitled to specific procedural and evidentiary safeguards and welfare

protections so that fair refugee status determination decisions are reached in respect of their claims. It is paradoxical (and a cause of concern) that the filter procedures (such as age assessment) are experienced by many of these young applicants (including in this study) as punishing, confusing and as a source of fear, worry and anxiety.<sup>13</sup>

In order to remain in the UK children must qualify for a protection status or be granted leave to remain under UK laws or policies. The protection claims of the individual children are assessed by reference to prescribed legal norms, policies and procedures. However, Home Office data shows that most child claimants are refused international protection status. Of the 1,269 applications from separated children in the UK determined in 2014, only 418 were granted refugee status and nine granted humanitarian protection – despite many of the children originating from countries known currently to be in a state of war or conflict or countries known for serious human rights violence against children. Older children were refused asylum and also refused leave to remain (some 363), while younger child claimants refused asylum were granted temporary leave to remain – set to expire when they reach the age of 17.5 years.<sup>14</sup> This temporary leave recognises that the child cannot be returned to his/her home country of origin when there are no adequate care arrangements for separated children there.<sup>15</sup>

### **Present Study**

This study investigates both the circumstances and experiences of 60 children across England and Scotland and the care and asylum processing systems they underwent. [As asylum seeker children are interviewed, assessed and their age, nationality and protection claims scrutinised by social services and the Home Office these most vulnerable of asylum seekers are examined more closely, more intrusively, and the children required to interact with many more officials than any other group of asylum seekers or indeed any other young people being looked after in the UK under Children Act provisions.](#) This study provides further data and insight into these processes and the effect on the child claimants. As the participating Law Centres included Glasgow Legal Centre, the Legal Services Agency<sup>16</sup> which was involved in a government trial of specialist independent advocates for unaccompanied children seeking asylum, our sample provided some insight into the processing experience of children supported by advocates and those in the majority of the participating Law Centres who were without such support.<sup>17</sup>

Local, national and international NGOs, UN bodies, statutory agencies and individual lawyers and social workers have long expressed concern over the treatment of children within the UK asylum and care systems and the national laws, policies and practices that govern their lives. As a result various agencies have published guidelines and written reports on unaccompanied children seeking asylum in the UK, their human rights, the processing of their claims, the quality of legal advice they receive,

their experiences of the asylum process and how they become failed asylum seekers.<sup>18</sup> These reports by children's charities and migrant and refugee NGOs, EU bodies and statutory entities such as the Office of the Children's Commissioner for England on migrant and refugee children's rights and experiences provide benchmarks against which the conclusions of this examination of asylum claimants and claims are measured.<sup>19</sup> Important themes in these reports concern the importance of effective legal representation for children in providing the difference between successful and unsuccessful outcomes. The variable and often poor quality of legal representation for asylum seekers and the difficulties child asylum seekers experience in understanding and properly participating in the many administrative processes associated with their claims is well documented. Through its detailed data collection and commentary this study builds upon and expands on these studies.

This study focuses on young asylum applicants represented by Law Centres across the UK. Law Centres are known for their work in child representation and are now the only national network of asylum practitioners.<sup>20</sup> The Project has utilised the breadth and experience in this network to collect comprehensive national evidence concerning young unaccompanied asylum seekers. It is hoped the insights and recommendations from this Project can assist with the representation and support of these young applicants and improve the practices of immigration lawyers and advisers wherever based, as well as Home Office decision makers and the courts and tribunals considering the appeals of these children.

Most unaccompanied young people seeking asylum are recent arrivals in the UK, unfamiliar with our language and procedures. They are generally referred to particular legal practices and do not choose such representation for themselves.<sup>21</sup> Of the 60 cases in the Project, 29 cases were children referred to the Law Centres by local authorities, 15 were referred by the Refugee Council, seven in Scotland were referred by a guardian, three were referred by foster carers, others were referred by Barnardo's, a local college and unknown.

In analysing the experiences of children represented by Law Centres this study focussed on children based within the UK who were already dependent on local authority or NGO assistance and whose cases were funded by the legal aid scheme. In 57 of the cases the Law Centres were the children's first and only legal representatives throughout the asylum process to Home Office decision.

In autumn 2013, lawyers from 15 Law Centres met to agree an audit tool (a detailed questionnaire) designed to capture precise data about the child applicants and their experiences throughout the current asylum process; about their lives outside the legal process; and concerning the substantive decisions made about them.

In the following 18 months the legal aid lawyers from Law Centres entered case file data in response to the detailed audit. Their data relates to the characteristics, representation and asylum processing of the 60 young, unaccompanied asylum seekers. This is a rich source of information and commentary conscientiously recorded by Law Centre lawyers. The Project organisers are immensely grateful for the time and care expended in providing this information. The design of the study and the details concerning the data collection and analysis is set down in Appendix A of this report. The qualifying criteria for inclusion of a young person's case in this study were that the child was under 18 years old at the point they claimed asylum; was unaccompanied or separated; was seeking asylum in his/her own right (i.e. they were not a dependent on any adult's asylum claim), and the child's substantive asylum interview took place between 1 December 2013 and 31 December 2014.

The Project set a time line for qualifying case data to be entered and the participating Law Centres selected the first cases from December 2013 that came to their attention meeting the above criteria. While the young people in the survey were effectively chosen at random the data set shows that the young people surveyed were representative of the cohort of unaccompanied young asylum seekers identified by the Home Office as making applications in this period in relation to country of origin, age, gender and other characteristics, explored further in Chapter 3.

The Project aims to research, better understand and critique the asylum and immigration processes undertaken by separated children, and their legal representation, including to describe the features of effective representation of separated children. As part of this Project, members of the Advisory Group provided training seminars and masterclasses to the Law Centre lawyers (details in Appendix A).

The Law Centres Network wanted to understand and evaluate the legal work for this vulnerable client group and to improve it. The data collection by the lawyers was demanding and the results show how thoroughly the lawyers answered the 621 questions posed in the Project surveys. We anticipate this data will be of real value to decision-makers, immigration judges, social workers and policy makers, as well as to the lawyers, guardians and NGOs who deal closely with these young people.

The practice of lawyers will vary from one Law Centre to another and the data collected cannot therefore be assumed to be a collective representation of 'Law Centre practice'. The main purpose of the research was to collect relevant data about the child applicants, their flight and experience of the UK asylum and care system and to highlight some of the best practices and the difficulties they encountered. This is the first report of the Project. As the full data set on decision-making and appeals is not yet available it is hoped that a second report will be published focusing on the Home Office decisions and the appeal process. This first report

documents and analyses the data up to and including the initial Home Office decision. It seeks to draw out and suggest where and how lawyers apply a child-centred approach to their practice and how they may improve the experiences or engagement of their vulnerable child clients in current asylum and protection processes. The primary attention in this report is on effective legal representation. The chapters dealing with the legal framework and the profile, experiences and outcomes of the children serve to illustrate the evidential and support requirements these child clients require.

This serves as the most detailed analysis available of the provision of legal services to child asylum seekers.

This report deals with the following themes directed at understanding the requirements for effective representation of unaccompanied child asylum seekers:

- i. The general policies and principles applying to the reception, protection and processing of the refugee claims submitted by unaccompanied children.
- ii. The profiles and backgrounds of the children in the study – and the relevance of this data for the representation and processing of unaccompanied and separated children seeking international protection.
- iii. The parallel systems of care and support and how these intersect with the asylum process.<sup>22</sup>
- iv. The ethics and practice of the legal representation of young asylum applicants.

Through the detailed documentation of the processes undertaken by 60 children this report aims to better understand and to elucidate the features of effective representation for children.

This report does not use the acronym “UASC” which is in common usage in both the asylum and the care systems for unaccompanied children in the UK. The young people are children and the acronym does not convey this. The term “UASC” is used in this report only where it is a direct quotation from an interview or an official document. The terms “unaccompanied” or “separated” children or young people and the terms asylum and international protection claims are used interchangeably since these terms are widely used in this sense in the UK care, asylum and legal systems.

Quotations in italics included in this report are the lawyers’ comments to survey questions and quotations in boxes and chapter covers are from children and young people interviewed as part of the focus groups, except when otherwise indicated. The confidentiality of the surveyed and participating young people is preserved throughout.

**1** European Migration Network, Synthesis Report for the EMN Focussed Study 2014, *Policies, practices and data on unaccompanied minors in the EU Member States and Norway*, Synthesis Report: May 2015, p.5. Of the 24,075 minors these were distributed as follows - Sweden (29%), Germany (18%), Italy (10%), Austria (8%) and the United Kingdom (8%) - taken together representing more than 70% of the total of all unaccompanied minors applying for asylum in 2014

**2** In 2013, European states received asylum applications from 12,685 unaccompanied minors, and recognised a further 12,770 who did not make an application. European Commission, European Migration Network publication available at: [http://ec.europa.eu/dgs/home-affairs/what-wedo/policies/asylum/uam/uam\\_infographic\\_a4\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-wedo/policies/asylum/uam/uam_infographic_a4_en.pdf)

**3** Home Office Immigration Statistics April to June 2015 'Asylum table as 07q' available at: [www.gov.uk/government/publications/immigration-statistics-april-to-june-2015/asylum#unaccompanied-asylum-seeking-children-uasc](http://www.gov.uk/government/publications/immigration-statistics-april-to-june-2015/asylum#unaccompanied-asylum-seeking-children-uasc)

**4** Department for Education *Children looked after in England year ending 31 March 2015* (October 2015) available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/464756/SFR34\\_2015\\_Text.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464756/SFR34_2015_Text.pdf). Figures for Scotland, Northern Ireland and Wales not available

**5** McVeigh, T. *Kent struggles with refugee children who arrive alone - 'we've used up every foster carer we have.'* 27 September 2015. Available at: [www.theguardian.com/world/2015/sep/26/young-refugees-problemsuk](http://www.theguardian.com/world/2015/sep/26/young-refugees-problemsuk); Wilding, J. & Dembour, M. *Whose best interests? Exploring Unaccompanied Minors' Rights through the Lens of Migration and Asylum Processes (MinAs)* University of Brighton, October 2015, 9.

**6** Private fostering is when a child under the age of 16 (under 18 if disabled) is cared for by someone who is not their parent or a 'close relative'. For more details see [www.privatefostering.org.uk/](http://www.privatefostering.org.uk/) (example research from the British Association for Adoption and Fostering [www.privatefostering.org.uk/node/249](http://www.privatefostering.org.uk/node/249)). It is estimated that there are 120,000 undocumented children in the UK. This figure relates to all undocumented children, including those within families, so it is unknown what proportion are separated children. Other organisations have estimated that between 9,300 and 12,400 migrant children may well be living in private foster care arrangements. See: The Children's Society *Not Just a Temporary Fix - The Search for Durable Solutions for Separated Migrant Children* (2015) p.10

**7** United Nations High Commissioner for Refugees (UNHCR) *Protecting Children on the Move. Addressing protection needs through reception, counselling and referral, and enhancing cooperation in Greece, Italy and France* July 2012, p.56. Available at: [http://images.savethechildren.it/IT/f/img\\_publicazioni/img186\\_b.pdf](http://images.savethechildren.it/IT/f/img_publicazioni/img186_b.pdf)

**8** See 'Q' & Ors, *R (on the application of) v Secretary of State for the Home Department* [2003] EWCA Civ 364 at [40] in which the Court observed concerning the control of smugglers/agents: "Mr Alexander Buchan, the Chief Executive of Refugee Action, put in evidence Home Office research which demonstrates the degree of control that some facilitators have over their charges. The Attorney-General recognised the possibility of duress by threats against the families of asylum seekers, and this phenomenon is recorded in the Home Office research. It is also clear that some asylum seekers are so much under the influence of the agents who are shepherding them into the country that they cannot be criticised for accepting implicitly what

they are told by them. There is no valid comparison between agents of this kind, whose interests at the point of entry may well be in serious conflict with those of the asylum seekers, and professional advisers. To disregard the effect that they may have on their charges would be both unrealistic and unjust.'

**9** UNHCR *Protecting Children on the Move. Addressing protection needs through reception, counselling and referral, and enhancing cooperation in Greece, Italy and France*. July 2012, p.48. Available at: [http://images.savethechildren.it/IT/f/img\\_publicazioni/img186\\_b.pdf](http://images.savethechildren.it/IT/f/img_publicazioni/img186_b.pdf)

**10** Kohli, R.K.S. (2006) 'The comfort of strangers: social work practice with unaccompanied asylum-seeking children and young people in the UK' in *Child and Family Social Work* 11: 1-10

**11** Kohli, R.K.S. (2014) 'Protecting Asylum Seeking Children on the Move' in *Revue Européenne des Migrations Internationales* 30 (1), p.89

**12** UNHCR *Beyond Proof, Credibility Assessment in EU Asylum Systems* Brussels, May 2013. Available at: <http://helsinki.hu/wp-content/uploads/Beyond-Proof-full-report.pdf>

**13** The Children's Society (2011) *Into the Unknown: children's journeys through the asylum process*, p.7 Available at: [www.childrenssociety.org.uk/sites/default/files/tcs/into-the-unknown--childrens-journeys-through-the-asylum-process--the-childrens-society.pdf](http://www.childrenssociety.org.uk/sites/default/files/tcs/into-the-unknown--childrens-journeys-through-the-asylum-process--the-childrens-society.pdf)

**14** Known as "UASC" leave (Unaccompanied Asylum Seeking Children)

**15** Home Office *Processing an asylum application from a child* Version 6.0 16 April 2013. Available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257469/processingasylumapplication1.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processingasylumapplication1.pdf)

**16** Legal Services Agency is an Associate of the Law Centres Network

**17** Crawley, H. & Kohli, R.K.S. (2013) 'She Endures With Me'. *An Evaluation of the Scottish Guardianship Service Pilot*. Available at: [www.scottishrefugeecouncil.org.uk/guardianship](http://www.scottishrefugeecouncil.org.uk/guardianship)

**18** Research on separated and unaccompanied children largely fall into three categories - investigations into how states organise their responses to the arrival of asylum seeking children; psychosocial and mental health studies; and studies with a focus on children's rights. This breakdown is proposed by the Norwegian sociologist Ketil Eide. An explanation of Eide's categorization and a review of literature on unaccompanied asylum-seeking children can be found in U. Wersnjö (2011) 'Unaccompanied Asylum-seeking Children: Whose Perspective?' *Childhood* 19:4 pp.495-507

**19** Following the EU's 2010-2014 Stockholm Programme, and the subsequent 2010-2014 Action Plan on Unaccompanied Minors adopted by the European Commission in May 2010, there has been important sponsored research into durable policy solutions, best interests, guardianship and 'best practices' resulting in a number of comparative research studies across the EU

**20** Following the closures of Refugee and Migrant Justice and the Immigration Advisory Service in 2010 and 2011

**21** *Lives in the Balance: The Quality of Immigration Legal Advice given to Separated Children Seeking Asylum*, Refugee Council, February 2011

**22** During this Project there have been a number of developments in the arrangements for separated children - including the Barnardo's child trafficking advocates pilot, updated guidance on the care of separated children and age assessments and austerity measures such

as the disbandment of specialist asylum seeking child social work teams nationally resulting in the loss of specialist social work support to these children. These changes are referred to in this report. Where relevant differing care practices for separated children in the devolved administrations are noted.



**Put Yourself in Our Shoes:**  
Considering Children's  
Best Interests in the  
Asylum System

## **Chapter 2**

The legal framework  
Principles and practice

"When something  
is good in your life  
they can change  
your life"

The Convention on the Rights of the Child (UNCRC) – the most widely ratified international human rights treaty – incorporates the most comprehensive standards concerning children (including their civil, cultural, economic, political and social rights).

The number of children seeking asylum who are considered to be ‘looked after’ in the care of local authorities in England in March 2015

2,630

The UNCRC highlights the fundamental human dignity of all children, the urgency of ensuring their protection, wellbeing, survival and development, and the concept of children as bearers of human rights. It makes clear that children are to have “such protection and care as is necessary for their wellbeing”, that children separated from their families or carers are entitled to “special care and assistance”, and that child refugee claimants are to “receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights”.<sup>1</sup> States are to ensure that the rights set down in the Convention are for each child within their jurisdiction without discrimination of any kind.<sup>2</sup>

The young asylum seekers concerned in this study are unaccompanied or separated children. The UNHCR defines unaccompanied children as those who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.<sup>3</sup> The UK Immigration Rules define unaccompanied children as those aged under 18 when their asylum application is submitted who are applying for asylum in their own right and are separated from both parents and not being cared for by an adult who in law or custom has responsibility to do so.<sup>4</sup>

Separated children are by common consensus vulnerable children. Indeed the UNHCR Executive Committee identifies such children as at ‘heightened risk.’<sup>5</sup> The identified risk factors include their age, immaturity, their lack of carers, dependency, their irregular immigration status, their susceptibility to or experiences of exploitation and abuse, lack of knowledge of the English language or UK administrative systems, and frequently their lack of education. Such children – as shown in this study (Chapter 3) – have often experienced trauma and abuse in their home countries or on their journeys to the UK. These experiences clearly add to their vulnerability.

Many of the unaccompanied children seeking international protection in the EU are adolescents aged between 14 and 17 years.<sup>6</sup> The protective laws and policies for children generally make provision for the evolving maturity and independence of children. Provision is made for the fuller participation of adolescents in legal and administrative proceedings affecting them, and for a lighter-touch mentoring and monitoring to be given to older adolescents. However, the protective focus of child rights and child protection laws is not lost for these older adolescents. Those aged 16 or 17 are still entitled without discrimination to all the rights and protections set out in the UNCRC and other instruments and laws concerning children.<sup>7</sup>

The need to focus on a young person's maturity and vulnerability rather than chronological age when considering child protections is well recognised by our Courts. Lord Justice Maurice Kay in *KA (Afghanistan) & Ors v Secretary of State for the Home Department*,<sup>8</sup> a case about family tracing,<sup>9</sup> stated in relation to "the eighteenth birthday point" that "it cannot be the case that the assessment of risk on return is subject to such a bright line rule" and he cited with approval Lord Justice Lloyd's observation in *DS (Afghanistan) v Secretary of State for the Home Department* that "It is not easy to see that risks of the relevant kind to ... a child would continue until the eve of that [18th] birthday, and cease at once the next day", further noting that child-specific persecution, which includes the forced recruitment or the sexual exploitation of vulnerable young males, "is not respectful of birthdays".<sup>10</sup>

The UNCRC Article 20 provides that separated children shall be entitled to suitable alternative care provided by the State. As a consequence unaccompanied children are 'looked after' children, accommodated and cared for by the local authority in which they are discovered, and thus subject to the protective arrangements set out in a number of Children Act and leaving care provisions and associated regulations.<sup>11</sup> As foreign, generally newly arrived and undocumented children, this means that unaccompanied asylum seeker children fail almost immediately to be identified and often age assessed by local authority child services.

In international asylum and human rights instruments, directives and policies and in UK immigration laws, unaccompanied asylum seeker children are also identified as requiring special protection, particular priority and care in immigration and status determination procedures.<sup>12</sup> And, in the same way as age assessment is a gateway to accommodation and 3 support for many separated children, age assessment also determines if the young claimant is entitled to particular priority and care from Home Office decision-makers. Along with social services the Home Office features large in the experiences of child protection claimants. It is therefore important to understand the domestic immigration and family laws and the international legal framework applying to their claims and care.

Relevant to this study the core international legislation, instruments and guidance defining these protections for unaccompanied children in the UK are listed in Appendix B. The EU directives transposed into national law in EU Member States envisage specific provisions for unaccompanied children, including accommodation, legal representation, access to education, health assistance and family tracing. Specific procedural guarantees for unaccompanied children, on account of their vulnerability, are also envisaged. In particular the Directives require that unaccompanied children shall be represented or assisted during the examination of the asylum application, they shall be informed by their representative about the meaning and possible consequences of the

personal interview and accompanied during the interview. The UK has not signed and is not bound by the recast versions of the Qualification, Reception and Procedures Directives.<sup>13</sup>

As outlined earlier, UNCRC has particular significance for unaccompanied children seeking refugee or humanitarian protection and its principles and rights form the basis of UNHCR guidelines on child asylum claims,<sup>14</sup> the EU provisions on child asylum claimants,<sup>15</sup> and the protections for child claimants and children affected by immigration decisions in UK legislation and rules.<sup>16</sup> The UN Committee on the Rights of the Child in 2005 issued General Comment No.6 on the “Treatment of Unaccompanied and Separated Children outside their Country of Origin” to give explicit guidance on the protection, care and proper treatment of unaccompanied and separated children and General Comment No.14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. In *SG & Ors, R (on the application of) v Secretary of State for Work and Pensions (SSWP)* Lord Carnwath described General Comment No.14 as providing “the most authoritative guidance now available” on the interpretation and effect of Article 3(1) of UNCRC.<sup>17</sup>

The UNCRC principles which have particular resonance for the experiences and treatment of unaccompanied young people, including the processing of their protection claim, include the right for children capable of forming his or her own views to express those views freely, and 4 to be provided the opportunity to be heard in any judicial and administrative proceedings affecting them (Article 12); and the protection that in all actions concerning a child, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Article 3). UNCRC requires State parties to respect and ensure the rights in the Convention to each child within their jurisdiction without discrimination of any kind (Article 2).

The UNCRC makes particular provision for children seeking refugee status in Article 22:

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations

and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

In this report we focus on the best interests principle, children's rights to be heard and to participate in judicial and administrative processes and decision making affecting them, the protective arrangements and assumptions applying to refugee decision-making for children and the protective care arrangements for unaccompanied children and young adults. In Chapter 6 these principles are analysed by reference to the legal representation of children.

## **Best interests**

The UK government has not transposed the UNCRC in its full form into domestic law<sup>18</sup> but the best interests' principle is now a regional customary norm.<sup>19</sup> The principle is endorsed in the Charter of Fundamental Rights of the European Union, Article 24(2) and the EU's 'Asylum Aquis' (the Common European Asylum System directives) and a child's UNCRC rights and best interests have been considered an integral part of the proportionality assessment under Article 8 and of the rights claimed by children under Articles 3, 4, 6, 11 and 14 of the European Convention on Human Rights.<sup>20</sup> Additionally, as recognised in *ZH (Tanzania) v Secretary of State for the Home Department* 'the spirit, if not the precise language' of the best interests' principle has been translated into our national law.'<sup>21,22</sup>

Thus, Section 11 of the Children Act 2004 places a duty on a wide range of bodies providing public services to carry out their functions "having regard to the need to safeguard and promote the welfare of children".<sup>23</sup> Section 55 of the Borders, Citizenship and Immigration Act 2009 places this same duty on the Secretary of State for the Home Department and immigration officers in the discharge of their functions in relation to immigration, asylum or nationality in connection with any child in the UK.<sup>24</sup> This safeguarding duty is defined in the guidance to Section 11 of the 2004 Act and to Section 55 of the Borders, Citizenship and Immigration Act<sup>25</sup> as:

- i. protecting children from maltreatment; preventing impairment of children's health or development (where health means 'physical or mental health' and development means 'physical, intellectual, emotional, social or behavioural development');

- ii. ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and
- iii. undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.

Section 55 and the related “Every Child Matters” guidance<sup>26</sup> are the vehicles by which UNCRC rights, the safeguarding and promoting of a child’s welfare, and the best interests principle become a core feature of immigration and asylum status decision-making. Under UNCRC Article 3(1) the best interests principle applies ‘in all actions concerning children’.<sup>27</sup>

The UN Committee on the Rights of the Child (CRC) has advised that the principle encompasses all acts, conduct, proposals, services, procedures, measures and omissions and applies not only to actions that are explicitly or exclusively directed at children, but also actions that have a direct or indirect impact on children.<sup>28</sup>

The CRC General Comment No. 14, para 20 notes that not every action taken by a State needs to incorporate a full and formal process of assessing and determining the best interests of the child. However, where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures is appropriate. This is understood to imply that the greater the impact a decision will have on the child and the child’s future development, the greater the procedural safeguards that need to be put in place when making that decision. There is thus a progression in the level or number of safeguards put in place. A decision concerning whether to remove a child who may be at risk of persecution or serious harm in the reception country clearly requires the greater procedural safeguards to be in place.

In *JO and Others (Section 55 duty) Nigeria*,<sup>29</sup> The President of the Upper Tribunal of the Asylum and Immigration Chamber, Mr Justice McCloskey issued guidance on the ‘careful’ and ‘rigorous’ analysis which a child’s best interests required when the Secretary of State is considering whether it is reasonable to expect a child to leave the UK.<sup>30</sup> The President noted the characteristics of Section 55 – that it is formulated in terms of an unqualified duty and it operates to protect all children who are in the UK, there is no qualification such as residence or nationality.

While the thrust of the guidance in JO was directed to Home Office decision-makers, the guidance also has a resonance for lawyers representing child claimants. Drawing on dictum in ZH Tanzania and core principles in public law, the Tribunal noted that a best interests evaluation requires that the initial decision maker is properly informed, must conduct a careful examination of all relevant information and factors and undertake a process of deliberation, assessment and final decision of some depth, observing that “Being adequately informed and conducting a

scrupulous analysis are elementary prerequisites to the interrelated tasks of identifying the child's best interests and then balancing them with other material considerations. This balancing exercise is the central feature of cases of the present type. It cannot realistically or sensibly be undertaken unless and until the scales are properly prepared."<sup>31</sup>

The Tribunal in *JO* also cited Lady Hale's observation in *ZH Tanzania* concerning the role of the legal representative who can 'improve the quality of the initial decision' and 'can assist the 'case owner' in establishing all the facts of the claim before a decision is made.'<sup>32</sup> Much of the substance of the remaining chapters is directed to those functions of effective representation – gathering evidence, asking the correct questions and interviewing the child concerned.

Article 3(1) of the UNCRC requires continuing oversight of an affected child's best interests<sup>33</sup> and it enumerates a broad list of entities whose actions concerning children engage the best interests principle – 'public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'. Children as individuals and as a collective are beneficiaries of the best interests principle.<sup>34</sup> These facets of the Article 3(1) duty are given legal force in the Children Act 2004, Section 11 and the Borders, Citizenship and Immigration Act 2009, Section 55.

The UNCRC's application to all children within the jurisdiction is most effectively stated in statutory guidance issued to the UK Border Agency on making arrangements to safeguard and promote the welfare of children the government guidance, *Every Child Matters (2009)*. Relevant to the children in this study the first principle, set out at paragraph 2.7 of the guidance, is that "Every child matters even if they are someone subject to immigration control". The principle means that every child's welfare has equal value, whether they are British or not and, therefore, that the need to safeguard and promote the welfare of a child is just as important when the child is subject to immigration control as when the child is a British citizen. The expression "Every Child Matters" is highly resonant and conveys the government's very serious intent to ensure that each aspect of an unaccompanied asylum seeker child's welfare is required to be assessed and given the same weight as the welfare of a British child, even though the ultimate action taken may differ.

The UN Committee on the Rights of the Child define the best interests of the child as a threefold concept:<sup>35</sup>

- A substantive right – the right of the child to have his or her best interests assessed and taken to be a primary consideration when, in decision-making, different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child.

- A fundamental interpretive legal principle – such that if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen.
- A rule of procedure – whenever a decision is made that will affect a specific child, group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child’s best interests; what criteria it is based on; and how the child’s interests have been weighed against other considerations, be they broad issues of policy or individual cases.<sup>36</sup>

The following chapters assess the practical issues associated with the presentation of a best interests case for child claimants. The content given to the child’s welfare and best interests and the deliberation on and weighting of this as a primary consideration is determined by the specific circumstances of a particular child or group of children. That assessment is made with full respect to all the rights – civil, survival and development, identity, family, economic, cultural, economic, political and social – identified and guaranteed by the UNCRC. There is no hierarchy of rights in the Convention. Each and all of the rights provided for in UNCRC is in the “child’s best interests” and can be relevant to the assessment of a removal decision which has the effect that a child loses rights or benefits or the risk the child may face if removed to another country. The UN Committee on the Rights of the Child’s General Comment No. 8 notes that no right can be compromised by a negative interpretation of the child’s best interests.<sup>37</sup>

The UNHCR has issued important guidance on the application of UNCRC and the best interests principle in decision-making on the asylum and humanitarian protection status claims of children, particularly unaccompanied children. While much of the litigation concerning children’s rights has focussed on the assessment of best interests as part of an Article 8 proportionality balance, it is important to emphasise that the best interest principle is relevant to each and all of the components of asylum/ humanitarian protection decisionmaking and the associated procedures.

The best interests principle is held to apply to:

- An asylum applicant’s duty to submit all elements needed to substantiate the application for international protection (Qualification Directive Art 4; Immigration Rules paras 339L; 351). While a child claimant is expected to ‘make a genuine effort’ to substantiate or establish his/her protection claim this expectation may be adjusted to

accommodate a child’s knowledge.<sup>38</sup> Decision-makers have a proactive duty to give more weight to objective indicators of risk rather than the child’s state of mind or understanding.<sup>39</sup>

- The assessment of a claim from and the credibility of a child (Qualification Directive Art 4, HC395 para 351) – children are afforded a more generous ‘benefit of the doubt’.<sup>40</sup> (UNHCR Child Guidelines para 73; APG Processing an Asylum Claim from a Child para 16.2, 16.4).
- The handling of the child’s claim – requiring ‘particular priority and care’ (HC 395 para 350; Every Child Matters 2009 Guidance).<sup>41</sup>
- The arrangements for interviewing child claimants – a responsible adult should be present, the interview conducted by a specially trained caseworker and all inconsistencies put to the child so as to allow them to explain these matters. (See Home Office guidance on processing an asylum application from a child).<sup>42</sup>
- The arrangements for eliciting and facilitating a child’s evidence at an appeal hearing (Adjudicator Guidance Note No. 8 on Unaccompanied Children” April 2004,<sup>43</sup> “Joint Presidential Guidance Note No. 2 of 2010: Child, Vulnerable Adult and Sensitive Appellants” of 30 October 2010 at Paras 4 -5; Equal Treatment Bench Book, 2013 at Section 6, para 6).<sup>44</sup>
- The assessment whether the acts the child has been or could be exposed to would amount to persecution or serious harm for a child, and the particular consideration given to acts of persecution of a child-specific nature (Qualification Directive Art 4(3)(c); Art 9(2)(f); HC 395 para 339J(iii)).
- The particular vulnerability, welfare and best interests of a child are to be considered when assessing harm to a child (*DS (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 305 at paras 80, 82, 88).
- The consideration of direct and indirect child-specific threats to children and the factors particular to children, in particular unprotected children which would “lower the level of indiscriminate violence required” for humanitarian protection *Elgafaji (Justice and Home Affairs)* [2009] EUECJ C-465/0; [2009] 1 WLR 2100 at [39]; *HM and Others (Article 15(c)) Iraq CG* [2010] UKUT 331 (IAC) at para 67; *AA (unattended children) Afghanistan CG* [2012] UKUT 00016 at [89-93]).

- The assessment whether there is effective protection for children / unprotected children is made by reference to their vulnerability and need for protection.
- In the examination of the availability and reasonableness of internal flight or relocation alternatives, the reasonableness and undue harshness is evaluated by reference to the best interests and need to protect and promote the welfare of a child. (APG Processing an Asylum Claim from a Child para 16.12; UNHCR Child Guidelines at [53], [84]).
- The identification, investigation and support and assistance for recovery arrangements for child trafficking victims. (Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, Articles 4,10(3),(4), 11(2),12,14(2)).

### Care obligations

The number of asylum seeking children in the care of local authorities in England at March 2015 was reported to be 2,630.<sup>45</sup> These will be ‘looked after’ children. As noted in the Children’s Society report *Not just a temporary fix: The search for durable solutions for separated migrant children* “It is rare for care orders to be made under Section 31 of the Children Act 1989 in relation to separated migrant children... This is only likely to occur when the child has been abandoned here or trafficked into the UK but a parent is still in the UK. There is also no power to make a care order when a child has reached the age of 17.”<sup>46</sup> There were six children in this survey who were recorded as having been victims of trafficking and three recorded as subjects of family abuse/ violence, but all had ‘looked after’ status.

A child’s immigration status has no bearing on the care to be provided to them as a child in need. It is sufficient that the child is within the local authority area and appears to require accommodation as a result of there being no person who has parental responsibility for him/her. Unaccompanied children seeking asylum benefit from the protections for children in need set down in the Children Acts 1989 and 2004, or the Children (Scotland) Act 1995 (see Appendix C for relevant Child Act provisions, including Wales and Northern Ireland). These Acts set out the duties which local authorities must fulfil for such children. Thus ‘looked after’ children are to be accommodated, safeguarded and supported, their needs are to be assessed, they are to be given a care plan, regular reviews and an allocated social worker.

The prescribed safeguarding and support is required to be given to children in need not only during their minority but for most such children into their early adulthood, supporting them into employment or through their higher education.<sup>47</sup> For ‘looked after’ children and care leavers, the clear Parliamentary assumption is that they require and should be given

ongoing support, supervision, practical assistance and guidance not just to the age when they reach chronological adulthood but to assist them to reach maturity, the outer limits of the term set in part by their completion of full time education or training.

In *M, R (on the application of) v London Borough of Hammersmith and Fulham* Lady Hale observed of this ongoing duty to those ‘on the verge of functioning adulthood’:

“Any parent of teenagers aged 16 and 17 knows how difficult they can be. But they also know that, however much those teenagers are struggling to discover their own identities and lead independent lives, they also depend upon the love and the support of their parents.”<sup>48</sup>

As the green paper ‘Care Matters: Transforming the Lives of Children and Young People in Care’ put it:

“For most young people the idea of being left unsupported at that age would be alien. They have a sense of security and know that their parents will always be there for them. Few young people ever really ‘leave’ the care of their parents. They may leave home, and on average do so at the age of 24, but they know that their families are only ever a phone call away and stand ready to offer financial support and advice, or a place to stay if they need it.”<sup>49</sup>

It is important for immigration lawyers to be aware of the statutory duties owed to their child clients and the relevant evidence on the children which may be recorded in social services reviews and files. The statutory guidance published by the Department for Education on the care of unaccompanied and trafficked children notes the following concerning the core evaluations and duties to these ‘looked after’ children:<sup>50</sup>

Where an age assessment is required, local authorities must adhere to standards established within case law. 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.<sup>51</sup>

- i. The assessment conducted as the first step in the care planning process “must be made with reference to the child’s needs as an unaccompanied or trafficked child” – including particular account “of any specific needs the child has, for example, because of their experiences in their country of origin (such as experience of conflict), their journey to the UK, abuse at the hands of traffickers or exploitation as a consequence of being trafficked.”<sup>52</sup>

- ii. The need for multi-agency oversight for the protection of these looked after children, and a 'central role' for Local Safeguarding Children Boards with everyone involved in providing the child's care (social workers, independent reviewing officers, teachers, NGO case workers or advocates or guardians working with the child) aware of the child's circumstance, contributing to case plan reviews and able to provide for any needs resulting from it.
- iii. The guidance notes that care "must be taken to ensure that the child does not become lost between the agencies involved and their different systems and procedures," is offered an independent visitor to help address isolation, is not required to repeat information already provided to immigration caseworkers, police or social care staff, encouraged to contribute to care assessments and plans and that their cases are regularly reviewed with the involvement of an Independent Reviewing Officer.<sup>53</sup>
- iv. The care plan for unaccompanied and trafficked children should note that specialist legal support is required and how it will be provided, set arrangements for the child to be accompanied to all meetings with legal professionals, the key stages relevant to the child's evolving asylum or immigration status and the child's health and personal education plan.<sup>54</sup>
- v. Where the child is or may be a victim of trafficking, the care/pathway plan must set down the steps and arrangements needed to protect the child from future harm and guard against the child going missing and being reclaimed by their traffickers. The guidance makes clear that 'older children may appear independent but can still lack the skills to keep themselves safe from their traffickers.'<sup>55</sup>

The UN and European Commission guidance on unaccompanied children stress the need to find a 'durable solution' for separated children. The UN Committee on the Rights of the Child, General Comment (No. 6) entitled "Treatment of Unaccompanied and Separated Children outside their Country of Origin" provides:

"79. The ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated. Efforts to find durable solutions for unaccompanied or separated children should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated. Following a rights-based approach, the search for a durable solution commences with analysing the possibility of family reunification.

80. Tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced. In any case, in conducting tracing activities, no reference should be made to the status of the child as an asylum-seeker or refugee. Subject to all of these conditions, such tracing efforts should also be continued during the asylum procedure. For all children who remain in the territory of the host State, whether on the basis of asylum, complementary forms of protection or due to other legal or factual obstacles to removal, a durable solution must be sought.”

The Department for Education advises that ‘planning for permanence’ for unaccompanied and trafficked children should include consideration of re-unification with the child’s birth family, subject to any protection concerns where the child’s family may have been involved in trafficking, exploiting or subjecting the child to child-specific forms of persecution such as female genital mutilation, forced marriage or involvement in armed conflict. ‘The wishes and feelings of the child will be important in establishing the steps to take when undertaking family tracing.’<sup>56</sup> Such planning is consistent with the positive duty on the Home Secretary to endeavour (safely) to trace the members of a child’s family as soon as possible after they make their claim for asylum.<sup>57</sup> In fact, as case law makes clear, the Secretary of State has strikingly failed to discharge her tracing duty for the majority of child asylum seekers.<sup>58</sup> The Children’s Society records the deficiencies in Home Office best interests’ assessment, local authority permanence and durable solution planning and “that there is currently no solution for separated children in England that can truly be seen as ‘durable’”.<sup>59</sup>

These planning and investigative omissions can have a deleterious effect for young people, often most marked when they have reached 18, their discretionary or unaccompanied asylum seeker leave to remain has expired and they are facing removal to their home countries. Numbers of these young people have outstanding immigration appeals and they therefore remain here with the status of ‘former relevant children’ and, as stated above, continue to be under local authority oversight and support.<sup>60</sup>

Section 23C of the Children Act 1989 requires local authorities to keep and stay in touch with such young adults and to continue the personal mentoring and guidance that facilitates their transition to independence. The statutory duty requires the local authority to take reasonable steps to keep in touch with a former relevant child whether he/she is within their area or not; and if they lose touch, to re-establish contact, to continue the appointment of a personal adviser for a former relevant child, to continue to keep his/her pathway plan under regular review and to give financial assistance, provide suitable accommodation and support to find employment or continue studies. The local authority owes these duties to

the young person until he/she reaches the age of 21 or, for children for whom their pathway plan includes a programme of full time education/training, until 25.

The Department for Education's Children Act guidelines and regulations, Volume 3: *Planning transition to adulthood for care leavers* states concerning the planning required for 'looked after' children and care leavers 'who require additional specialist support':<sup>61</sup>

6.20 Unaccompanied asylum seeking children (UASC) making the transition from care to adulthood have both a leaving care status and an immigration status in addition to their placement and accommodation, education, health, financial, religious and cultural needs. Planning transition to adulthood for UASC is a particularly complex process that needs to address the young people's care needs in the context of wider asylum and immigration legislation and how these needs change over time.

6.21 Pathway planning to support a UASC's transition to adulthood should cover all areas that would be addressed within all young people's plans as well as any additional needs arising from their specific immigration issues.

Planning may initially have to be based around short term achievable goals whilst entitlement to remain in the UK is being determined.

6.22 Pathway planning for the majority of UASC who do not have permanent immigration status should initially take a dual or triple planning perspective, which, over time, should be refined as the young person's immigration status is resolved. Planning may be based on:

- a transitional plan during the period of uncertainty when the young person is in the United Kingdom without permanent immigration status;
- longer term perspective plan in the United Kingdom should the young person be granted long term permission to stay (for example through the grant of Refugee Status); or
- a return to their country of origin at any appropriate point or at the end of the immigration consideration process, should that be necessary because the young person decides to leave the UK or is required to do so.

In *JS (Former unaccompanied child – durable solution) (Afghanistan)* the Upper Tribunal held that the fact that an appellant child or young adult is receiving support from a local authority does not without more determine his immigration status but accepted "that the fact

of local authority support or the adoption of a pathway plan may give rise to evidence that in his particular circumstances he is either able to meet the requirements of the immigration rules or establish a significant private life in the United Kingdom interference with which would be unjustified, and thus establish a lawful basis for remaining.”<sup>62</sup>

As to the State’s responsibility to identify a durable solution for separated children, the Upper Tribunal in JS observed concerning the young adult claimant:

“34. ...There may be cases where the child’s needs, his age on arrival and his future development will all suggest that a durable solution may need to be found in the host state.

35. ...In making that assessment we must take into account all relevant factors including his age, his background, his family and general circumstances including any particular vulnerability. We must consider whether an appellant will have family or other adult support on return to his home country appropriate to his particular needs, and ... that there is no bright line across which the risks to and the needs of a child suddenly disappear.”

[Again these observations assist to outline the evidential tasks for lawyers representing older adolescents or young adults](#) – this issue and the young people’s experiences in the care system are explored in Chapters 5 and 6.

**1** United Nations (1989) *Convention on the Rights of the Child* Articles 3(2), 20(1) and 22(1)

**2** United Nations (1989) *Convention on the Rights of the Child* Article 3

**3** UN High Commissioner for Refugees (UNHCR), *Refugee Children: Guidelines on Protection and Care* 1994, p.121

**4** Immigration Rules (HC 395) Part 11, para 352ZD Sections A-C. Available at: [www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum](http://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum) (updated on 6 October 2015)

**5** Executive Committee of the High Commissioner's Programme (ExCom), *Conclusion on Children at Risk*, No.107 (LVIII) 5 October 2007. Available at: [www.unhcr.org/4717625c2.html](http://www.unhcr.org/4717625c2.html)

**6** UNHCR *Heart of the matter: Assessing Credibility when Children Apply for Asylum in the European Union* Brussels, December 2014. Available at: [www.refworld.org/pdfid/55014f434.pdf](http://www.refworld.org/pdfid/55014f434.pdf)

**7** See for example *HC (A Child), R (on the application of) v Secretary of State for the Home Department & Anor* [2013] EWHC 982 (Admin) in which Moses LJ at [43] underlined in respect of the treatment of 17 year olds in the criminal justice system that 'the significance of all of the relevant International Conventions are that they reveal a broad consensus that those aged 17 should be regarded as children, who must be treated differently from adults and sheltered by special protection designed to meet their best interests.'

**8** *KA (Afghanistan) & Ors v Secretary of State for the Home Department* [2012] EWCA Civ 1014 per Maurice Kay LJ at [18]

**9** Article 19.3 Council Directive 2003/9/EC of 27 January 2003 *Laying down minimum standards for the reception of asylum seekers* (Reception Directive) provides that: "Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety." This Directive is given effect in The Asylum Seekers (Reception Conditions) Regulations 2005 (SI 2005/7). Regulation 6 of the regulation provides: "(1) So as to protect an unaccompanied minor's best interests, the Secretary of State shall endeavour to trace the members of the minor's family as soon as possible after the minor makes his claim for asylum. The regulation confirms that the Directive safeguards to such tracing "where there may be a threat to the life or integrity of the minor or the minor's close family"

**10** *DS (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 305 per Lloyd LJ at [54] In similar fashion in EU (Afghanistan) & Ors v Secretary of State for the Home Department [2013] EWCA Civ 32 Sir Stanley Burnton at [9] noted that as the birthday that has been ascribed to a claimant is often arbitrary, and may as a formality have been, for example set as 1.1.1996, the lack of clarity concerning the precise date of birth is a further reason why the assessed achievement of adulthood cannot of itself change the assessment of risk on return

**11** Under the devolved administrations these care provisions include: Children Act 1989; Children Act 2004; The Children Act 1989 guidance and regulations Vol 2: care planning, placement and

case review and Volume 3: planning transition to adulthood for care leavers; Children (Leaving Care) (England) Act 2000; The Care Planning, Placement and Case Review (England) Regulations 2010 and The Care Leavers (England) Regulations 2010 (as amended by The Care Planning and Care Leavers (Amendment) Regulations 2014 (SI 2014/1917); Children Act (Scotland) 1995; Protection of Children (Scotland) Act 2007; Children and Young People (Scotland) Act 2014; The Children (Scotland) Act 1995 regulations and guidance (Vol 2): Guidance on the Looked After Children (Scotland) Regulations 2009; Social Services and Well-being (Wales) Act 2014; Social Services and Well-being (Wales) Act 2014 - Part 6 (to be implemented in April 2016); The Care Standards Act 2000 (notification) (Wales) regulations 2011 and guidance (Welsh Assembly Government, 2011); Children (Northern Ireland) Order 1995; Children (Leaving Care) Act (Northern Ireland) 2002; Children (Leaving Care) Regulations (Northern Ireland) 2005

**12** Border Citizenship and Immigration Act 2009 s.55; Immigration Rules (HC 395) Part 11, para 350-352ZB; Council Directive 2003/9/EC of 27 January 2003 *Laying down minimum standards for the reception of asylum seekers* (Reception Directive) Official Journal of the European Union, 6 February 2003 (L31/23-24 Articles 10, 17, 18 & 19); Council Directive 2004/83/EC of 29 April 2004 *on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted* (Qualification Directive) Official Journal of the European Union, 30 September 2004 (L304/12 Articles 6(2)(f), 20(3), 20(5), 30); Council Directive 2005/85/EC of 1 December 2005 *on minimum standards on procedures in Member States for granting and withdrawing refugee status* (Procedures Directive) Official Journal of the European Union, 13 December 2005 (L326/14 (14), L326/22 Article 17)

**13** See: Hansard *The House of Lords European Union Committee First Report, Asylum Directives: Scrutiny of the UK opt-in decisions*, 2 December 2009. Written statement 13 October 2011, Column 44-45WS. Available at: [www.publications.parliament.uk/pa/ld200910/ldselect/lducom/6/602.htm](http://www.publications.parliament.uk/pa/ld200910/ldselect/lducom/6/602.htm)

**14** UNHCR *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 & 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* December 2009; UNHCR, *A Framework for the Protection of Children* June 2012

**15** Council Directive 2004/83/EC provides in its preamble (12) that "The best interests of the child should be a primary consideration of Member States when implementing this Directive" and in Article 30 dealing with unaccompanied minors reflects the application of that principle in its admonitions to the responsible State to ensure the representation of unaccompanied minors by legal guardianship or by an organisation responsible for the care and well-being of minors, to ensure that the minor's needs are duly met, to take into account the views of the child, to keep siblings together "taking into account their best interests", to keep unaccompanied children's changes of residence to a minimum and to protect their best interests by endeavouring to trace the members of the minor's family as soon as possible The UK's responsibilities to unaccompanied children are set down in the asylum acquis, immigration and family legislation. At its core such children are required to be safeguarded and their welfare promoted. The Reception Directive requires the care is provided to separated child

asylum seekers 'from the moment they are admitted to the territory to the moment they are obliged to leave the host Member State in which the application for asylum was made or is being examined' (Art 19.2)

**16** Border Citizenship and Immigration Act 2009 s.55; Immigration Rules HC 395 paras 350 – 352ZB

**17** [2015] UKSC 16 para 105; [2015] 1 WLR 1449

**18** The government stated to the Joint Committee on Human Rights and the UK's 5th Periodic Report to the UNCR that domestic law through the Human Rights Act 1998 and the Children Acts already enshrine the UNCR principles

**19** The Charter on Fundamental Rights of the European Union explicitly acknowledges the rights of children to such protection and care as is necessary for their well-being, to express their views freely and requires the best interests principle to be a primary consideration in all actions relating to children whether by public or private institutions and it absolutely prohibits the forced or compulsory labour and the trafficking of children (Article 18 24). All EU member states, including the UK are obliged to adhere to such rights in all EU measures implemented into domestic law, including the Qualification, Procedures and Reception Directives. The Explanatory Memorandum to the Charter makes explicit the drafter's intention to incorporate the wider obligations of UNCR into Article 24's free-standing safeguard for children – stating concerning Article 24 "This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof"

**20** See: *Zoumbas v Secretary of State for the Home Department* [2013] 1WLR 3690 at [10]-[13]; *Demir v Turkey* [2009] 48 EHRR 54; *Neulinger v Switzerland* [2010] 54 EHRR 31; *Opuz v Turkey* [2010] 50 EHRR 28; *Burnip v Birmingham City Council* [2013] PTSR 117; *V v United Kingdom* [2000] 30 EHRR 121; *R (T) v Chief Constable of Greater Manchester Police* [2014] UKSC 35; *X v Austria* [2013] 57 EHRR 14 considered in *SG & Ors, R (on the application of) v Secretary of State for Work and Pensions (SSWP)* [2015] UKSC 16; [2015] 1 WLR 1449 – in which the majority held that that the UNCR does not become relevant to every ECHR question which arises, simply because children are as a matter of fact affected by the decision or legal framework under consideration

**21** per Lady Hale at [23] [2011] UKSC 4; [2011] 2 AC 166

**22** See also discussion on the limits of the application of the best interest principle in *SG & Ors, R (on the application of) v Secretary of State for Work and Pensions (SSWP)* [2015] UKSC 16; [2015] 1 WLR 1449

**23** 'Welfare' under s.11 is not defined. But the term is to be understood in the context of the definition of "wellbeing" under s.10(2) as relating to children's:- a. Physical, mental and emotional well-being; b. protection from harm and neglect; c. education, training and recreation; d. the contribution made by them to society; and e. social and economic well-being

**24** Section 55 of the Borders Citizenship and Immigration Act 2009 states: Duty regarding the welfare of children (1) The Secretary of State must make arrangements for ensuring that— (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK, and (b) any services provided by another person pursuant to arrangements which are

made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need

(2) The functions referred to in subsection (1) are— (a) any function of the Secretary of State in relation to immigration, asylum or nationality; (b) any function conferred by or by virtue of the Immigration Acts on an immigration officer ... (3) A person exercising any of those functions must, in exercising the function, have regard to any guidance given to the person by the Secretary of State for the purpose of subsection (1)

**25** *Working Together to Safeguard Children* (March 2015) available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/419595/Working\\_Together\\_to\\_Safeguard\\_Children.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf); *Every Child Matters, Change for Children: Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children* (November 2009) available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257876/change-for-children.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf) (see also for devolved administrations Welsh Assembly Government (2007) *Safeguarding children: working together under the Children Act 2004*; Scottish Government (2014) *National guidance for child protection in Scotland: Getting it Right for Every Child*, Scottish Government (2014)

**26** *Ibid* *Every Child Matters, Change for Children*

**27** The Upper Tribunal of the Asylum and Immigration Chamber has made clear that while s.55 applies to decision-making concerning children in the UK, the UNCRC requirement to give primary consideration to a child's best interests applies to immigration decision making concerning children outside as well as inside the UK. Relevant to unaccompanied asylum seeker children, this would include decisions made about and processing arrangements for unaccompanied children in the UK's 'juxtaposed control' processing zones in France and Belgium. On the operation of these controls for children see: Matthews, A. *Landing in Dover: The Immigration Process Undergone by Unaccompanied Children arriving in Kent* Office of the Children's Commissioner Jan 2012, p.20. Available at: [www.childrenscommissioner.gov.uk/sites/default/files/publications/Landing\\_in\\_Dover.pdf](http://www.childrenscommissioner.gov.uk/sites/default/files/publications/Landing_in_Dover.pdf)

**28** UN Committee on the Rights of the Child, General Comment No. 14 (2013), The right of the child to have his or her best interests taken as a primary consideration, UN Doc. CRC/C/GC/14, paras 17, 19 & 20. The best interests' principle is developed further in the work of the UN Committee on the Rights of the Child, in particular in General Comment No. 5 which calls for the systematic consideration of the interests of children in 19 relation to all decisions and actions that affect them; in General Comment No. 6 which stresses the importance of a proper determination of the best interests of a child in order to guide decisions that "fundamentally impact on the unaccompanied or separated child's life" and in General Comment No. 14, which provides detailed guidance on the best interests' principle

**29** [2014] UKUT 517 (IAC)

**30** See also: *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74; [2013] 1 WLR 3690 in which concerning a proportionality assessment under Article 8 ECHR the Court (per Lord Hodge at [10]) outlined the processing principles including that "it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play"; "to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself

whether those interests are outweighed by the force of other considerations" and that there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an Article 8 assessment

**31** *JO and Others* at [10] - [12]

**32** *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 at [35]

**33** The Home Office guidance to its decision makers concerning this continuing obligation states: "Any decision which is taken without having regard to the need to safeguard and promote the welfare of any children involved will not be 'in accordance with the law'...Article 3 of the UNCRAC obligates the UKBA to ensure that the best interests of the child are a primary consideration in all actions concerning the child. This guidance must be read with this principle clearly in mind and the understanding that best interests is a continuous assessment that starts from the moment the child is encountered and continues until such time as a durable solution has been reached": *Asylum Policy Guidance, Processing an Asylum Application from a Child*, para 1.3. The Joint Committee on Human Rights held that the best interests of a child must be at the forefront of the minds of all those making decisions regarding the welfare of unaccompanied migrant children during the asylum and immigration process: Joint Committee on Human Rights, *Human Rights of Unaccompanied Children and Young People in the UK*, First report (2013-2014, HL9, HC196) 21

**34** *Ibid* paras 21-23 in SG & Ors, *R (on the application of) v Secretary of State for Work and Pensions* (SSWP) [2015] UKSC 16; [2015] 1 WLR a challenge on grounds of discrimination to the housing benefit cap policy – per Lord Carnwath at [108] "the evaluation needs to consider, where relevant, the interests both of children in general and of those directly affected by the action. It also needs to indicate the criteria by which the "high priority" given to children's interests has been weighed against other considerations. In so far as that evaluation shows conflict with the best interests of the children affected, it needs either to demonstrate how that conflict will be addressed, or alternatively what other considerations of equal or greater priority justify overriding those interests."

**35** UN Children's Rights Committee General Comment No.14 op. cit. para 6

**36** Consistent with this principle in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; [2011] 2 WLR 14. Miss Carss-Frisk (for the Secretary of State) acknowledged that the principle applied not only to how children are looked after in this country while decisions about immigration, asylum, deportation or removal are being made, but also to the decisions themselves

**37** Thus in responding to submissions that corporal punishment may be in a child's best interests, the Committee responded: "But interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity" [Committee on the Rights of the Child, General Comment No. 8 (2006) *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment* UN Doc. CRC/C/GC/8, para 26]

**38** HC 395 para 339L; See *KA (Afghanistan) & Ors v Secretary of State for the Home Department* [2012] EWCA Civ 1014 at [29] concerning the burden of proof on an young applicant to establish that he is entitled to what he is seeking and that a past lack of cooperation, including on tracing family, may lead to the drawing of an adverse inference

**39** UNCHR, Guidelines on International Protection No.8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08 ("UNHCR Child Guidelines") para 73; HC 395 para 351

**40** In *KS (benefit of the doubt)* [2014] UKUT 00552 the Upper Tribunal stated that the 'notion' (as it put it) of the benefit of the doubt adds nothing of substance to the lower standard of proof – observing 'if, if we have held, the benefit of the doubt is neither a legal rule nor a principle to be applied invariably, it cannot be converted to one by a more liberal application of it... Accordingly, except insofar as it operates as a useful reminder of what a decision-maker should do at the end point of the assessment of the credibility of a minor, the 20 notion of a liberal application of the benefit of the doubt is best understood simply as an expression of how the lower standard of proof is to be applied in making such an assessment. Application of that standard when the subject-matter is the evidence of a child must take account of the fact that the applicant is a child and that children in general are vulnerable in a way most adults are not'. Undercutting much of the established guidance on the protection for all children the Upper Tribunal also held at [8] that 'the liberal application of the doubt...may not necessarily be given if the [child] applicant has equivalent maturity to an adult' [96]. This is obviously a highly problematic stance. It leaves open the question of how an individual child's maturity is to be assessed. All too often, immigration judges make findings in relation to a child's maturity on the basis of entirely inappropriate factors. *KS* is a case in point, since in the decision appealed, the FTJ held that the claimant's maturity was indicated by his having successfully attempted the journey to the UK [105]. As the data summarised in Chapter 3 makes clear, children's journeys often render adolescents more vulnerable and more dependent on care and cannot be taken without more to signify a maturity denying them the 'benefit of the doubt' protection

**41** *Every Child Matters, Change for Children: Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children* (November 2009), available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257876/change-for-children.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf)

**42** Home Office guidance on processing an asylum application from a child. Available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257469/processingasylumapplication1.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processingasylumapplication1.pdf); *Mloja R (on the application of) v Secretary of State for the Home Department* [2005] EWHC 2833 (Admin) at [33]

**43** Adjudicator Guidance Note No.8, *Unaccompanied Children* (April 2004), available at: [www.judiciary.gov.uk/wp-content/uploads/2014/07/GuideNoteNo8.pdf](http://www.judiciary.gov.uk/wp-content/uploads/2014/07/GuideNoteNo8.pdf)

**44** *Equal Treatment Bench Book* (2013), available at: [www.judiciary.gov.uk/publications/equal-treatment-benchbook/](http://www.judiciary.gov.uk/publications/equal-treatment-benchbook/)

**45** Department for Education *Children looked after in England year ending 31 March 2015* (October 2015) available at: [www.gov.uk/government/uploads/system/uploads/](http://www.gov.uk/government/uploads/system/uploads/)

attachment\_data/file/464756/SFR34\_2015\_Text.pdf This number is higher than the number of asylum applicants because it is the total number of asylum seeking children in local authority care regardless of the year in which they applied, rather than the number applying in a particular year. The Children's Society report, *Not just a temporary fix: The search for durable solutions for separated migrant children*, 2015 p.8 records a response from a Freedom of Information (FOI) request, showing that there were 3,612 unaccompanied and separated migrant children in the care of the 107 local authorities, suggesting that numbers of separated migrant children may not be captured by the national data set on unaccompanied asylum-seeking children

**46** Not Just a temporary Fix, op.cit. p.11

**47** This duty applies to children looked after for more than 13 weeks after their 14th birthday

**48** [2008] UKHL 14 para 4

**49** (2006) Cm 6932, para 7.2

**50** The Department for Education *Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children* July 2014 p.8

**51** *ibid*

**52** *ibid* at [23-24]

**53** *ibid* pp.5; 9-10; 13; 51

**54** *ibid* pp.10, 34

**55** *ibid* pp.11-12; See also The Department for Education, *Statutory guidance on children who run away or go missing from home or care* January 2014 pp.17; 20; 73-79

**56** *ibid* p.9

**57** The Asylum Seekers (Reception Conditions) Regulations 2005, SI 2005/7, reg. 6

**58** In *KA (Afghanistan) & Ors* [2012] EWCA Civ 1014 the Court at [16] and [17] per Maurice Kay LJ held: The case for the appellants is that the duty to endeavour to trace simply was not complied with between 2006 and 2010; that this was not just a haphazard coincidence in the present cases; and that the irresistible inference is that it was deliberate and systemic. Indeed, it seems that in *DS (Afghanistan)*, the submission on behalf of the Secretary of State, which was rejected by this Court, was that she was "entitled to do nothing by way of tracing inquiries" (paragraph 44). In the present case, that has morphed into a submission which I can caricature as an entitlement to do next to nothing which I find equally unsustainable. The inference that I draw from the history prior to *DS (Afghanistan)* is that the Secretary of State failed to discharge the duty in relation to unaccompanied minors from Afghanistan because she adopted the policy of granting them leave to remain until they reached the 21 age of seventeen and a half, where after any further application would be considered on its merits. By that time, of course, the duty to endeavour to trace would be close to expiration because of the imminence of majority

**59** Children's Society op. cit. pp.17, 19-22

**60** Under the Children Act 2004 s.10(2), 9(a) (b), 11- the obligation on local authorities and agencies to safeguard and promote the welfare of children and to cooperate 'with a view to improving the well-being of children in the authority's area ... relating to - (a) physical and mental health and emotional well-being; (b) protection from harm and neglect; (c) education, training and recreation; (d) the contribution made by them to society [and] (e) social and economic well-being - apply not only to children but to former relevant children - that is to young adults,

including those formerly unaccompanied child asylum seekers. It should also be noted that the Care Planning, Placement and Case Review (England) Regulations 2010 and The Care Leavers (England) Regulations 2010 were amended in 2014 by the Care Planning and Care Leavers (Amendment) Regulations 2014 (SI 2014/1917) to require that duties owed to eligible children and former relevant children are to be fulfilled with particular regard to the child's circumstances and needs as unaccompanied or trafficked children

**61** See also HM Government, *Promoting the health and well-being of looked-after children* *Statutory guidance for local authorities, clinical commissioning groups and NHS England* March 2015, provides that good health assessment and planning should 'not be an isolated event but, rather, be part of the dynamic and continuous cycle of care planning'; 'focus on emotional and mental well-being as well as physical health'; 'carried out with sensitivity to the child's wishes and feelings and fears'; 'take account of any particular needs, including attention to issues of disability, race, culture and gender and if they are unaccompanied asylum seekers' and 'inform other aspects of care planning' p.44. **62** [2013] UKUT 568 para 31.



**Put Yourself in Our Shoes:**  
Considering Children's  
Best Interests in the  
Asylum System

## **Chapter 3**

The children  
Their profiles,  
flights and journeys

"They say  
go back,  
but all the world  
know that  
is not safe for  
my people"

“Migration transforms life forever... children seeking asylum endure in multiple ways as they leave their homelands and move across countries, as time passes, and as they grow up and adjust themselves psychologically. Once they are on the move, the past cannot be the future, even if they are returned to the country of origin for settlement. They (and their helpers) also have to work out what protection means, and where it lies, and with whom, at different stages of their transits, arrivals, and lifelong settlement.”<sup>1</sup>

Family life in the country of origin is replaced by dependence on agents, and peers who happen to travel with them replace friends. In the destination country, if they reach it, carers replace agents and new acquaintances and friendships are established, even within temporary circumstances... What is established is that from their genesis to their resolutions, such intrepid and secretive movement across borders and boundaries involve elements of luck and planning ... Here, entitlement and credibility are continually tested, not just at the borders between countries, but also at the boundaries of entering informal and formal networks of care and protection, and in keeping out of harm’s way.<sup>2</sup>

Change is what happens to the separated child. They become asylum seekers because a parent, carer or other adult has arranged for their journeys. They are put under the control of agents and, as Kohli has described, thereafter the changes in their lives (their journeys across countries, over time – their maturation and experiences) are determined by circumstances, by agents, their destination and the ethics, skills and expert knowledge of the carers and care systems in which they are assigned.<sup>3</sup>

The core of this study concerns a particular cohort of separated children seeking international protection. The majority are young asylum seekers newly arrived in the UK, predominately male, mid to late adolescents who have often recently endured dangerous journeys to the UK. These newly arrived children are frequently detected on arrival through port surveillance, or are first detected by the police or members of the public because they are young and homeless, appear distressed and are manifestly without support.

It is important to note that the profiles of separated children are varied and complex. A small group of children in this study did not come to the attention of the UK authorities immediately, and had spent some time in the UK prior to their protection needs and their ‘undocumented’ status being identified.<sup>4</sup> Some separated children may have passed through immigration control on pre-approved visas and are later identified as children in need because of child protection and/or trafficking concerns. Three of the children in this study arrived into the UK to join family, entering into private fostering arrangements on arrival. Six of the children in this study were reported as being trafficked into the UK for the purposes of sexual and/or labour exploitation. This small group of children arrived into the UK at varying ages, some as young as 10, their entry was in the company of and facilitated by adults. All were exploited and/or abused during their time in the UK and later received into the care and asylum systems as potential victims of trafficking or child abuse.

There are unknown numbers of separated and ‘undocumented’ children in the UK and numbers of them in private fostering placements. These children may come to the attention of the police, social services or the Home Office at times of family breakdown, child protection interventions and/or the child’s identification as a victim of trafficking or when, as older children, they seek safety, help and support. For some, this may be the first time that they become aware of their irregular immigration status. These young people may fear violence and/or persecutory practices in their country of origin, will be entitled to benefit from international protection frameworks in the UK and will frequently need to make asylum and/or human rights claims.<sup>5</sup>

As the text below makes clear a fuller picture of the profiles of these separated children emerges from the information examined in this study. Unsurprisingly, the information also spoke to the experiences of the children – the loss of their home, their everyday life, separation from and fears for siblings and parents, their physical and emotional maturation, and in the UK their schooling (some for the first time), their acculturation and their new attachments with foster families and friends. Many of the children are shown as trying to settle, feel safe and feel at home here. At the same time they are involved in complex immigration processes which will determine whether this will be their home.

“In this respect, protection is not simply a matter of being safe through obtaining refugee or some other form of enduring status within the codifications of the country of asylum or settlement, it is also about moving to re-building their lives, by using the scaffolding provided by others, as well as their own capabilities.”<sup>6</sup>

The young people interviewed as part of this Project described living with their hopes of refuge and suspended expectations:

*That’s like the future has just begun. Back then you were like stuck in a cage, but now it’s like the gate is wide open and you can come out. (Child granted international protection.)*

*I was absolutely all over the moon. At that moment something changed, and I felt my future is right in front of me, I can now do what I want to do. That door is really wide open, and I can go through it. (Child granted international protection.)*

*... [Home Office] application, was OK – but it’s scary to wait for the result, and complicated to know [the result]. (Child refused international protection.)*

*I am waiting. I am waiting for 6 months now. I am sure they are not even looking at the papers. If they were looking, I would have heard something by now. (Child refused international protection.)*

*If you’ve been here for 6, 7 or 8 years, you make friends, you make a family, you know the people, your solicitor, lawyer – everyone in this country. Then after that they say go back to (your country), that makes a lot of trouble for us. This is harder for us. Now is more hard if we go back. They say go back, but all the world know that [my country] is not safe for [my people]. (Child refused international protection.)*

*When something is good in your life they [the Home Office decision makers] can change your life. (Child granted international protection.)*

*It's like when you come here you are blind, then you get a stick to help you to go, because you don't know the language, the words they don't work, and you don't know the way. By the time you find out, you are refused and all that, so it's all mixed, and confusion and all that... (Child refused international protection.)*

Of the 621 questions answered by participating lawyers in this study, one in particular stands out as a marker of the particular rite of passage which these young people experience. The lawyers were asked to list the possessions children had with them on their arrival. While this information was not recorded for all the children, the answers given show that almost all of the sampled children arrived with very little or nothing from their past lives. Of the children recorded as having possessions, some had clothes (9), passports (8)<sup>7</sup>, mobile phones (7), ID documents (2), addresses and telephone numbers for friends / family (2), a family photo (1), a bible (1) and some money (3). Only two of the children had some evidence which could help to support their claim for international protection – one child had a DVD dealing with an uncle's death and another a UNHCR refugee camp ID. One young person reported that all his personal possessions were taken from him by the agent, a practice confirmed by other children smuggled to Europe by agents, and which can have significant consequences for children seeking to maintain contact with families left behind.<sup>8</sup>

While this and later chapters deal with the children's experiences as narrated by lawyers and as seen through the prism of their status and care claims, it is important to retain a sense of these most formative years as lived by these young people.

This chapter begins by comparing certain characteristics of the sampled children with the general profiles on unaccompanied young asylum seekers published by the Home Office. As detailed in Chapter 1, the 60 children included in this study were chosen at random by participating Law Centres.

It was therefore important to ascertain whether and to what extent these young people were broadly representative of the recorded population of unaccompanied child applicants in the UK. It is the conclusion of the Project team that the emergent picture of the young applicants is properly representative of the general profile and experiences of young asylum seeker children. Given the paucity of such studies, it cannot conclusively be asserted that each and all of the characteristics and experiences noted in this study are typical, but this can be generally inferred because of the close congruence of the child profiles in the study sample with Home Office data on the age, nationality and gender of the known young asylum seeker children in the UK. The recorded views and experiences of the young people cited in this study also correspond with and echo those of

other asylum seeker children interviewed by organisations supporting such children in the UK.

### Applications:

The Home Office publishes quarterly and annual statistics for all asylum applications made by unaccompanied child asylum applicants in the UK.<sup>9</sup> In the year ending 2014 some 1,945 young unaccompanied people claimed asylum in the UK. This was the same time period in which the 60 sampled children made their asylum claims.

### Age:

The surveyed children corresponded to the age profile of the UK's young asylum seeker population in 2014.

Age	Surveyed Children	%	UK Government published data (2014)	%
Under 14	6	10%	113	6%
14 – 15 years	18	30%	525	27%
16 – 17 years	36	60%	1220	63%
Unknown age	0	0%	87	4%

### Gender:

Parallels can also be found in the intersection of age and gender; Home Office figures identify males aged 16-17 as the largest young asylum application group, with 1,052 applications in 2014 (54% of applications for the year). Of the surveyed children, 30 were males aged 16-17, making up 50% of the sample.

In the sample, six of the 36 children aged 16 and above were girls; two of the 18 children aged between 14 and 16 were girls and there were no girls aged under 14. Comparable statistics for the gender of applicants further suggests that the surveyed young people were representative of the broader population of young asylum seekers.

Age	Surveyed Children		UK Government published data (2014)	
Total Male	52	10%	113	6%
Total Female	8	1,713	88%	27%

### Nationality:

The surveyed children also corresponded with the nationality profiles of the documented population of young unaccompanied asylum seeker children. The 60 children came from 18 different countries and, as with the general data the majority nationalities were Albanian (12), Eritrean (11), Afghan (8), Iranian (4), Syrian (4) and Vietnamese (3).

Nationality	Surveyed Children		UK Government published data (2014)	
Eritrea	11	18%	460	24%
Afghanistan	8	13%	179	9%
Syria	4	7%	118	6%
Vietnam	3	5%	103	5%
Iran	4	7%	73	4%
Other	18	30%	380	20%

Published Home Office data simply measures the gender, age, nationality and outcomes of unaccompanied children seeking asylum in the UK. There are no national statistics or figures to show either home country risk/harm factors claimed by children, or children’s characteristics directly impacting on their capacity to participate in asylum processing, such as their education or the length of their journeys to the UK. This survey allows for an examination of these issues.

### **Age at asylum claim and persecution:**

To take one clear example, the Home Office measure – the young person’s age at the date of claim – is not the only relevant measure. As children are required to establish their claim for protection, it is also important to know how old the children were when the events prompting their flight occurred. This survey asked lawyers to record this information.

Some 39 (65%) of the children who identified the early occurrence of their risk/ harm factors marked them as occurring throughout their childhood, or commencing/occurring when they were 13 years or under. Manifestly, children are likely to have limited knowledge or memory of events which occurred years previously and when they were very young.<sup>11</sup> As detailed in later chapters, where some young children have limited knowledge of these early events, their claims are rejected as ‘vague’ and unsubstantiated.<sup>12</sup>

### **Education level:**

The Home Office does not publish or appear to collate data on the educational background of child applicants, although this is another important indicator reflecting in some measure children’s understanding of and capacity to respond in interviews in the care and asylum systems.<sup>13</sup> However, published Home Office guidance to assist decision-makers with assessing and determining the asylum claims of children does mention the relevance of the child’s educational attainment as ‘indicating what is reasonable to ask at interview’.<sup>14</sup>

A number of studies have found that the educational background of unaccompanied children prior to their arrival in the UK is varied.<sup>15</sup> Some children may have regularly attended schools in their countries of origin

and completed a term of schooling appropriate for their age. Others may have had limited or interrupted education due to conflict and their flight.

In this study, of the 55 cases in which the child's education level was recorded, 41 of the children were recorded as having had some form of formal education during their childhood, while 14 were recorded as having had no formal education at all. The 41 were recorded as having a range of education experience prior to arrival. Some were recorded as attending state run educational facilities and others had community-based e.g. Arabic language and/or religious classes. The majority had limited or interrupted education:

- 3 were educated for less than 1 year
- 18 for 1 – 6 years
- 12 for 6 – 8 years
- 8 for 9 – 11 years

Some of the children described being taken out of school by their parents for fear of attacks, reprisal or kidnapping (one child was reported as kidnapped from school); others spoke of their school having been bombed or destroyed; or reported that they were taken out of school to begin working to help support their families; or left school because their family was unable to pay their school fees; or that their schooling ceased on their departure from their country of origin.<sup>16</sup>

### **Types of harm:**

There is some existing research on the motivations prompting the flight of refugee children, their experiences in transit to the country where they claimed protection and some studies have explored why unaccompanied asylum seeking children come to the UK, or the range of experiences that may have lead them to leave their country of origin.<sup>17</sup> To date there has been no government research into the general causes of migration for separated children who apply for asylum in the UK – although their extensive asylum interview data would assist to document this.<sup>18</sup> UN bodies, support organisations and academics have undertaken research to better understand the backgrounds and experiences of separated children, including child trafficking victims, those at risk of child-specific harm such as female genital cutting and/or forced marriage.<sup>19</sup> There is also a growing body of research on the harms which separated children are reported to have suffered in their home countries, on their journeys to Europe and the future risk/harm they claim to fear.<sup>20</sup>

In this study lawyers were asked a series of questions related to past, current and future harm reported and feared by the children.

Lawyers were asked to record if children reported suffering physical or psychological harm in their country of origin. Lawyers noted such claims were made in 39 of the 60 cases. Of those 39 cases, lawyers were asked

to record if the children claimed to have been subject to physical and/or psychological harm and to note the specific forms/types of harm which were reported. In the 39 cases, 25 children reported suffering physical injury and 20 as suffering psychological harm. The following types of harm were also identified and recorded:<sup>21</sup>

- Rape
- Torture
- Domestic violence / child abuse
- Sexual exploitation
- Forced labour / labour exploitation
- Forced conscription
- Unlawful detention (by rebel groups or state authorities)
- Witnessing the detention / arrest of family member
- Forced marriage
- FGM – subjected to and/or threats of
- Targeted violence of street children
- Witnessing harm to others
- Witnessing armed conflict
- Witnessing verbal abuse and threats against family
- Verbal abuse and threats against their person
- Discriminatory administrative measures
- Disproportionate prosecution / punishment of children
- Forced separation from family

It would appear from this study that numbers of the separated children arriving in the UK have suffered and/or witnessed violence or been threatened with violence in their home country. Children were recorded as suffering physical injury (including head injuries, stab wounds, shrapnel wounds and problems with their sight or hearing due to head injuries) and psychological injury (including emotional / psychological distress, confusion, significant anxiety or disabling depression/ PTSD or psychological trauma) from reported past harm.<sup>22</sup>

Some 20 of the children were noted to be suffering migraines, distress, anxiety, emotional disturbance and self-harming during the asylum process:

*Client presents as distressed and traumatised and he has self-harmed, referred to Baobab centre [a psychotherapeutic centre for young survivors in exile].*

*Initial medical assessment revealed child to suffer from PTSD symptoms.*

*Client suffers from trauma/PTSD consequent of experiences including rape.*

*Child has been beaten round the head suffers terrible headaches and was sexually abused -medical examinations are continuing.*

*Mental health is deteriorating. Further psychological therapy with Freedom from Torture underway.*

*[Child] is very self-conscious about visible scar on face which is associated with rape and forced abortion. Fixated on the scar because she believes that people look at it and it brings back memories of how the injury was sustained.*

All the children as refugee claimants were asked to record their fears and the lawyers to document the assessed future risk to the child. In all 60 cases individual, gender and child-specific grounds were recorded on which the international protection claims were based. In the 60 cases, the following 1951 Convention grounds were argued (alone or in combination): Race (3); Religion (3); Nationality (1); Political Opinion (in total 22 – the child's own opinion (4) and imputed opinion (18)); Membership of a Particular Social Group (39 in total – as sole and unprotected and homeless or street child (20); as an unprotected girl/young woman (2); former child trafficking victims (male and female) (6); victims of sexual exploitation / rape/abuse (3); as an unsupported, single mother (1); as a family member, including of a family in a blood feud (3); as a child at risk of forced conscription / detention due to illegal exit (8); on account of their sexual identity (2); the risk of FGM (1); their membership of a minority clan (2).

### **Flight from home and the journey to the UK**

Much of the survey commentary on the children's pre-arrival experiences concerned children's journeys to the UK. The data at Appendix D shows how individual the journey experience was for each child with children from the same country spending markedly different times on their journeys here.<sup>23</sup>

Some 14 of the 60 surveyed children arrived into the UK in under a week. Some of these children arrived into the UK by air, arriving with passports and visas (some fraudulent). Such journeys generally were short and uneventful, but for children flown to the UK with their traffickers, events soon after their arrival here proved traumatic.

Other children suffered severe hardship, abuse, privation, experienced great fear and confusion on journeys lasting months, sometimes years, with some trafficked and exploited for long periods on their journeys. Eight children had journeys that took 1-4 months, four took 4-6 months, and eight took 6-12 months. Eighteen – particularly those travelling overland from Africa, Asia or the Middle East – took between two and 12 months and nine of the 60 children experienced journeys that lasted between one and four years. Lawyers recorded that some of

these children were trafficked on their journey; had been forced into exploitative labour in transit, and several had been detained. Some of the trafficked/detained children were very young when they began their flight. Of the 59 children whose age at the time of flight was recorded, 12 were 13 years or under; 24 were under 16 and 23 over 16 years when they commenced their journeys.

The survey confirms a working assumption in studies on child refugees – that children generally do not choose to leave their homes but are sent, coerced or taken by adults and/or traffickers, on their journeys to Europe.<sup>24</sup> Of the 60 children in this survey only one child was recorded as having sought help from extended family members to leave his country of origin (this was because of family violence he suffered). In this, as in other studies, the child's flight often occurs quickly with little time for planning, explanations, consideration given to evidence gathering or even proper leave taking from their families. Departure is often remembered by children with sadness, loss, regret, guilt and anxiety.<sup>25</sup>

The sampled children – again consistent with other studies – were told little about their journey and in many cases were unaware of or deceived concerning the purpose of the journey and their destination – the lawyers noting:<sup>26</sup>

*The client stated that he understood that he was going to a safe place.*

*The child was told that he was being sent to the UK to study.*

*His uncle told him he was being smuggled out of the country to a place of safety.*

*Client was a street child when approached by trafficker. Told going abroad, to safety, to go to school.*

*“They never told me where they were taking me and no one explained what was going to happen to me. I felt very frightened.”  
[From child's account.]*

*Child acted on instructions of agents. Having landed in Italy, he was told the best place for him to go was the UK.*

*Was under the control of an agent, did as he was told.*

*She thought that she was joining her uncle. She was not aware of where he was staying apart from that it was in another country. She was however trafficked.*

*Sold by father to traffickers. Not told where he was going at any point during journey, nor did he appear to have an understanding of what to expect at end of journey.*

Of the 60 cases in this study, seven of the children travelled with family members at the point of flight from their country of origin but later became separated from their family.

*The client originally travelled with his mother from Syria to Turkey. He felt safe with his mother. He was then sent away with an agent and he was separated from his mother he did not know where he was going. The client stated that he was very hungry and was in a lorry for 4-5 days.*

*Child is suffering from PTSD, separated from cousin, has not disclosed all details of journey.*

*Child states he travelled through many places and did not know the names of these places. After he was separated from his family during the journey he was accompanied by agents who took him from one place to another. If he did not keep the pace with the agent he would be beaten.*

*Child was separated from family when fleeing Sudan aged 7. He spent years in Libya, about 2 years in Italy and 9 months in France, suffering various forms of abuse at the hands of various people during this time.*

Some children were in contact with family members whilst on their journey, and followed their instructions via phone and/or the agent.<sup>27</sup> The UNHCR study of the journey of Afghan children suggests such contacts often concerned delayed payments to the smugglers, or the child's desire to end his journey and remain in the country he had reached.<sup>28</sup>

*Child did not understand where he was going at any point.*

*Calais he was told to make his way to London where he had a cousin. The lorry however dropped him off in the Edinburgh area. He was located trying to walk to London.*

*Unclear if the child knew that his destination was the UK. Decisions being made by family members and agent. Child just understood going to a safe country and to do what agent said arranged by family.*

In two cases the children are recorded as having decided to come to the UK during their journey having received information or instruction during their flight that the UK was a safe country to go to.<sup>29</sup> The majority

of children (37 out of 60) are recorded as having had no or only partial knowledge that they were coming to the UK; 12 of the children knew their destination (the views of 11 children are unclear):

*Client asked to join a group of people at a site where he had been told lorries travelled from. He did not know where he was going.*

*Client was handed over from one agent to the next and spent time stowed away in a lorry not knowing where he was going.*

*The child did not know where they were or who they were with during a large portion of the journey, and was arrested and held numerous times.*

*Child did not know where he was going and felt very frightened. He was also left to his own devices once in the UK and was found by a British woman sleeping in her garage. She took him to the [local] refugee centre.*

The children are recorded as having multiple companions on their journeys; a small number (4) travelled with friends; the majority were with other displaced people (16), with people smugglers and traffickers (33).

For many of the children their journeys were fraught with dangers and difficulties. Some were detained when travelling through a number of countries and a number reported suffering abuse, violence and exploitation. Detentions in Libya were described as 'horrific' with children being imprisoned for extended periods, many described beatings being kicked, punched, and raped. The lawyer's summaries state:

*The client described a very dangerous and terrifying journey. He spent time in a refugee camp in Ethiopia (two camps). He was detained twice in Ethiopia and Libya. In Libya, he spent 2 weeks in detention. The journey between Sudan and Libya was particularly perilous... If his relative had not transferred money, he would have been sold into slavery. There was a serious accident on this journey. In Libya, he was locked in a house for 2 weeks until further money was paid by relatives. He was then held in a prison by the Libyan authorities who caught him trying to get on a boat to Italy. The authorities were bribed to release him.*

*The boat he got on to Italy capsized and he was rescued by Italian coastguards. The client had just as much trauma problems linked to the journey than he did to treatment experienced in Eritrea.*

*There were periods of time spent in a refugee camp. The agents were abusive at points in the journey which scared the client. This was particularly the case in Libya where he was locked in a house until*

*a family member paid for the journey. He travelled on small boat to Italy which was dangerous.*

*Sudan for 3 weeks, detained in Tripoli in an overcrowded prison for 2 months, escaped, dangerous boat journey across Mediterranean, then cross country to Calais, then lorry to UK.*

*He spent 8 months in detention in Greece, suffering beatings and rape.*

*Child was frightened of the agents and was manhandled. He ended up with a long term medical condition as a result of the journey.*

*The child stated that he did not know what was happening most of the time and he did not know where he was. He stated that he was dizzy and vomiting.*

*Child was fed biscuits by agent during his journey. Locked inside a boat, abandoned, and boat began to sink....[later] Tied in the back of a lorry in a warehouse on arrival in UK.*

*Child fled Morocco and spent two years plus travelling around Europe living hand to mouth, taking state assistance where available and moving on.*

*Travelled in a very unsafe boat/vessel from Egypt to Italy, saw a lot of illness, mistreatment of other 'passengers', bad conditions on vessel when in Italy, had to live with an older man and do his housework/cooking etc to 'pay' for the accommodation.*

*Child was locked into a house in an unknown European country and trafficked for forced labour. He was threatened, and physically abused and threatened with sexual abuse. He was subjected to severe deprivation.*

*The child described being not allowed to speak and being pushed into a lorry with adults. The child explained that she was raped by the agent while in Morocco and France. The child stated that she was very scared at all times and that she did not complain.*

*The child was threatened with a knife when he was in one of the lorries on his journey. He said that he was ill and groaning. He was told that if he did not shut up then he would be killed.*

*Locked into house in Russia for 3 months, forced into domestic servitude. Journey by lorry from Russia to France – stressful and feeling unsafe. Forest in France for 3 months – tired, cold and unsafe. Near suffocation en route to UK by lorry.*

*It was a dangerous journey at times (she was kept in a small box for some of it where she struggled to breathe). She was in the control of different traffickers at different points. It became abusive at the final destination when it became clear she and others she was with were to be exploited. She managed to escape before this occurred.*

Some of the children brought to the UK by traffickers – as in the example quoted above – had experience or intimations of their proposed exploitation during their journeys. Others became fearful after arrival when subjected to or exposed to fear of exploitation here:<sup>30</sup> She was told she had to lie to immigration officials but was not actually questioned by them.

*She did not feel unsafe during the journey but on arrival she was taken to a house in London and handed over to an unknown man whom she found frightening.*

*Child was taken to an aunty and uncle in UK who were supposed to facilitate his education in the UK but were abusive and neglectful. He was placed with foster carers.*

*Client travelled by airplane with trafficker – the journey itself was straight forward. However, she and her friends were detained in trafficker's house for several months before journey and they were also locked into a house in London for purposes of sexual exploitation for a week or so after – so these aspects of her journey ... were traumatic and involved restriction of freedom of movement and considerable fear.*

It is of real concern that these distressing experiences are overlooked by lawyers, social workers and immigration caseworkers.<sup>31</sup> As Chapter 6 makes clear, these details should shape the arrangements and timetabling of child interviews, feature in risk analysis and for social workers suggest a need for counselling or other therapeutic responses and longer, supportive foster care placements.<sup>32</sup> However, it is essential that lawyers exercise care in seeking instructions on these traumatic experiences. As this survey shows numbers of children are reluctant to speak of these experiences during the time frame of their asylum processing.

**1** Kohli, RKS, 'Protecting Asylum Seeking Children on the Move' in *Revue Européenne des Migrations Internationales* 2014, 30 (1) pp.99-100.

**2** *ibid* pp.88-89.

**3** *ibid* p.84.

**4** Undocumented children may be those who have entered into the UK on visas and permits which have expired (commonly termed as 'overstayers'), others may have arrived into the UK on false documents facilitated by adults or traffickers, whilst there may be some children who are born in the UK but do not have permission to remain.

**5** UK Government, Policies, practices and data on unaccompanied minors in 2014 National Contribution from the United Kingdom, May 2015 "For instance, a child may move between the unaccompanied and accompanied categories.....a child arrives with their parents or close relatives but is later abandoned; a trafficked child, or one brought in on false papers, is with an adult claiming to be a relative." p.4. Available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257469/processingasylumapplication1.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processingasylumapplication1.pdf).

**6** Kohli, *Protecting Asylum Seeking Children on the Move*, op. cit. p.86.

**7** Most of the children who held passports had them taken away by agents/traffickers/family prior to, during and/or after their arrival to the UK. In the cases involving potential victims of trafficking, their entry to the UK was facilitated through the use of fraudulent documentation. Lawyers recorded that none of the children had passports in their possession at time of their representation.

**8** UN High Commissioner for Refugees (UNHCR), *Trees Only Move in the Wind: A Study of Unaccompanied Afghan Children in Europe* UNHCR Policy Development and Evaluation Service, PDES/2010/05 (June 2010) p.21 paras 128-129. The Children's Society report (2011) *Into the Unknown* op. cit., p.9 also recorded the 'common and extremely stressful experience' for separated children was when their case files and essential information, such as identification documents, were lost by the UKBA for long periods of time or even permanently.

**9** Home Office *Immigration Statistics April to June 2015 Asylum table as 07q* Available at: [www.gov.uk/government/publications/immigration-statistics-april-to-june-2015/asylum#unaccompanied-asylum-seeking-children-uasc](http://www.gov.uk/government/publications/immigration-statistics-april-to-june-2015/asylum#unaccompanied-asylum-seeking-children-uasc).

**10** The ages given by the surveyed young people (and broadly accepted) at their date of claim were between 10 and 17.5 years. There were no children under 10 years old at the date of their claims. The majority of children were 16.5 / 17 years old. Thus 36 of the sampled 60 children (60%) were aged between 16 and 17½; 18 of the 60 (30%) were aged between 14 and 16; 6 were under 14 (10%).

**11** In *KS (benefit of the doubt)* [2014] UKUT 552 (IAC) the Upper Tribunal accepted at [99] that a child-sensitive application of the lower standard of proof may need to be given to persons if they are recounting relevant events that took place at a time when they were minors or were even younger minors.

**12** See: UNHCR *The Heart of the Matter* (2014) op. cit. pp.73 & 148-150.

**13** Children claiming asylum in the UK are required to complete and return a detailed *Statement of Evidence Form (SEF)* and submit this to the Home Office within 20 days of issue. Within the SEF there is one question on education, requiring the child to record the name and address of their school and dates attended. In some regional areas,

local authority staff and/or lawyers may be asked to complete a pre-screening interview form – entitled 'pre-appointment questions for children in the care of social services who are claiming asylum' – which asks for the address of the child's school and name of their teacher if they say they attended school.

**14** See: Home Office, *Asylum Process Guidance Processing an asylum application from a child*. This guidance refers to the educational attainment of a child and its relevance in assessing and determining the child's asylum claim in two sections of the guidance, advising decision-makers to '...consider factors that would affect a child's demeanour such as age, education, maturity.' (s.16) and that they should consider the 'level of detail and the language used in the witness statement. This will help the case owner understand the education, maturity and general background of the child, thus indicating what is reasonable to ask at interview' (s13.3).

**15** Chase, E. Knight, A. & Statham, J. (2008) *The emotional wellbeing of unaccompanied young people seeking asylum in the UK* Thomas Coram Research Unit, British Association for Adoption and Fostering; Wade, J., Mitchell, F., & Baylis, G., *Unaccompanied Asylum Seeking Children: The response of social work services*, British Association of Adoption and Fostering (BAAF) 2005. See also in respect of unaccompanied children in the EU, UNHCR *The Heart of the Matter* (2014) op. cit.

**16** This education profile corresponds in large measure with the data on education which the UNHCR collected concerning Afghan child claimants in *Trees Only Move in the Wind* (2010) op. cit. p.12 paras 48-50. In that study information on the young people's educational background was available for 93 of the 110 boys included in the analysis. A little more than half of the boys (52) had at least one year's formal education, a third of them (33) attended school between five and 11 years. Of the 41 boys who had not attended school, six had received informal education, primarily home schooling.

**17** Feeling unsafe, security situation and armed conflict, human rights abuses, death of family members, persecution of family members or of the child, deprivation, neglect, severe poverty, and exploitation. See for example: Ayotte, W. (2000) *Separated children coming to Western Europe Why they travel and how they arrive* Save the Children, London; Halvorsen, K. (2002) 'Separated children seeking asylum: the most vulnerable of all'. *Forced Migration Review* 12, 34–36, 7; Thomas, S., Nafees, B. & Bhugra, D. (2004) 'I was running away from death' – the pre-flight experiences of unaccompanied asylum seeking children in the UK *Child: Care, Health & Development*, 30:2, March pp.113–122; Hewitt, T. et al. (2005) *Uncertain futures. Children seeking asylum in Wales* Wales Programme of Save the Children; Hopkins, P. & Hill, M. (2006) *This is a good place to live and think about the future...The needs and experiences of unaccompanied asylum-seeking children in Scotland* The Glasgow Centre for the Child & Society and Scottish Refugee Council; European Migration Network (EMN) Synthesis Report for the EMN Focussed Study 2014 *Policies, practices and data on unaccompanied minors in the EU Member States and Norway* May 2015 p.12.

**18** As noted by the UK Government in its contribution to a recent EU Commission report: "Whilst the Home Office has not commissioned specific research into the motivation and reasons for UASC [unaccompanied asylum seeker children] seeking entry into the UK, it is recognised that this is likely to be as complex and diverse as the backgrounds of the children themselves. Also, as these are children, the decision to leave their

country and/or travel to the UK may not have even been made by the child." Thorpe, K. *Policies, practices and data on unaccompanied minors in 2014. National Contribution from the United Kingdom* Home Office (May 2015) p.4. Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/unaccompanied-minors/28a\\_uk\\_uam\\_study\\_2014\\_final.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/28a_uk_uam_study_2014_final.pdf).

**19** See the bibliography to this study listing relevant studies on separated children. In 2013 UNICEF published what has been described as the most comprehensive compilation of data and analysis on the prevalence of FGM in Africa and the Middle East in their document: *Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change* (July 2013) available at: [www.childinfo.org/files/FGCM\\_Lo\\_res.pdf](http://www.childinfo.org/files/FGCM_Lo_res.pdf)

**20** See studies at footnotes 16 and 17 as comparators for the experiences of the sampled children.

**21** In response to this question 32 lawyers answered 'yes' to the question whether their child client had suffered harm but in the following question asking for the type of harm to be specified 39 lawyers gave details of the types of harm. We have therefore taken the figure of 39 as the figure for children reporting harm.

**22** This is broadly in line with a study of 100 unaccompanied children described in Thomas, S., Nafees, B. and Bhugra, D. (2004) 'I was running away from death' (note 19) in which, concerning a group predominantly African, male and over 15, it was found that some form of violence was the primary reason for flight in almost all cases, with rape (of boys and girls) a particular problem.

**23** This appears to depend in large measure on the means of the family and the sum of money expended on the child's travel. The UNHCR study of Afghan children's journeys, *Trees Only Move in the Wind* (2010) op. cit. noted: Arranging travel to Europe from Afghanistan is a very costly matter. Amounts up to \$15,000 were mentioned for an 'all-inclusive' trip to a selected destination (such as Germany, Norway or the UK) while figures of \$6,000-7,000 were quoted for the journey through Iran and Turkey to Greece, or \$3,000-\$5,000 to Turkey. Families could thus choose according to their means or their capacity to secure loans. Those with limited means would choose a less expensive initial destination such as Turkey or Greece, in the hope that their sons would be able to earn enough there to cover their costs for the next stage of the journey. As noted by the EMN Synthesis Report, 2015 and EMN national reports, Policies, practices and data on unaccompanied minors in the EU Member States and Norway, May 2015 pp.12, 13, 17 –.....in most cases the initial decision to migrate is made by parents or family members and not by the minor himself/ herself the (Member) State in which the UAMs actually arrive/ are intercepted/ or are registered by the authorities, can be unintentional and dependent on external factors. In fact, UAMs might not even know why they have ended up in a particular (Member) State.....smugglers adapt the routes and destination countries to changes in border control strategies. Because of insufficient funds, or the demand for more money by smugglers on route, the UAM may also end up and be left alone in a different destination country than the one originally chosen...As such, the child has often little control over his/ her travel route and destination.

**24** Matthews, A. (2014) *What's Going to Happen Tomorrow? Unaccompanied Children Refused Asylum* The Office of the Children's Commissioner for England, April p.49; The Children's Society (2011) *Into the Unknown* op. cit.; Nicolini, A., 'The

Afghan Migration Project after 2001: Destination London', presentation at Graduate Student Migration Research Seminar 2010, University of Oxford; Hopkins and Hill (2006); EU Fundamental Rights Agency 2009; Rice, L. & Poppleton, S. *Policies on reception, return, integration arrangements for, and numbers of, unaccompanied minors – UK report for an EU comparative study* UK National Contact Point for the European Migration Network. Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/unaccompanied-minors/27\\_united\\_kingdom\\_national\\_report\\_on\\_unaccompanied\\_minors\\_final\\_version\\_16mar10\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/27_united_kingdom_national_report_on_unaccompanied_minors_final_version_16mar10_en.pdf).

**25** Matthews, A. (The Office of the Children's Commissioner for England) (2014) op. cit. p.11; Chase, E. et al (2008) op. cit.

**26** *Trees Only Move in the Wind* (2010) op. cit. paras 75–78 p.16 states: "Some Afghan children set out with a specific European destination country in mind, usually one where family or community members were to be found. However, the majority of those interviewed in the course of this study said that they did not have such clear objectives. Those whose parents had paid for the journey were often told to ask for asylum in whatever country the agent or smuggler told them to stay. Whether the parents were themselves aware of which country that might be is unknown..." The OCC study, Matthews, A. *What's Going to happen Tomorrow* (op. cit.), further stated at p.50: "Participants only rarely suggested that the UK had been a positive choice on their part as a destination country, particularly at the start of their journey: While there is on-going debate and discussion about which European country might be best to try and make a future in amongst young migrants as they travel, these details are not necessarily known by the adults sending them away."

**27** *Trees Only Move in the Wind* (2010) op. cit. paras 75–78 p.16 states: "... it is clear that they [the parents] generally continue to play a role in decision-making as the journey progresses. A number of boys reported having spoken with their parents to seek permission to stay in a particular country since they could not face travelling any further. In some cases the parents had agreed, but others had instructed their sons to continue to whichever country the smugglers had designated for them. Afghan children who were paying for their own journeys, or whose families' means were limited, tended to move step by step, paying for each segment as they went along, and hoping to earn enough money along the way, or have it paid by their family, to keep going to the next country. A clearer understanding of the pros and cons of transiting or seeking asylum in different countries in Europe inevitably developed enroute. By the time they reached France, for example, most boys were very clear whether they were heading for the UK or for Scandinavia."

**28** *ibid* p.17 paras 84–92 "In view of the large sums of money involved, it seems likely that many families will have entered into serious debt to pay for the journey. Boys also explained how they or their family had sold a piece of land, a house or a car in order to raise cash. Where such options were not available, or when they did not raise enough to cover the full journey, an agreement would be reached with the selected agent to make the payment in instalments...these payment arrangements have serious implications for the safety of the boys once they have started their journey. It is important to recall that the contract for the journey, whether full or partial, is established between the individual paying for the travel (parent, employer, uncle) and the local agent. Consequently, it is the parent, uncle or

employer who remains responsible for paying the subsequent instalments. If a payment is delayed at the place of origin, the boy will remain where he is, often in unsavoury and dangerous conditions, at the mercy of whoever is organizing the movement at that location. Boys who are paying their own way are at even greater risk, as they have no one but themselves to count on once their initial savings have run out, and often find themselves in places where wage labour is illegal, scarce and very poorly paid. It is in such circumstances that the risk of trafficking increases, as boys may find themselves obliged to accept work from smugglers under exploitative conditions in order to retain the possibility of continuing their journey."

**29** The OCC study, Matthews, A. (2014) *What's Going to Happen Tomorrow*, op. cit. p.50; EMN Synthesis Report, 2015 and EMN national reports, Policies, practices and data on unaccompanied minors in the EU Member States and Norway, May 2015 p.13.

**30** Studies document the vulnerability of separated children and young people. See: Knauder, B. & Hancilova, B. *Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practices* International Organization for Migration, December 2011; Kanics, J. et al *Migrating alone – unaccompanied and separated children's migration to Europe* UNESCO, 2010. Available at: <http://unesdoc.unesco.org/images/0019/001907/190796e.pdf>; Boland K., *Children on the move: a report on children of Afghan origin moving to western countries* February 2010 UNICEF, Geneva – A report of 20 unaccompanied Afghan children in the UK and Norway reported children's experiences of living in containers without food or water and seeing companions suffocated to death, 2010; Halvorsen, K, noted 'some are recruited by traffickers either in their country of origin or en route' Separated children seeking asylum: the most vulnerable of all, *Forced Migration Review*, 2002 12, pp.34–36.

**31** Chase, E. et al (2008) op. cit.; the 2014 Department for Education statutory guidance for social workers recognises these journey experiences as part of the care assessment and the impact they may have on children [pp.1, 23, 36]... They may have experienced emotional trauma in their country of birth, in their journey to the UK or through their treatment by adults in the UK. They are likely to be uncertain or unaware of who to trust and of their rights. They may be unaware of their right to have a childhood [p.1].

**32** As recently advised by the Association of Directors of Children's Services, *Age assessment guidance for social workers*, October 2015 [pp.10; 54].



**Put Yourself in Our Shoes:**  
Considering Children's  
Best Interests in the  
Asylum System

## Chapter 4

### Processing the asylum claim

"It's like when  
you come here  
you are blind, then  
you get  
a stick to  
help you to go"

**As described in Chapter 3, for many of the young people their flight from home and journeys to the UK represented a loss of independence and autonomy, and the replacement of familiar routines with wholly uncertain and precarious futures.**

*You don't know nothing when you come to this country. You don't know no people, you are lonely, you can't find a way, you can't speak, you don't know the language, it is a different country so... (Child refused international protection.)*

It is telling that of the sampled children only one boy is recorded as choosing to leave his home and travel to Europe – the rest are stated to have been sent away from their homes, had little if any choice as to their passage and destination and were marshalled and controlled by agents or traffickers.

Most of the sampled children were brought into or arrived in the UK clandestinely (48 of the 60 children)<sup>1</sup>; six entered with fraudulent documents (arranged by agents or traffickers) and four are recorded as having entered lawfully with travel documents and visas (these included overstayer/trafficked children whose 'family' placements in the UK subsequently broke down).<sup>2</sup>

Given their unlawful entry and lack of identity documents, the majority of the young people therefore were detected and introduced to the UK asylum system via initial identification and 'screening' processes once in-country.<sup>3</sup> Initial contact processes varied according to where a child was first identified and by whom. Formal asylum screening processes were largely undertaken by immigration officers and social workers, although many of the children were recorded as having 'initial' contact with a range of adults prior to entering these processes.

Children in this study continued to be under adult direction following their arrival in the UK. They were allocated to a local authority, a social worker, a key worker, guardian or foster carer and required to undertake and cooperate with screening and interview procedures with immigration officials, which many of them did not properly understand.<sup>4</sup> Most were also allocated a legal representative early on in the asylum process prior to or following screening. Their allocation to social workers and lawyers were protective measures, to provide them with support and protection. The young people, then in unfamiliar surroundings, did not make informed choices about their place of residence or allocation of representatives.

The observation as to the children continuing under adult direction in the UK is made simply to underline that during their immigration processing each and all of the important decisions about the child's place of residence, the type of accommodation provided and the persons who were to care for and assist them in various care, immigration and legal processes were taken on behalf of the children. It is therefore important that separated children are assisted to understand the processes in which they are involved, why they are being questioned, the purpose of interviews, and the reasons why choices and decisions are made by adults

acting on their behalf. It is also important to deal with their anxiety and confusion about often fast changing, unfamiliar events.<sup>5</sup>

*It's like when you come here you are blind, then you get a stick to help you to go, because you don't know the language, the words they don't work, and you don't know the way. By the time you find out, you are refused and all that, so it's all mixed, and confusion and all that... (Child refused international protection.)*

The survey data identifies certain key problems in the identification, reception into care and immigration processing of many of the surveyed children. These problems and some examples of good practice are featured in turn.

It is well to begin from the vantage point of the children when evaluating these identity, screening and assessment processes. From that perspective:

- i. A first consideration concerns the child's autonomy, choices and understanding of the arrangements made for them.
- ii. The context in which post arrival identification, screening and assessment is undertaken – namely the long, tiring and often frightening journey the child may just have completed.
- iii. A recognition of the significant number of people the child encountered on this journey – some of whom (agents, state police and border officials, prison/detention centre staff and other travellers) may have exploited or abused the children and damaged their trust in adults.<sup>6</sup>
- iv. The often confusing array of different officials and professionals whom the child encounters and interacts with on arrival and in their time in immigration processing and the care system.

The officials, professionals and experts whom most unaccompanied children seeking asylum can expect to have dealings with throughout the asylum process include the following. The survey noted many children engaging with different individuals in each of these roles in the course of their interactions:

- Port staff and Home Office screening and interviewing officers and their interpreters.
- Police.
- Foster carers.
- Allocated social workers.
- Child Protection Officers.
- Assigned key workers / support workers.

- Social workers undertaking age assessments (who usually differ from allocated staff)
- Housing provider support staff.
- Teachers.
- Support staff at NGOs.
- Refugee Council's Children's Panel Advisers.
- Scottish Guardians.
- General practitioners / counsellors / psychologists / psychiatrists / psychotherapists.
- Other young people in foster care or co-tenants in supported accommodation.
- Lawyers and their staff.
- An array of interpreters aiding the work of all the professionals listed above.

Many of the lawyers noted their child client's confusion and anxiety over these processes and the professionals involved.

*The client was anxious at the start about where she was, what was happening to her and the roles of different professionals. The role of the [Scottish] guardian was key in [explaining] this process.*

*When I came over as a child – I was 13 years old – I didn't know about the asylum seekers. When I get here I did not know about the lawyers. They didn't mention to us anything (about asylum) the first time. Now they make us into liars about everything. (Child refused international protection.)*

### **Initial identification and pre-screening interviews**

Some 25 of the sampled children were first identified by police or immigration officials shortly after arrival.<sup>7</sup> Others were first identified by members of the public / strangers and/or other professionals:<sup>8</sup>

*The child was found by the police in the lorry that she travelled in from France.*

*The police stopped the child while he was walking alongside the motorway.*

*Child was found by officials tied inside a lorry.*

*The client was very hungry and distressed when he got off the lorry. He attended a shop and tried to ask for food and drink and the police were telephoned by the shop assistant.*

*Child spoke to passers-by and was directed to police station. He didn't know he was in the UK. He spent a whole night inside a telephone booth as he didn't know where he was.*

*Eventually he met someone who then took him to the Home Office where he claimed asylum.*

*Child walked into a shop and asked for the police. Police was called. Client had been waiting for hours hoping his uncle would come...*

Children identified or discovered by members of the public were usually referred to the police. It is police practice to ascertain identity details from such children and to refer them to local authority social services departments. Some of the young claimants (12) were recorded as having spent some time in police custody, most were referred directly to local authorities as children in need and collected from the police station by social workers. A minority were screened by immigration officers and age assessed by social workers whilst at the police station.

*The child was detained until after he had an initial interview and age assessment to wait for Social Worker.*

*The client informed me at the initial interview that an age assessment was carried out at the police station by two female social workers before he had the screening interview.*

Some of the children had their first interaction with officials via Home Office staff. This may have been at a port (air or sea), at a police station or at the Asylum Screening Unit (ASU) in Croydon to which some children were taken or directed by their smugglers or members of the public. As with the police, immigration officers are also obliged to identify children who are in need and who may be at risk of harm and to refer them to the appropriate agency and work effectively with that agency.<sup>9</sup>

On one occasion – as with the example below – the young person was treated as an adult and detained with adults until assisted to claim and to be identified as an unaccompanied asylum seeking child.<sup>10</sup>

*I was arrested in England on the motorway 3 years ago, and they took me to a detention centre 2 or 3 times. Then I was released and sent to a YMCA here. I felt very bad and scary about everything. I thought it looked like a jail and things. I feel very bad. Then a social worker came. She did not believe my age. Then the Refugee Council helped me. They sent me a worker from the Red Cross. She helped me. She took me to a solicitor. She said, "They will help you about your case, about your age, and everything..." (Child granted international protection.)*

Lawyers were asked to comment on any observations or instructions they received from their child clients on their experience of initial contacts. The lawyers noted the children:

- *Seemed pleased to have made contact and been taken into care*
- *Seemed happy to be accepted and referred on to a local authority.*
- *Seemed to believe he would be cared for and off the streets, and therefore content with this*
- *As noted on the Home Office record – child wanted to speak to his dad and immigration officer told him he would be allowed to make an international call to his dad shortly.*

It was evident from the study that many of the lawyers knew little about the circumstances of these first Home Office contacts and interviews. Lawyers were not instructed at this early period and noted that their child clients ‘had a poor recollection’ of this initial contact period. Most of the lawyers were unable to answer survey questions concerning whether prior to the formal asylum screening interview the children were searched, fingerprinted, had provided any documentary evidence to police or the Home Office, were interviewed and/or whether they were assisted in these early pre-screening interviews by a responsible adult.

Of the 60 lawyers, 11 clearly identified and recorded pre-screening processes, and their responses are included in order to shed a light on some of the first interactions children may have had with officials on arrival. Otherwise the detail of what occurred at this stage is largely unknown.<sup>11</sup>

These first Home Office contact interviews – formerly termed ‘illegal entry interviews’ – were heavily criticized in a report published by Refugee and Migrant Justice in 2010 entitled *Safe at Last: Children on the frontline of UK Border Control*.<sup>12</sup> The report highlighted the detention of unaccompanied children at the port of Dover where illegal entry interviews were carried out immediately on arrival without allowing children an opportunity to recover from their journeys. Children were not informed of the purpose of the interview, they were carried out without any independent responsible adult or legal representative present, and sometimes without the right interpreters. The interview records were later used to discredit the children’s claims for international protection.

Following intervention from the Office of the Children’s Commissioner for England<sup>13</sup> and litigation challenging the Home Secretary’s detention of children and reliance on these illegal entry interview records to discredit the child’s evidence in their protection claims,<sup>14</sup> the Home Office made changes to their pre-screening processes. Pre-screening interviews were renamed ‘welfare interviews’, ‘initial contact interviews’ or ‘arrival interviews’ to reflect a different focus and the Home Office accepted that unaccompanied children must be afforded an opportunity to rest and recuperate and provided an opportunity to access representation before they were subject to formal screening and asylum processes.<sup>15</sup> In a recent response to an EU wide study, the Home Office confirmed that children identified in-country will be referred to social services, will be subject to

a short welfare interview in regards to the child's health and wellbeing and their basic personal details taken. 'A *screening interview will be conducted after a period of four days for recuperation (this period may vary in practice, but will be a minimum of four days)*'.<sup>16</sup> This will be the same for unaccompanied children detected in-country by the authorities and/or if they present at the Asylum Reporting Centre/Asylum Screening Unit.<sup>17</sup>

The sampled cases illustrate better practice concerning these initial and pre-screening contacts. Most children on identification were referred to local authorities on initial contact and given time (generally two to four weeks) to recover, rest and settle before having a first Home Office screening interview.

However a minority of the sampled children were subjected to a screening interview at first contact or given pre-screening, searching interviews on the day they arrived.<sup>18</sup>

*I was interviewed 3 times. The first times I was scary and worried, but then I came to the interview with my lawyer, and they know what happened to me in my country. There was an interpreter with me. He helped me to understand anything. And they gave me 2 or 3 break times. When I said I needed a break, they gave me a break. (Child granted international protection.)*

In the 48 cases in which detail about the child's first contact processes were recorded, lawyers said that in 11 cases the child was interviewed by the Home Office prior to the formal screening interview.<sup>19</sup>

The pre-screening interviews were by port staff or customs on arrival, or were booking desk or pre-appointment interviews. A small number of children (3) were detained between two and four hours as part of these interview arrangements:<sup>20</sup>

*Airport proceedings went on for hours, but there is a note that a document was not yet served on [passenger] pax as pax was sleeping so there were clearly breaks.*

Five lawyers included notes of pre-screening interviews providing details of the questions posed (including certain questions properly directed to identifying whether the child was a potential trafficking victim):

*Questions around the situation she was in within the UK and whether she had freedom of movement/was harmed. Questions designed to elicit whether there were indicators of human trafficking.*

*He was asked “what was your reason for coming to the UK...reasons for travel, who is the person you are meeting, what are you going to do here, do you want to claim asylum, why are you afraid to go back”*

*“Are you saying that you are afraid that you will be harmed if you return to your home country?”*

*No specific questions but the ‘basic questions’ included questions about medical conditions which are relevant to her asylum claim – lower abdominal pain, headache and back ache.*

*The officer asked about whether claims to asylum were made in the countries visited before entering the UK. None were made before the UK.*

Three lawyers identified difficulties with the interpreter during the pre-screening process; in one a security official at the airport was brought in as the ‘responsible adult’; in five cases the child was recorded as being fingerprinted and searched and four of the lawyers commented that the file notes pertaining to these pre-screening processes included references to – for example – the child’s ‘distress’, trafficking indicators and observations about the child’s ‘scars from physical abuse.’ The children were issued with notices warning them of their liability to detention and removal.

## **Screening**

The asylum screening interview is a formal procedure by which a child’s actual claim for asylum is registered and lodged with the Home Office. The experiences of children during the initial screening processes have been well documented in reports by the Office of the Children’s Commissioner for England<sup>21</sup> and in evidence to the Joint Committee on Human Rights where it was argued that far too often screening blurs into wider information-gathering and this should cease.<sup>22</sup> As stated, these reports recommended that separated children should not be screened on their first contact with the Home Office.<sup>23</sup>

This study found that most children were given an opportunity to rest and settle in following initial identification and prior to a formal screening process, with the majority given more than four days – and a number two to four weeks (see Appendix E Table of ‘Time Taken through the Asylum Process’). Most of the children were recorded as screened at the Asylum Screening Unit in Croydon (27); some were screened at a local immigration office or regional port office (21), two at a police station, three at local authority offices and five at the Home Office premises in Glasgow.

The lawyers were asked whether, if instructed at the time, they requested special arrangements to be made for the child's interview and if the Home Office cooperated in making such arrangements. [These requests were made in a few cases and the Home Office was wholly cooperative.](#) Thus taking but five examples, a teenage mother had the venue of her screening changed so as to be closer to her home and it was arranged to take place in a room large enough for the child and toys. Interview breaks were given to allow her to feed the baby and the interviewing officer supplied hot drinks. In three other cases special arrangements were made to screen the child at a local authority office and in one case the interview was at one of the Home Office 'no-customer' offices because of the distance the child would otherwise have to travel. However, some lawyers commented on the difficulties in liaising with the Home Office at these earlier stages and prior to allocation of a designated immigration caseworker:

*Contact with UKBA is difficult. No HO reference number, no case owner no direct means of communicating with children's teams during the initial stages.*

All separated children are given a short screening interview – a process originally designed for adult asylum seekers to enable their allocation within the asylum system.<sup>24</sup> The screening interview is limited to the collection of basic information from child applicants, including their identity and family information. It is Home Office policy that the screening interview is 'not the place to explore the claim for asylum'<sup>25</sup> and government evidence to the Joint Committee on Human Rights confirmed that "no questions relating to the basis of the claim" were to be asked during the screening process.<sup>26</sup> However, in some instances screening interviews were noted to focus on the child's protection claim contrary to Home Office policy.<sup>27</sup>

Of the 60 sampled children, 55 were recorded as having been allocated to a local authority prior to the screening interview. However, only 33 of the children had instructed a legal representative prior to screening.<sup>28</sup> Further, of the 33 children who had a lawyer only 17 were accompanied by their lawyers to the screening interview.

The lawyer's reasons for non-attendance included:

- *2 children taken on the same day by [lawyer] and so only attended one screening interview and the other child unattended with responsible adult only.*
- *Outdoor clerk sent.*
- *Had been instructed the day before so had spoken to child through interpreter and advised of process by telephone.*
- *Given heavy caseload and shortage of staff – Law Centre staff did not at this point attend screening interviews with minors.*

A new Home Office initiative involves 'pre-screening questions' forms being issued to children seeking to collect some of the child's bio-data and family information prior to the screening interview.<sup>29</sup> These forms can be completed and filed with the Home Office by local authorities or legal representatives. There are problems with this initiative. Two lawyers recorded that the social workers filled in the forms without reference to the lawyers or the child and the personal information and the social worker's summary of the child's asylum claim were incorrect.<sup>30</sup> As Home Office refusals frequently rely on inconsistencies in the child's accounts, such errors could prove to be damaging to the child's application. Two lawyers reported a good working practice with local authorities where they worked together to complete the forms. This practice should be encouraged to ensure accuracy in information provided to the Home Office at the earliest opportunity.

At the time of writing, 26 of the children had received decisions refusing them asylum.<sup>31</sup> All but one of the refusal decisions included the screening interview in the list of documents that the decision-maker assessed as part of the decision-making process, and in five of the cases information collected in the screening interview was relied upon to challenge the child's credibility or age. It is thus important that child claimants are prepared for and represented by a lawyer at a screening interview and that their lawyer completes the child's pre-screening questions form.

The Immigration Rules state that child asylum seekers over the age of 12 'shall be interviewed about the substance of his claim' and that the interview 'shall be conducted in the presence of a parent, guardian, representative or another adult independent of the Secretary of State who has responsibility for the child.'<sup>32</sup> A responsible adult was recorded as present at the screening interview for 48 of the sample children (four were without any responsible adult and in eight cases it was not known or was unclear if such adult was present). The responsible adults attending the screening interview with the child, included: local authority social workers (35); foster carers (7); Scottish Guardians (3); Refugee Council Children's Panel Advisor (1); Barnardos staff member (1); British Red Cross staff member (1).

The 25 lawyers commented – generally positively – on the suitability and support provided by the responsible adult and also noted that where the child had been given a 'meaningful' choice of their preferred adult (e.g. where the responsible adult was known to the child, had a 'good rapport', was 'attentive' and 'assertive in advocating for the child's welfare and wellbeing'), this had a very positive impact on the child's engagement with the process.

*Foster Carer was very supportive with client. They were on time for the interview. They assure the child that at any time they were not feeling well to notify them.*

*The responsible adult plays her role very well. She made sure the interview was as child friendly as it could be and made sure it proceeded in a fair way.*

*The social care workers and social workers from Warwickshire social services are very good and will engage with the interviewing officer where necessary.*

*The responsible adult was from the Refugee Council and used to being a responsible adult in such circumstances.*

*Responsible adult was a guardian from Scottish Guardianship Service, so she was an independent advocate with considerable experience and understanding of her role and excellent rapport with client.*

The interpreting skills were noted to be of variable quality. There were some difficulties with interpreters, mostly dialect differences, and one interpreter was recorded as having:

*A very poor manner – inappropriate for child. Errors in interview record as a result.*

In order to have a proper understanding of the stresses associated with Home Office interviews, the lawyers were asked to record both waiting and interview times. The waiting time of 32 children was recorded for the screening interview – 17 waiting less than 1 hour but 10 children waiting for 1-2 hours, and 5 children for between 2-4 hours. The screening interview itself was recorded as taking less than an hour for 11 children, 1-2 hours for 17 children and 2-4 hours for 8 children (the times for 24 children were not known/unclear.).

The lawyers commented that ...*screening is not a child friendly environment* – and the majority who responded raised concerns about the ‘scripted’, formulaic nature of the interview in most cases, which did little to put the child at ease and ‘inhibited’ children. There were concerns raised at the pressure put on children and young people to sign interview records where the records were not read back to them or the child disagreed with the record.

*This is when child became distressed. The record showed the date of birth that was attributed to her by the Home Office rather than date she claimed and she refused to sign the record. The caseworker then suggested they would not register her claim for asylum. We had to try to explain that we would be able to dispute the age...She could not understand why they wanted her to agree to something which was not true. She felt that they were hostile and she felt let down by*

*her representative [previous] who was incapable of defending her against the demands of the HO.*

Of the 17 lawyers who attended the screening interview, some reported evidence of good practice in Home Office screening. The demeanour of some officials was praised for being child-friendly, particularly if they did not wear a uniform. Those in uniform were considered too formal and intimidating for some children. One lawyer noted of the interviewing officer in the screening interview that she was well trained, had a nice manner and took into account the client's anxieties; her questions were asked sympathetically.

*Practice seems to be changing at the ASU in Croydon, with a more child-friendly approach to children.*

*Trying to make it as friendly as possible despite unfriendly surroundings and time pressure.*

As to the children's experiences of the screening interview lawyers recorded:

*Child was happy to have finished. It did take 3-4 hours and child became very tired towards the end. He needed to feel assured that he had done everything well. Child was comfortable throughout the interview but didn't understand why it was essential that he took his time in answering the questions.*

*Child was shaking throughout.*

*Child was very young (12) and was unaware of dates, quite possibly not date literate, not confident [about] explaining events back home.*

*She developed a migraine during the more detailed and inappropriate questioning around the reasons for her entry into the UK and detailed questioning around her asylum claim. She disclosed sexual violence for the first time under this inappropriate questioning. The responsible adult was required to deal with the follow up from this disclosure. There was no steps taken from the Home Office even although she had just turned 17.*

*She still did not understand why the same questions were being asked repeatedly and why her age was being disputed. She felt that nobody believed her.<sup>33</sup>*

*Scared and nervous...*

The lawyers were asked whether the children were asked questions concerning their asylum claims at the screening interview. Of the 59 lawyers who responded to the question (who drew from their attendance at the interview and/or assessment of the screening records following interview) 53 said that the children were asked questions relating to the asylum claim. Some were 'brief' or 'standard' questions to find out the child's reasons for coming to the UK but other children faced inappropriate questioning contrary to the terms of Home Office screening interview policy:<sup>34</sup>

*Client is very young, 16... full on questions about terrorism and criminal matters could have been handled better, plus answers were not checked back with child leading to errors.*

*Can you BRIEFLY explain why you cannot return to your home country? Do you support the Assad regime? Who might want to kill you? Any names of groups?*

*He was asked questions about his parents and how he was killed and what will happen if he goes back to his country.*

*Child asked if he was afraid of return to Egypt- why he could not seek internal protection and the basic outline of the events that induced his fear of return to Egypt.*

*The interviewer asked the child about his life back in Eritrea. Who he lived with and the occupation of his parents? The interviewer didn't go into much detail about the reasons why he fled Eritrea, he drew most of his attention towards child's faith and his knowledge of his religion ... The interviewer was fixated on catching the child out about his religious beliefs.*

The Joint Committee on Human Rights in its report, Human Rights of Unaccompanied Migrant Children and Young People in the UK noted:<sup>35</sup>

*"The gathering of substantive information on a child's claim for asylum or other protection should come well after the screening process, to allow children to be settled and to articulate their views properly... our evidence indicates that screening too often blurs into wider information-gathering. This must change, to bring children's best interests to the fore."<sup>36</sup>*

The screening interview should be the occasion for identifying indicators suggesting the child might have been trafficked.<sup>37</sup> Some 14 lawyers observed that there were trafficking indicators in their child clients' accounts, but the immigration officials conducting the screening only identified indicators in five cases. The indicators that lawyers considered

to be ones which should have been picked out by the screening interviewer included:

*Client confirmed that she had been left at an address with an unknown man, with three other young women/ girls, the man tried to force her to have sex with him and threatened to kill her when she refused. This should have been enough to indicate there were trafficking indicators present!*

*Indicators initially related to the child's treatment at the hands of her brother and family. She described having no money, working in the house for long periods of time and being physically abused. She lived under the threat of being returned to [country X] (and persecution) if she did not comply.*

*Client by his own evidence was trafficked for forced labour in unknown European country.*

### **First Reporting Event (FRE)**

As part of Home Office guidance, all unaccompanied children are to attend a First Reporting Event (FRE) prior to their substantive interview.<sup>38</sup> This is a measure brought in by the Home Office largely to allow children had an opportunity to meet with the immigration officer allocated to carry out their asylum interview. However, as recognised by the Home Office in their guidance, FRE events may not actually take place. The study suggests that this was not a first event but a 'non-event' which rarely took place.<sup>39</sup> As this is listed as a scheduled process it should be dispensed with. Lawyers commented that it simply creates anxiety about a further interview and further confusion for the child.

### **The asylum interview**

#### **Submission of evidence and representations prior to the substantive interview**

Children are issued with a Statement of Evidence Form (SEF) at their screening interview, which is to be completed and filed with the Home Office prior to their substantive interview.<sup>40</sup> They are also afforded an opportunity to submit any further representations and / or evidence in support of their application. This is an important part of the process as it allows for the Home Office interviewing officer to consider the child's case prior to interview.

The lawyers were asked, in addition to the SEF, what evidence (from listed options) they submitted on behalf of the child at this time of the process.

- Child's statement – 52 responses.
- Legal representations – 10.
- Medical evidence – 4 (GP records x 1; medical report x 3).
- Documentary evidence – 5.

- Letters from the local authority -2.
- Visa information – 1.
- None – 4.

This appears to be a limited array of evidence for the profiled child clients. This issue is discussed in more detail in Chapter 6. Very few lawyers made representations prior to interview regarding the fitness of child for interview and/or other specific considerations. One lawyer highlighted the Law Centre’s good practice:

*We always make representations prior to substantive interview with regard to gender of interviewing officer and interpreter; dialect of interpretation, identity of responsible adult. We also request the child-friendly interviewing suite, specify a minor’s trained case owner and deal with any requests for audio recording... and we draw attention to client’s key vulnerabilities and any mental health diagnoses (PTSD) and request this be taken into account.*

Several lawyers, who made requests for child-friendly meetings, spoke positively of a purposely designed interview room for children and families and how it created a better atmosphere for such interviews:<sup>41</sup>

*...Home Office have a child-friendly interview suite – this is informal and welcoming  
...well lit, warmly decorated with soft furnishings and has a lot of space.*

*[Child] was interviewed in the family and child friendly room at the Home Office. This has been designed to be more informal and inviting than the other rooms. The walls are yellow, there is a sofa and there is more space. There is no bolted down furniture. It is a far more pleasant environment than other interview rooms that they [Home Office] have.*

The negative effect of poorly designed interview rooms was also mentioned:

*... the appropriate adult sat behind the [child] client and out of his vision...was not able to maintain eye contact or even see the client’s face and therefore monitor whether he was distressed or struggling to understand the process; the interview room was small – ... the chairs are bolted down and quite close; child has back towards social worker; can’t see social worker’s face.*

Nine of the lawyers recorded that they had requested the asylum interview to be postponed to meet the welfare needs of the child; to obtain medical evidence concerning the child’s fitness for interview and/or have adequate time to prepare the child for interview.<sup>42</sup> In all but one case, the

postponement request was approved and requests for gender and dialect specific interpreters, changed venues and appropriate interview rooms were adhered to by the Home Office.

The comments on interview arrangements demonstrate to the Home Office the value and importance of creating appropriate interview facilities for children – how further adjustments can be made to the interview environment and that officers should also attend to the lawyer’s observation that uniformed officers were intimidating for some children.

The children interviewed for this Project told of their nervousness and anxiety before the Home Office interview.

*On the night before my interview at the Home Office, I really felt sick you know. I took a taxi to a hospital, and I said to him stop, I feel sick, but the taxi man did not stop. And I was sick in the taxi you know. He just took me out and leave me. I couldn’t speak English at that time. I got to the hospital, and all day and night I was there. When the next 13 interview come, again I was sick. I was just on my own in one room, and no one to see me. I was really ill. A really bad time. (Child refused international protection.)*

## **Delay**

For many of the sampled children, the time recorded between the screening and asylum interviews was 2-4 months.<sup>43</sup> However, in some instances there were delays of more than a year, due in some instances to the child’s circumstances and in others to Home Office errors (failing to notify parties of appointments or issues with interpreters). In one case the delay was for 3 years and 5 months; others were for 18 months and 2 years – delays which are contrary to the child’s best interests and welfare.<sup>44</sup>

*I went to my final Home Office interview. It had been cancelled 3 or 4 times before. It was cancelled the first time because I felt so bad. I had a headache, and I felt very bad. Then they sent a second interview date but I was in hospital. My solicitor was with me (at the final interview). At that time I had a medical problem, and my solicitor said to them, “He does not have to answer any more questions”. The interview was from 9 o’clock to 12 o’clock. They asked me about my life story. (Child granted international protection.)*

The journey and waiting times for the interview recorded for the sampled children were within reasonable limits. The interviews themselves could be lengthy, with 19 children interviewed between three and five hours; 22 between two and three hours and 17 interviewed between 30 minutes and two hours.<sup>45</sup>

Lawyers commented that the breaks were adequate and met the child's needs – these were generally instigated by the interviewer when the child was visibly upset or distressed and by the lawyers when they could see the child was tired and losing concentration.

*Oh I didn't even ask for a break! The lady interviewing me said, "She needs a break" but I said "No, just keep going, keep going..." (laughs). I just felt I want to get this over and done with. (Child granted international protection.)*

*First, at the interview I felt scared but as time went on I felt very comfortable because I know I had a lawyer who absolutely knows what he is doing. So knowing that he is there, everything is just going smooth. (Child granted international protection.)*

## Representation

In four of the 58 cases (where data was included) the child/young person was unrepresented at their substantive interview.<sup>46</sup>

One lawyer commented on the difficulty they faced in representing a vulnerable young person who had attained the age of 18 at the time of the interview.<sup>47</sup>

The problems with the interviews may be moderated if all the interviews are tape recorded. From the survey it would appear that all interviews were recorded in the West Midlands and the majority were in Glasgow, whilst in the rest of the UK practice was sporadic.<sup>48</sup> It is not clear why such a disparity exists across the regions. Some but not all Law Centres routinely request that the interview is taped so that the record can be checked if disputes arise. This is a good practice.

## Responsible adults

In 56 cases out of 58 where this question was answered, the lawyers recorded that a responsible adult was present throughout the asylum interview.<sup>49</sup> Some 27 children were invited to request whom they wished to be the responsible adult at the interview, in only one case was their request rejected. In 12 cases the child was not given this opportunity.

The lawyers recorded some useful interventions by the responsible adult, as a result of which the interviewer took appropriate action. Responsible adults intervened in issues relating to the child's health, mental distress and lack of sleep, that the child was fasting, had not eaten and had a long journey. Lawyers commended the responsible adult role as an important and proactive one, helping to make sure that the child felt reassured, to correct any confusion and provide information on the child. Home Office guidelines allow interviewing officers to limit the role of the responsible adult in the interview<sup>50</sup> and lawyers noted some examples when this was

done and the responsible adult was reduced to the role of observer rather than safeguarder.<sup>51</sup>

*Interviewer read a script stating role of Responsible Adult and legal representative stating we could only comment at the end of the interview.*

*Role explained at beginning by case owner not allowed to answer questions for child and only to interrupt if child appears to be distressed.*

The Home Office should be encouraged to see the value of the responsible adult and discourage their caseworkers from commencing the interview with a scripted presentation setting limits to the responsible adult role. If the responsible adult begins to answer questions for the child in the course of the interview – that is the occasion to read the script on the limitation as to their role.

### **Role of the interpreter**

*Sometimes at the Home Office, we are losing our case because of the interpretation... they are no good, and that is why we are losing the case. Twice when I went to court I got an interpreter from another country, and I lost the case. They cannot tell the truth for us. Their dialects are different. If they work for the Home Office, the Home Office makes this mistake. If we speak English, they should ask us if we want to take the interview in English or not. But they don't do that sometimes. I did say to them once that they were not translating properly, but they did not do anything. (Child refused international protection.)*

Skilled interpretation of asylum interviews is essential to ensure that the child is heard, that they are able to fully and actively participate in the process and are safeguarded. As with a number of studies, lawyers recorded a number of difficulties with interpreters:<sup>52</sup>

*... manner lacked professionalism and he was not age appropriate. The interpreter was "aloof" and looked bored. He was the poorest individual in the room in terms of his manner and engagement.*

*Interpreter was visibly unhappy when corrections were made by Legal Rep following consultation with our interpreter. She objected to the corrections and said that this is what she had said in any event. Interviewing Office accepted our corrections and noted them.*

*Issues with interpreter flagged during the interview but client was keen to proceed. We therefore reviewed the record afterwards with our independent interpreter and submitted corrections to the record in writing together with our 5 day reps.*

All those working in this jurisdiction know the difficulties resulting from dialect differences.

These difficulties are compounded when the child has limited education or fluency in their home language.<sup>53</sup>

*Child commented that the interpreter used a different dialect because he was a Pakistani Pashto speaker and he was Afghan – ‘they speak different from us’.*

*The UKVI interpreter did not know the country information and so was not able to provide correct spellings.*

Certain of the Law Centres (22 lawyers) ensure an independent interpreter is present to monitor and correct interpreting errors. Lawyers recorded 17 cases in which there were concerns about the interpretation, and lawyers criticised the quality and training of some interpreters, citing examples not just of factual interpreting errors but of a lack of attentiveness resulting in errors, disengagement, fear and confusion for the child.<sup>54</sup> These concerns, and the absence of child training for Home Office interpreters, requires attention.<sup>55</sup>

### **The interviewing officer**

*My Home Office interviewer was kind of calm. I had two people with me (solicitor and Voluntary Organisation support worker) that maybe she knew she couldn’t ask any squeezey questions because my lawyer would have stopped her. She didn’t ask like that. So she just asked the questions, and I just answered. She was alright, she was alright... (Child granted international protection.)*

The lawyers generally considered the interview process to be fair. The 53 lawyers commenting on the role of the interviewing officers noted some who tried to be friendly, calm, reassuring, to pace interviews appropriate to the child and to build a rapport with the child by being friendly and chatting about issues outside of the content of the interview. One lawyer commended the interviewer’s efforts to confer with the child to ensure (with help from the responsible adult) that there was no misunderstanding or confusion and another commented positively on the interviewer trying to understand the child’s life as a child and what sports he played or games with friends in the country of origin.

There were criticisms of uniformed caseworkers whose dress and presentation was intimidating for children,<sup>56</sup> of those interviewers who did not reassure the child, who adopted a formulaic approach, heavily scripted with some not deviating from the script and who did not make eye contact with the child, directing questions to the interpreter instead of the child. Some interviewers were said to be very aggressive, hostile

and challenging.<sup>57</sup> Such approaches, and the interviewer's focus on note-taking, were said to make children feel nervous and uncomfortable.

- *The interview style was cold and didn't encourage the child to provide detail or elaborate on any aspects of his account. Most questions were closed questions and prompts for more information were not given.*
- *The interviewing style only allowed the child to answer the questions that he interviewing officer wanted to cover, and there was little flexibility to allow the child to give more information than had already been given in his statement.*
- *Child dealt with it well by simply stating he didn't know and IO accepted this, but it is unnerving in this 'exam situation' to have to say I don't know a lot.*
- *The questions were not in itself unfair, but they were not asked in a very child friendly way, too brisk and hurried.*

The lawyers highly rated the following attributes shown by some interviewers:

- *Respect for the child's culture and religion.*
- *Proper preparation for the interview with short, clear, precise instructions and questions.*
- *Repetition to ensure the child understood the question.*
- *Allowing the child time to answer and to tell their story in their own time.*
- *Attempts to understand the child's former home life – for example the games played with friends.*

Although the lawyers were not asked to record poor practices of interviewing officers in this study, many included comments in the sections tailored for the above set of questions. Their criticisms/ concerns included:<sup>58</sup>

- *Adopting a detached manner with the child, with no 'personal warmth' or expression. This was intimidating for the child and did not foster a relationship of trust between the child and the interviewer.*
- *Interviewing techniques that were 'hectoring', 'hostile' and 'aggressive'.<sup>59</sup>*
- *Difficult child protection and safeguarding issues being discussed in front of the child.*
- *Inappropriate questioning around the child's sexuality and activities in the UK.*
- *Unnecessary and hurtful critical comments or showing irritation or impatience with a child's answers – the example given was the interviewer's negative reaction to a child's attempt to draw his house.<sup>60</sup>*

- *Using closed questions which don't encourage the child to provide detail or elaborate on the narrative.*
- *Asking multiple questions on dates and the sequence of events, without reference to the child's age or education.*
- *Omissions, for example the failure to explore the child's early family life or sense of displacement.*
- *Country questions aimed at an adult and not properly adapted to a child.<sup>61</sup>*
- *Repetitive and accusatory questions, creating the sense that the child has given inconsistent accounts – with the lawyer noting: Questions quite difficult and lack clarity: Q66 – Q81 [of interview records] were all concerning what the client witnessed when his father was abducted from the home. The client was confused, as was I, and the questions became almost accusatory – I intervened at this point: Where were you? Did they see you? But you said they entered the three rooms? But you said they entered the three rooms? You said your father went out of the house and they dragged him away and now you're saying that they came in?<sup>62</sup>*

There were a number of constructive criticisms over the substance of the interviewers questions and the erroneous assumptions these betrayed. A common criticism concerned the interviewer's use of questions based on their speculation as to the motives and actions of others, their assumption that the child should know the motives of others and their use of these assumptions/speculations to discredit the child's account.<sup>63</sup> For example:

*The border guards in [X country] have orders to shoot to kill anybody... How did you avoid being shot at?*

*Questions on why authorities refused to let him defer military service and it confused client.*

*Child was asked to speculate on the reasons why his captors may have behaved in a certain way, although the reasons for their actions were not known to him. Child found this difficult as he didn't know why he had been arrested*

*Child was asked to guess why father would want to kill/beat him. He answered that father must not like him.*

*Child asked what adults planned and why when he was only 9/10 at the time of the events*

*Asked why he thought an [named] Commander beat him. Child requested a break and was upset.*

*Asked about why a local mafia leader would have a grudge against child because of parents' activities... The client was a little*

*bewildered by this and I intervened.*

*Lots of questions asking him why he thinks other people have done x and y – the boy is 12.*

*Question included ‘when your uncle joined the Taliban did he want to or was he forced’.*

Two lawyers noted inappropriate questioning relating to the motivations of traffickers and/or perpetrators of harm:

*The child was asked to speculate on motives of people who took him to [named country] and kept him there.*

*Questions to vulnerable young girl relating to the relationship between [family members] and how they would be able to carry out their threats.*

The lawyers also observed instances where:

*Several times the child was asked why he took one route to the UK instead of apparently a more efficient one...*

*The child was asked complex questions about when his school was founded, etc – I could not comment on when any of my schools were founded now let alone as a child – also asked about how many students were at the school, was asked who founded the school.*

Several lawyers noted the child’s high levels of anxiety concerning the interview and that certain of the children *appeared distressed as they had to relive the trauma experienced or had felt shame when pressed on why she had been reluctant to tell someone she was pregnant.*

*C did not understand why she was asked questions about the police in [named city] uniforms or about tribal customs, which had nothing to do with what had happened to her. She continued to feel that peripheral matters were more important than the core of her claim. This following the age dispute meant that she felt that the process continued to be hostile and infected by disbelief.*

In the EU Agency for Fundamental Rights (FRA) report, *Separated, asylum seeking children in the European Union Member States, 2010* the children interviewed were often distressed about the possibility of being perceived as liars.<sup>64</sup> This sensibility was also apparent amongst the sampled children. The majority of lawyers noted some levels of anxiety and stress amongst children, stress in some cases a natural reaction to the process but in other cases recorded as high levels of anxiety leading

[to confusion](#). Some of this distress occurred when the children were recounting traumatic events or when evoking memories of their families.

Children were observed to be anxious to finish the interview – and in a small number of cases were frustrated and upset at the course of the interview. The lawyer’s measured assessments included the following:

- *The child was upset but this was due to being asked a question about her past. This was not because of the attitude of the interviewer. The child was anxious about the process but this was at an expected level. The interview was held in familiar surroundings and was short. The child recognised that it was fair and that it had gone as well as something like this can go.*
- *The child became confused about years, this may have been the pressure of the interview as he had been consistent during instruction taking.*
- *He became upset during it because the question of his family was raised.*
- *Child understood importance of interview and hence was a little anxious and just tried to answer the questions best he could; Child was mature and street wise and understood the nature of the interview, and coped with it well enough notwithstanding traumatic nature of his experiences.*
- *The distress was due to repeating painful history, otherwise the child was eager to please and asked if the interviewer wanted to know anything else at the end of the interview.*
- *I felt that she was keen to get the interview done with as quickly as possible but later when she had more time to reflect she was anxious to make sure the information was correct and complete.*
- *Child able to explain himself fully in interview, there were no gaps, the information was out there, but showed irritation / frustration at questions the relevance of which he did not understand.*
- *He alluded to rape being common in Libyan jails, where he spent time on his journey to the UK, and was very distressed by his time there but...refused to discuss the issue further...may not be willing to disclose for a long time, if ever:*

This survey suggests there have been improvements in some of the Home Office processing arrangements for child asylum seekers. The Immigration Rules require that caseworkers interviewing children have specialist training in interviewing children, have particular regard to the possibility that a child will feel inhibited or alarmed and allow the child to express himself in his own way. The commentary cited above suggests that not all caseworkers have benefited from the specialist training or know how to put it into practice. This is not to suggest that the interviewer cannot challenge a child, but rather such challenges should be crafted to be intelligible and fair to the child.

## Decisions

While this Project plans to complete a second report on the decisions when all the appeals have concluded, at the time of writing 53 of the children had received a decision on their claims from the Home Office. A comparison of the survey results and the general Home Office statistics on child asylum seekers outcomes in 2014 is set out in Appendix F.

The survey outcomes are generally consistent with the national statistics, although the Law Centre lawyers achieved proportionately rather better outcomes than the national average for the child claimants who have reached adulthood.

When making such comparison, it is important to note the nationality breakdowns of the Home Office outcome figures as there was significant variation within that figure with high and low success rates for particular nationalities and the grants of temporary leave depending on the age composition of the child cohort. Thus on the UK figures

- 267 of the 282 Eritreans and 21 of the 22 Sudanese claimants were granted refugee status.
- 2 of the 275 Albanians and 16 of the 111 Afghani were granted refugee status.
- Of the 568 young people refused status, 406 were granted some form of temporary leave (most given a term of leave to take them to the age of 17½). This figure depends on the age composition of the young unaccompanied asylum seeker candidates. Thus 189 Albanians and 70 Afghans under 17, refused asylum were eligible for the grant of discretionary leave to await their adulthood. Of the 992 total 162 (16%) were denied any status or leave to remain.<sup>65</sup>
- The refusal rate for unaccompanied children who reached 18 when their decision was made was very high – 214 of the 285 such child applicants were refused asylum and leave to remain.

The Home Office data does not show whether the successful or unsuccessful unaccompanied child claimants were represented or unrepresented and there is limited data on immigration appeals – and no data showing the numbers of appeals by unaccompanied children or the outcome in such appeals or the numbers of children appearing without legal representation. We therefore have no concrete data to show the value of legal representation or the cost of its absence for separated children.

**1** John Vine (Independent Chief Inspector of Borders and Immigration) notes the 'disproportionately high numbers' of child clandestine entrants and the risks, if not found, that they could fall into the black economy where they will be exploited and not safeguarded. In *An Inspection into the Handling of Asylum Applications made by Unaccompanied Children* (February – June 2013) p.16 at 5.3-5.7.

**2** The entry arrangements for the remainder of the cases is simply recorded as 'other'.

**3** Only 2 of the sampled children were identified at port by Home Office officials. Home Office statistics demonstrate that a very small percentage of unaccompanied migrant children will have claimed asylum at a port of entry. Only 121 of the 1,861 claims made in 2014 were made at port. Home Office *Immigration Statistics April to June 2015* Available at: [www.gov.uk/government/publications/immigration-statistics-april-to-june-2015/asylum#unaccompanied-asylum-seeking-children-uasc](http://www.gov.uk/government/publications/immigration-statistics-april-to-june-2015/asylum#unaccompanied-asylum-seeking-children-uasc).

**4** As noted by The Children's Society report (2011) *Into the Unknown* op. cit. which included consultation with a group of 33 young people 'Many of the young people we spoke to during this consultation told us that the immigration system made them feel powerless as they had no choice over what was happening with their case or the impact it had on their life' noting that from their consultation 'it was a particular concern to hear that almost all of the young people we spoke to said that they often did not know what was happening to them during various parts of the asylum process' [pp.4; 10].

**5** *ibid* p.10 'In talking about their experiences since arriving in the UK and claiming asylum, many young people displayed feelings of confusion, distress, anger and frustration. Some struggled to piece together the stages of the process as their memories were blurred or were so traumatic that they had blocked them out. Fear, worry and anxiety'.

**6** Matthews, A. (The Office of the Children's Commissioner) (2014) op. cit. notes 'For some young people who had travelled through Europe and encountered police or other authorities during their journey the idea of being placed in care was new and treated with initial suspicion' p.53.

**7** Police (20); Home Office officials at port / airport (2); Asylum Screening Unit (2); Home Office other (1).

**8** Members of the public / strangers (22); member of the child's community (1); local authority (3); GP (1); British Red Cross (1); local college (1); Law Centres (2).

**9** In *AN & FA (Children), R (On the Application Of) v Secretary of State for the Home Department* [2012] EWCA Civ 1636 Lady Justice Black at [98] observed concerning immigration and social services arrangements for these initial contacts: "Social services have particular expertise in assessing children and making provision for their welfare needs. They can also assist in enabling children to give their account of what has happened to them and why they have come to this country. Informed early about the arrival of the appellants, they [social services] could have begun to make arrangements for their collection and accommodation and, if resources permitted, attempted to get a social worker or other responsible adult to accompany and/or assist the appellants during at least some of the processes they had to go through with the Border Agency...a timely referral would have enabled immigration officials and social services to work positively together to ensure that the children were kept safe and their best interests made a primary consideration."

**10** Overall 3 of the 60 children were initially age assessed as adults at first point of contact with the immigration authorities – one child was detained in an adult immigration detention centre and two were placed in Home Office accommodation for adult asylum seekers. All 3 were later found to be children at varying stages of the asylum process and later provided with 'age appropriate' support and accommodation provision. See Chapter 5 for further detail.

**11** These pre-screening interviews do not feature, for example in the report by John Vine (Independent Chief Inspector of Borders and Immigration) op. cit.

**12** Available at [http://resourcecentre.savethechildren.se/library/safe-last-children-front-line-uk-border-control-Refugee & Migrant Justice went into administration later that year](http://resourcecentre.savethechildren.se/library/safe-last-children-front-line-uk-border-control-Refugee%20and%20Migrant%20Justice%20went%20into%20administration%20later%20that%20year).

**13** See The Office of the Children's Commissioner for England: Matthews, A. *Landing in Kent: The experience of unaccompanied children arriving in the UK* 10 Feb 2011 available at [http://socialwelfare.bl.uk/subject-areas/services-client-groups/children-young-people/childrenscommissioner/161544Landing\\_in\\_Kent\\_-\\_The\\_experience\\_of\\_unaccompanied\\_children\\_arriving\\_in\\_the\\_UK.pdf](http://socialwelfare.bl.uk/subject-areas/services-client-groups/children-young-people/childrenscommissioner/161544Landing_in_Kent_-_The_experience_of_unaccompanied_children_arriving_in_the_UK.pdf); Matthews, A. *Landing in Dover: The immigration process undergone by unaccompanied children arriving in Kent* 17 January 2012. Available at: [www.childrenscommissioner.gov.uk/sites/default/files/publications/Landing\\_in\\_Dover.pdf](http://www.childrenscommissioner.gov.uk/sites/default/files/publications/Landing_in_Dover.pdf). The Commissioner also documented and reported the use of a "Gentleman's Agreement", signed in Paris in 20th April 1995, whereby children were being returned to France and Belgium within 24 hours of embarkation if they did not formally articulate and/or intimate an asylum claim on detection.

**14** *AN & FA (Children), R (On the Application Of) v Secretary of State for the Home Department* [2012] EWCA Civ 1636.

**15** Announced by then Immigration Minister Damian Green (in a letter to the Office Children's Commissioner, 6 February 2012) available at: [www.childrenscommissioner.gov.uk/sites/default/files/publications/JCHR\\_Consultation\\_-\\_Unaccompanied\\_Migrant\\_CYP.pdf](http://www.childrenscommissioner.gov.uk/sites/default/files/publications/JCHR_Consultation_-_Unaccompanied_Migrant_CYP.pdf).

**16** May 2015, United Kingdom response to the European Migration Network: Home Office, Policies, practices and data on unaccompanied minors in 2014 National Contribution from the United Kingdom pp.12 & 19, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/unaccompanied-minors/28a\\_uk\\_um\\_study\\_2014\\_final.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/28a_uk_um_study_2014_final.pdf). The Home Office databases will also be checked to assess if the child is known to the Home Office. If not known the child is 'to be declared a 'de facto' illegal entrant, serve a notice of liability to removal (form IS151A)' and when social services arrive, 'serve IS86 (notice to fingerprint) and take fingerprints under section 141 of the Immigration and Asylum Act 1999 with the social worker acting as the 'appropriate adult' (necessary when fingerprinting a child aged between 5 and 16 years), Issue IS96 Temporary Admission on the unaccompanied child (residence restriction care of social services. The child will not be placed on reporting).

**17** *ibid* p.12.

**18** Five lawyers recorded that these screening interviews had taken place on the same day as the child's initial contact: at the police station (1); local immigration office (2); Asylum Screening Unit (2). In two cases the children were in Local Authority care and had instructed a lawyer therefore they were supported at the Screening Interview, which was the first point of contact.

**19** Of the 11 identified 'interview' processes recorded pre-screening and on the date of arrival, it was recorded these were: Port staff / customs interview (2); Home Office 'booking in' / 'desk' interview (3); arrival interview (2); initial interview (4). Lawyers were asked to record whether 'welfare interviews' had been recorded and none were recorded.

**20** In *An & FA*, per Lord Justice Maurice Kay at [185] "I respectfully agree with the analysis of Black LJ. "When one combines (1) the provisions of the Code of Practice for Keeping Children Safe from Harm; and (2) the limited permissible scope of an initial interview (as I have held it to be), it is, in my judgment, unlawful to detain a minor for several hours with a view to conducting an initial interview (the permissible parts of which could have eventuated at booking-in) and only embarking upon a referral to social services at or towards the end of the postponed interview."

**21** Matthews, A. (Office of the Children's Commissioner) (2012) op. cit.

**22** Joint Committee on Human Rights *Human Rights of Unaccompanied Migrant Children and Young People in the UK* HL Paper 9, HC196, June 2013, para 76. Available at: [www.publications.parliament.uk/pa/jt/201314/jtselect/jtrights/9/9.pdf](http://www.publications.parliament.uk/pa/jt/201314/jtselect/jtrights/9/9.pdf).

**23** *ibid*; See: *AN & FA (Children), R (On the Application Of) v Secretary of State for the Home Department* [2012] EWCA Civ 1636. Lady Justice Black (in a part minority judgment) noted at [103]: "No convincing explanation has been advanced as to why interviews of this type needed to be undertaken that day [the child's arrival]. This does not appear to have been a case which gave rise to particular suspicions about trafficking. ... There is more force, in my view, in the argument that a child's interests are better served by ensuring that he is enabled to explain properly any matters that may be relevant to asylum. The period of rest that was afforded to the appellants is a recognition of the difficulty for them in addressing such issues immediately after the experiences of their journeys and it may be that for some children it is simply not feasible to carry out a constructive interview on the day of arrival at all."

**24** Home Office guidance on processing an asylum application from a child, op. cit.

**25** *ibid*, at 'Screening – General Principles' Para 6.2.

**26** Joint Committee on Human Rights *Human Rights of Unaccompanied Migrant Children and Young People in the UK*, op. cit. para 69.

**27** John Vine (Independent Chief Inspector of Borders and Immigration) notes 'we found an inconsistency in the content and timing of screening interviews. The content could differ according to which form was in use, whether an adult attended with the child, and whether staff fully understood the procedural implications of the differences. We were particularly concerned to find a number of instances where children were questioned at screening about the substance of their asylum claims, which is contrary to Home Office guidance' *An Inspection into the Handling of Asylum Applications made by Unaccompanied Children* (February – June 2013) p.3 at 5.

**28** Of the 60 cases in the Project, 29 children were referred to the Law Centres by local authorities and 15 were referred by the Refugee Council, 7 in Scotland were referred by a guardian, 3 were referred by foster carers and others were referred by Barnardos, a local college and an unknown entity.

**29** The Project team are aware that as part of an attempt to ensure swift allocation of screening interviews for children in social services care, and

to minimise the length of time a child spends at a screening interview, Home Office staff in London have introduced this new process. The form provides an opportunity for the child's bio data to be collected. However, evidence from the study did not suggest that this new procedure was common practice in other regions.

**30** In addition to basic bio data (child and family) and the contact details of the child's UK carer, the form includes questions on the child's home: details of any landmarks, streets (known to child); details of extended family who live in the family home or nearby; details relating to any work the child has carried out during their childhood, journey to the UK, their medical conditions / disabilities / pregnancy.

**31** Out of 53 Home Office decisions received for this study at the time of writing, refugee status had been granted in 24 cases (45%), asylum refused in 29 cases. Six cases were awaiting a decision and one child is missing, 26 of the 29 refusal letters were analysed for this report.

**32** HC 395 Para 352.

**33** The Children's Society (2011) *Into the Unknown* op. cit. note 'Another factor that contributed greatly to young people's anxieties about the asylum process was having their age disputed by the UKBA or local authorities. They did not understand why they were not being listened to about their age and why they were not believed'.

**34** The Home Office Asylum Policy Guidance, 'Processing an Asylum Application from a Child' recognises that children may be encountered by different immigration officials i.e. at port and/ or before they come to the Asylum Screening Unit (ASU). However, at Section 6.2 it is stated: "Where there is no Responsible Adult or legal representative present, particular care is required to ensure that the approach in the screening or other non-substantive interview does not go beyond inviting a response that verifies that asylum is being claimed. So, in the process of registering their asylum application, an interviewer may ask a child 'Are you saying that you are afraid to return to your home country?' An initial interview or screening interview without a Responsible Adult or legal representative present should not however involve a child being asked to explain or elaborate on why they are afraid to return to their home country. However, it should be explained to the child that they will have an opportunity to explain these details at a later date."

**35** Joint Committee on Human Rights, Human Rights of Unaccompanied Migrant Children and Young People in the UK, First report 2013-2014, HL9, HC196.

**36** Joint Committee on *Human Rights Human Rights of Unaccompanied Migrant Children and Young People in the UK*, op. cit. para 76.

**37** The screening form contains questions which are directed to elicit information that could show the child was trafficked. Unfortunately, as one lawyer commented the screening form pro-forma is not well designed to identify trafficking issues. The form includes one question – in an adult format. ('Have you been subject to any forced work or other type of exploitation in your country of origin, or within the UK') The lawyer commented this question would not have succeeded in getting information about trafficking.

**38** Home Office *Guidance on processing an asylum application from a child* notes 'Before children leave the ASU or other screening location... the following should be issued to them: An IS.96 form which grants temporary admission to the UK; Children aged 12 or over must be issued with a letter to report to a case owner in

10 working days, for the First Reporting Event (FRE letter ICD.3391); A Self-Evidence Form (Self-Completion) (ASL.1957) should be issued which should be completed and returned to case owners within 20 working days; An Application Registration Card (ARC), however, should the screening location not be ARC-enabled a time limited Standard Acknowledgement Letter (SAL) should be issued.... A FRE should be conducted by the child's allocated case owner or a UK Border Agency member of staff who has received the requisite children's training (see further details at 11.1 of the guidance).

**39** Of the 59 answers, FRE's took place in 12 cases and did not take place in 43 cases (The lawyers did not know or it was unclear in 4 cases). FRE's took 1-2 hours (2) or 30 minutes – 1 hour (5). In 1 case the child was told on arrival that she would only meet the case owner at substantive interview. Another comment refers to 'little more happened other than turning up and signing on'.

**40** The deadline for submission is usually 20 days from date the form was issued, see p.20 Home Office *Guidance on processing an asylum application from a child* op. cit.

**41** The lawyers noting the child friendly interview rooms were from 2 particular regions where it was stated that the Home Office had made an effort to establish such arrangements. John Vine (Independent Chief Inspector of Borders and Immigration) noted that interview facilities were not always appropriate but reported that an increasing number of interviews in Glasgow are being held at non-Home Office locations *An Inspection into the Handling of Asylum Applications made by Unaccompanied Children* (February – June 2013).

**42** In one case the lawyer records a child being unable to engage with process due to difficulty in processing past experiences and the fact that an age assessment had also taken place between the screening and substantive interviews.

**43** 23 out of 59 responses recorded.

**44** Chase, E. et al (2008) op. cit. p.5. 'Uncertainty concerning their immigration status causes extreme anxiety and distress for young people'.

**45** As noted by the Office of the Children's Commissioner, in response to the Chief Inspectorate report 2013, Matthews, A. (Office of the Children's Commissioner) (2014) op. cit. 'However he also noted that average (median) interview length was around two hours 45 minutes. Most were less than four hours with interviews in the midlands clustered around two to three hours but more variation in London. These are very long periods of time to expect a child to concentrate especially if they are as vulnerable as unaccompanied children are'.

**46** Three of the children had been referred to the Law Centres after their asylum interview. The children were referred because of complaints of poor practice by the previous lawyers. In the remaining unrepresented case the substantive interview date was delayed for a lengthy period due to Home Office error and when it was scheduled the Home Office and the local authority failed to notify the lawyer and the interview went ahead with the child unrepresented.

**47** Lawyers need to be alert to the fact that legal aid continues to be available to the young person so long as the legal help matter was opened when the young person was a child (See 13.7: Calculating the Applicable, Escape Cases electronic handbook, 10 July 2014. However, funding for any appeal work related to any refused application (CLR) will then be paid under the Fixed Fee scheme as in the case of adults).

**48** 58 lawyers responded on this question. 32

lawyers stated that the child's interviews were tape recorded (55%) 26 stated they were not (45%). 33 lawyers requested that the interviews be taped – some said it was their standard practice and others said they would always insist on this safeguard.

**49** Local authority: social worker (17); local authority: key worker/ support worker (10); foster carer (11); Refugee Council (3); Guardian (in Scotland) (11); lawyer (3); keyworker from the accommodation provider (1).

**50** Case owners should ensure that they: "set the framework in which child's legal representative and/or Responsible Adult may ask questions and make comments in the interview" s.13.4 Home Office Asylum Policy Guidance *Processing the asylum claims of children* op. cit.

**51** In a recent report, involving interviews with professionals assigned to the role of appropriate adult, it was noted "As appropriate adult you're never allowed to intervene in the interview. At the police station as appropriate adult you can intervene, but at the Home Office you are just an observer. Accommodation provider." Wilding, J. & Dembour, M. (2015) *Whose best interests? Exploring Unaccompanied Minors' Rights through the Lens of Migration and Asylum Processes* (MinAs) University of Brighton p.12.

**52** *ibid* at p.12 'A social worker described Home Office interpreters "show[ing] their disbelief by doing things like rolling their eyes when the young person said something"; UN High Commissioner for Refugees (UNHCR), Quality Initiative Project, Sixth Report to the Minister, UNHCR UK asylum quality initiative project – children, UNHCR UK 2009 [3.5.32 – 3.5.34]; The Children's Society (2011) *Into the Unknown* op. cit. pp. 11-12.

**53** UNCRC Article 12 op. cit.; UNCRC General Comment 6 op. cit.; Office of the UNHCR Geneva *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (February 1997) 5.13 p.8.

**54** The Children's Society (2011) *Into the Unknown* op. cit. reported 'A number of young people said that they were provided with interpreters who did not speak the correct language or dialect and this had an impact on their case: "They use interpreters with different dialects; they can't explain exactly what I want to say. Some words are totally different and it changed my story." ...As one young person reflected: "How can they make the right decision with the wrong information?"... Often young people will not realise that mistakes have been made through interpreting errors until it is too late. This appeared to be a common problem and a number of young people only realised this at a later stage, when their English had improved.

**55** See UNHCR Quality Initiative sixth report to Ministers 2009 at para 3.5.34 on recommendations regarding training for interpreters and working with interpreters, available at [http://www.unhcr.org.uk/fileadmin/user\\_upload/pdf/QI\\_Sixth\\_Report.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/QI_Sixth_Report.pdf).

**56** Lawyer's responses highlighted the regional variation in the dress and style of presentation, with lawyers commenting on those immigration officers who are unformed being 'daunting' and/or 'scaring' or 'unerving' children.

**57** The Children's Society (2011) *Into the Unknown* op. cit. reported 'While a few young people said that the UKBA officials dealing with them had been respectful and smiled, the majority we consulted said that staff had been rude, did not smile and had been 'rough' with them. A number of young people even reported angry and aggressive behaviour towards them. One recounted his asylum interview: "My interview was

the worst experience that I have in my whole life. He was so angry with me and there was a part of my case that I need help for my health... and he asked 'why you didn't die! Isn't it rude?'

**58** As noted in UNHCR guidance and reports 'Some children, due to their age and immaturity, may not understand the purpose of the substantive asylum interview or may find the experience intimidating or frightening' and interviews should be carried out in a child-friendly manner 'in an environment of confidence, trust and understanding that makes the child comfortable and thereby more inclined to impart information relevant to the asylum claim' UNHCR 'Refugee Children: Guidelines on Protection and Care', 1994 at 101; UNHCR 'Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum', 1997 at 4.2; UN High Commissioner for Refugees (UNHCR), Quality Initiative Project, Sixth Report to the Minister, UNHCR UK asylum quality initiative project – children, UNHCR UK 2009, op cit. at 3.5.8.

**59** 'Some young people told us the atmosphere in the interview was adversarial and pervaded by an attitude of disbelief by the interviewing officer' The Office of the Children's Commissioner, "What's going to happen tomorrow?" Unaccompanied children refused asylum, April 2014, p.58.

**60** The Children's Society (2011) *Into the Unknown* op. cit. 'Some young people found the questioning easier than others but the majority felt that the questions were confusing and difficult to understand. Some considered the questions to be private and intrusive. They said they felt under pressure and that they could not ask questions themselves. A number of young people said that their interviews were very upsetting with a few of them saying that they had bad memories of their interviews, which continued to give them nightmares'.

**61** Matthews, A. (Office of the Children's Commissioner) (2014) op. cit., noted that there was very little understanding of a young person's age, background and culture, citing one young person's account: *In my opinion, the Home Office, they don't treat people differently. I come from Africa. Here it is advanced. You can see four, five, six or 10 years olds know many things. But in my country we don't know these things even if you are 14, 15, 16. They don't understand, they don't know, because maybe here culture is like that, they know their minds from a younger age to know many things. But for us it's different. They don't understand that.* p.58.

**62** The Children's Society (2011) *Into the Unknown* op. cit. p.9, *A number of young people we spoke to felt that officials were doing this to try to 'catch them out'...This type of questioning was very unsettling to some of the young people and undermined their ability to communicate essential details and present their case properly. One young person said: "It [the interview] made me feel bad. Their intention is to find something in what we can say so they can catch us. They shouldn't do that.'*

**63** Similar concerns were raised by the UNHCR UK in an audit of children's cases in 2008, UN High Commissioner for Refugees (UNHCR), Quality Initiative Project, Sixth Report to the Minister, UNHCR UK asylum quality initiative project – children, UNHCR UK 2009 op. cit. [at 3.5.30].

**64** As also noted Matthews, A. (Office of the Children's Commissioner) (2014) op. cit. – 'They're judging people: 'You're lying'. I just want them to stay for a week there, then they would realise what's going on. They're living in a safe country. They can't even hear the bullet. They can't hear the bomb blast and things like that. I know that they are judging' p.58.

**65** Refugee Council Information Sheet, Children in the Asylum System May 2015, Table 5. Home Office, Immigration statistics, January to March 2015, published May 2015 at 8.6.

**Put Yourself in Our Shoes:**  
Considering Children's  
Best Interests in the  
Asylum System

## **Chapter 5**

Parallel lives

Care and support for  
separated children

"It was OK,  
but it's scary  
to wait for  
the result"

As stated the 60 children whose cases were analysed in this survey were all 'looked after' children. Four of the children were reported as having other family / adult contacts in the UK and were or had been living with them for all or part of the processing process.<sup>1</sup> The remaining 56 children were wholly dependent on support from and were accommodated by their assigned local authority.<sup>2</sup>

As this survey sought information from Law Centre lawyers representing children in their international protection claims, the focus of the detailed surveys therefore was on the asylum processing of the children's cases. However questions were asked about the care and support given to children by local authorities as a means to better understand their experiences while in the UK asylum system.<sup>3</sup> The information and commentary on the care system is insightful and complements and expands upon other studies focusing on care provision for this vulnerable group of children.<sup>4</sup>

The findings from this and other studies show:

- Separated children seeking asylum live with a high degree of uncertainty about their future, which can have a 'destabilising influence' on a young person's mental health and emotional wellbeing.
- Professionals and carers working with, and alongside, children need to plan for a range of outcomes while coping with each day as it comes.
- There is a lack of coordination associated with this vulnerable group of young people, and the level of support truly available to many of these children through the asylum process is much less substantial than would be expected given the number of professionals involved.<sup>5</sup>
- The parallel arrangements of asylum and care systems cannot be considered in isolation when determining the welfare and protection needs of separated children.
- Given the complexities of the care system and the core status and protection decisions to be made, these young people need and are shown to benefit from an assigned guardian who undertakes to coordinate processes and professionals, assist with the child's care and personally guide and support the child through changes of carer, residence, through education, medical treatment and the highs and lows of asylum, age, nationality and immigration decision-making.<sup>6</sup>

This study considers a number of aspects of separated children's immersion into the 'looked after' care system, including their assignment to and reception by the responsible local authority; age and nationality disputes; different types of support and accommodation provided and the young people's experiences within these accommodation systems; medical and legal referrals and care-leaver support given to those 'looked after' children who turn 18 during the asylum determination process.

### **Reception into care**

Section 17(1) of the Children Act 1989 (applicable to England and Wales) states that: "It shall be the general duty of every local authority ... to safeguard and promote the welfare of children within their area who are in need." Section 20(1) of the same Act requires that: "Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of there being no person who has parental responsibility for him." This is the

legislative basis for the provision of the 'looked after' care provided to the sampled children in England and Wales.<sup>7</sup>

In Scotland, all unaccompanied children should now be supported under s25 of the Children (Scotland) Act 1995.<sup>8</sup> However, until recently, and during the lifetime of this Project, some local authorities in Scotland supported unaccompanied children, who arrived in Scotland aged 16, under s22 of the Children (Scotland) Act 1995.<sup>9</sup> This was previously the position for most unaccompanied children in Scotland but unaccompanied children are now supported under s25 of the Act.<sup>10</sup> This means that looked after children in the UK are now dealt with under equivalent statutory provisions.

During the course of this study it was reported that of the 13 sampled children who were processed in Scotland:

- Six were supported under s22 of the Children (Scotland) Act 1995.
- Five were supported under s25 of the Children (Scotland) Act 1995 and
- One was supported under s29 of the Children (Scotland) Act 1995 – the provision for those children who have reached 18.<sup>11</sup>

*In Chapter 3, we noted that the sampled children were generally first identified and assisted by police and members of the public, with just five children having been identified by immigration officers either at a port or the Asylum Screening Unit and three by local authorities. For most children the first officials they encountered were the police, who usually referred the children directly to the local authority social services departments.<sup>12</sup> This study suggests that in a small sample of cases some children were already known to NGOs, including the British and Scottish Refugee Councils, the Scottish Guardianship Service, Barnardos or lawyers, prior to coming to the attention of a public authority, and it was these entities which referred the child to their local social services department. A lawyer involved in one such case records:*

*We noted at first interview that there were serious child protection concerns with regard to the child being a potential victim of trafficking sexual exploitation in an unsafe environment and made a child protection referral to the local authority immediately.<sup>13</sup>*

The manner in which children experience the care system can play a key role in their engagement with the asylum system. This can be the first occasion when these young people feel safe.<sup>14</sup> Recently arrived children and young people will usually need a high level of support to ensure that they are safe and well, and that they understand what is happening to them in the confusing first few weeks.<sup>15</sup> However for some of the sampled children their introduction to the care system was experienced as

chaotic and confusing. These problems arose where there were disputes concerning the allocation of the responsible London local authority, concerning the age of the young person claiming to be a child, or in a small number of cases where protection issues were identified for children living in the UK with 'family members' who were found to be abusive.<sup>16</sup>

Under the Children Acts a local authority is responsible for the care of separated children 'within their area.' The majority of identified separated children are located in the gateway councils of Kent, Croydon and Hillingdon, hosts to Dover port, Folkestone and the Eurotunnel, the Asylum Screening Unit at Lunar House in Croydon, and Heathrow Airport. These local authorities have high (or higher) numbers of separated children 'within their area' than other local authorities and are thus responsible for a disproportionate share of young separated children.<sup>17</sup>

For some years London local authorities – via a voluntary agreement initiated by the Directors of Children Services – have operated a voluntary pan-London rota, through the auspices of the London Asylum Seekers Consortium and managed by Croydon Children's Services so as to ensure the 'equitable distribution' of young unaccompanied children seeking asylum in London.<sup>18</sup> Unaccompanied children aged 16 or 17 who claim asylum in Croydon and have no local connection are placed on the rota, through which Croydon Children's Services refers each child on to the next participating borough in turn. Croydon distributes separated children identified at Lunar House, the Asylum Screening Unit in Croydon. The Home Office meet the costs of accommodation and support while the young people are in emergency accommodation awaiting collection. The rota distribution is supposed to work quickly, and under this arrangement children should not be in emergency accommodation for longer than five days, but the study suggests that they can remain there for much longer. For newly arrived children, this allocation process – as managed – can add to their confusion and distress. One London lawyer whose child client had disrupted and inappropriate care while awaiting allocation was critical of the allocation arrangements for the particular child:

*[Child] handed over to Croydon Social Service to be allocated to a Local Authority on the Rota system. The Rota system broke down, [rota LA] denied receiving the referral from Croydon and neither Local Authority would speak to the other. We shuttled between the two, with officials from both councils blaming the other side. We had to convey the contact details of one LA to the other as they seemed incapable or unwilling to communicate. Meanwhile, our 17 year old client was lodged in Bed and Breakfast, run by a non-French speaking man who didn't expect her to be with him for more than 2 nights. When I insisted that a social worker take her for a medical check the result was that she was not taken to see a doctor but interrogated about a jacket I had given her the day she arrived because she had no warm clothing in December and another*

*a Church charity worker had given her seeing her shivering on the streets of Croydon. ...At the next screening interview 4 days later the proprietor of the B&B walked to Lunar House with her. No social worker or responsible adult in attendance. It took 2 weeks for the referral from Croydon to [rota LA] to be finalised. I have file notes of increasingly fraught conversations while I tried to get the two local authorities to speak to each other. Croydon threatened to make complaints about [rota LA] and [rota LA] denied any knowledge of the referral. After 2 weeks [rota LA] collected the child and conducted an age assessment in the absence of any legal representation or responsible adult and decided she was an adult and moved her into Adult [Home Office] accommodation at Barry House where for the first time we were able to arrange medical care for her... The entire first two months were negative and hostile.*

## **Age disputes**

In the sample of 60 children, 53 children were recorded as giving their exact date of birth (88% of children). Most of the young people unable to give a precise birth date were Afghan nationals. One age disputed Afghan child gave an age range when declaring he did not know his exact date of birth.<sup>19</sup>

The lawyers recorded that 16 of the 60 children (27%) had their ages disputed at some stage in the asylum process, either by the Home Office, the local authority or both.<sup>20</sup> Two of the age disputed children in the sample, coached (and still influenced by) their agents admitted that they initially gave false information concerning their age on the advice of agents who facilitated their entry into the UK.<sup>21</sup> All the other age disputed children maintained their claimed ages.

The proportion of children recorded as age disputed in the sample is higher than in the Home Office's published age dispute figures for 2014. The Home Office figures show 318 disputed cases from 1,945 child claimants (16%). However, these published figures do not include all children whose ages may have been disputed, as they do not include children who are treated as an adult by Immigration Officers at first point of contact or children whose age is first disputed by a local authority.<sup>22</sup> The higher percentage in this sample is therefore arguably a more accurate rendering of the age assessment processes that unaccompanied young people are subjected to through the asylum process because it captured not only those age disputed child applicants whose assessed ages were maintained, but also those children temporarily age disputed but later accepted by the local authority and Home Office to be the age claimed by the child.

At the time of writing, asylum decisions had been received in all 16 age dispute cases. Of the 16 cases, the Home Office disputed four children's cases at 'first contact' either at port or at the Asylum Screening Unit in

Croydon. Three of the children were assessed as ‘adults’ by immigration officials – decisions they made on the basis that the child ‘looked older’ than 18.<sup>23</sup> In all three cases the children were later accepted as children by local authorities. In eight of the 16 cases, at the time of decision the child’s claimed age had been accepted by the Home Office.<sup>24</sup> In the eight cases where the child’s claimed age at the time of decision was not accepted by the Home Office – four were still taken to be children, but older than their claimed ages.

Local authority statutory guidance states that ‘age assessments should only be carried out where there is significant reason to doubt that the claimant is a child. Age assessment should not be a routine part of a local authority’s assessment of unaccompanied or trafficked children.’<sup>25</sup> This survey suggests that the age assessments were not always merited or correct and that for some children the process caused considerable distress and hurt.

Some children are subjected to multiple assessments. One lawyer recorded a case where the child was subject to multiple assessments by the Home Office and a further two assessments conducted by two separate local authorities and another noted: The child was initially in an asylum induction centre for adults which obviously was not appropriate for him... [following]...the second age assessment he was then moved to a children’s home. He then had support of social services and more support from the Refugee Council. The child felt more comfortable and supported and he was able to speak freely to his legal representatives and the Home Office officials. The child felt safe and was comfortable.

Two lawyers recorded children being assessed by local authorities at the police station. In another case the initial age assessment was carried out with interpretation done by telephone.<sup>26</sup> In one such case, the child’s age was accepted following the involvement of another local authority. The Association of Directors Children’s Services (ADCS) October 2015 Age Assessment guidance states ‘in all circumstances the assessment must be conducted in an appropriate setting (i.e. it should not be conducted in a police station).’<sup>27</sup> Children who are age disputed face serious consequences. One lawyer reported a child being detained.<sup>28</sup> The child was assessed by a local authority whilst in detention and his claim to be a child accepted and the child subsequently released.<sup>29</sup>

*Child detained by Home Office but then released under unaccompanied minor grounds following age assessment. Age reassessed to be under 18.*

At the very least age disputed children are transferred to adult accommodation and lose their social worker support. Lawyers representing three children who were placed in adult accommodation, as a result of unlawful assessments recorded:

*The client said on the first appointment that he did not like the accommodation that he was in. He stated that it was overcrowded and that he is with adults. He was accommodated in an asylum induction centre.*

*The child was originally in adult accommodation. He did not feel safe and was being treated as an adult. This was not positive for his mental health. He expressed his distress to his legal representative... low in mood and has expressed being upset about living with adults and he does not like their behaviour.*

*The child's age was first of all not accepted by the Home Office. It was later accepted after the child obtained proof of his age and after much correspondence with them. The child is now in the care of the social services. If he had not been then he would have been left to his own devices.*

As one lawyer records:

*The physical security of the child is essential. If the child is accepted as being under 18 this shouldn't be a problem but with disputed minors, children who 'look over 18' can be left unsupported and vulnerable to exploitation. A cold, frightened and hungry child is unlikely to be able to trust her rep or to be able to give the best instructions.*

And as this survey shows – following this disruption and distress to the children – the Home Office assessments and many of the local authority decisions on age were shown to be wrong. Even when the Home Office maintained their dispute, the age difference was within the margin of error that all such subjective assessments should entail. The Home Office should assess these outcomes and the repercussions of such assessments which can have a significant impact on the child's emotional and physical wellbeing – as recorded in numerous reports and by lawyers in this survey.<sup>30</sup>

Lawyers were asked to provide further information on the child's understanding of the age assessment processes. Fifteen lawyers responded in full to these survey questions and noted that children were provided a copy of their age assessment in 12/15 cases, only four of those assessments were translated into the child's language; only two of the children reported being told by the local authority that they could challenge their decision; 10 of the children were advised by the Law Centre. As one lawyer records:

*The assessment was done right at the start prior to any engagement with the Home Office. The client however did not understand why his age was being challenged ... and this did impact on trust with*

*professionals at the start of the process. We also had to explain what this process was, why it was being carried out and the outcome.*

Lawyers recorded the difficulties children faced when their age was disputed:

*Child could not engage with process due to difficulty in processing past experiences. Age assessment also took place between screening and substantive interviews. Due to difficulty, interview took place at [Law Centre] offices.*

As was recorded by another lawyer, even where the initial dispute concerning the child's age has been resolved, the risks of such flawed processes can continue, particularly for older adolescents:

*Home Office in their asylum decision did not review final age assessment conducted on [date] which assessed child's age to be 17 with a DOB [date]. Home Office only considered initial age assessment conducted on [date] which assessed child's age to be 17.5 with a DOB of [date]. Thus, child was improperly detained for three days because Home Office believed child to be now 18 when in fact he was not.*

Some age disputed children lose confidence in the processing system or the opportunity to be granted a term of discretionary leave as a child:

*Once age had been accepted at 17.5 she was placed in semi-independent accommodation. There was a bit of agitation before she turned 18 as she still had no decision. The accommodation providers asked for a letter from me with all relevant dates- when she made her application for asylum etc and she remained in LA care. The support workers were concerned that local authority [named] would try to shrug her off onto [Home Office adult support and accommodation] and at that stage she was still very distressed and vulnerable.*

*No issues as yet with local authority care but as client is being treated as 1 year older than claimed age obviously this will have a detrimental impact on his access to appropriate aftercare support for example. Very distressing for minor, who was ill and unsupported. Increased her lack of trust. Then when they finally accepted that she was a minor she was so close to being 18 that they appeared to lose interest and it took about a year for the decision granting refugee status to be made and implemented.*

Throughout the survey, lawyers commented on the impact that these processes were having on the 'mental health' and 'wellbeing' of the child, with some finding it 'distressing', other young people getting 'upset',

'angry' or 'withdrawn'.<sup>31</sup> They noted that it was more difficult to build trust with the child and without age appropriate packages of support children were forced to attend legal and official appointments alone. The effects on child clients summarised by lawyers included:

*The age assessment process can be long and damaging. The delay in establishing that a child is a child can mean that a child can spend weeks without the proper support she would have if she were accepted as a child or indeed as an adult e.g. access to proper GP care. In such circumstances the insecurity can be a real barrier to building trust and taking instructions and ultimately getting proper protection for the child. Co-operation between different agencies is poor. Home Office and Local Authorities do not communicate well, Local Authorities do not communicate with each other or the legal representative. And the child is often left to try to keep the agencies in touch.*

*Age assessments also mean that children are assessed as being older than they actually are and they are then expected to self-care to an extent that they are not mature enough to do. This can be extremely difficult for a child to cope with, can knock their confidence and leave them with a lack of faith in the system. The service provided to asylum seeking children is different to that provided to resident children and asylum seeking children often feel aware of this. They are given the message that they are less important and their needs are ignored. This places a barrier between the child and the process which can be very difficult to overcome, and also leaves the child angry and isolated which impinges on their ability to communicate.*

Where age was later accepted, some lawyers recorded children looking 'happier', 'rested' and 'calm'. Lawyers also recorded 'improvement in mental health' and children feeling 'happier'. Others recorded further disruptions for the child as their lives changed with new support, relationships and changes to placements following the acceptance of their claimed age. One lawyer recorded the child being 'overwhelmed'. One child was reported as moving from foster care to semi-independent living because the local authority while accepting him as a child found him to be 16 years rather than 14.

## **Nationality disputes**

Of the 60 sampled children four had their nationality disputed by the Home Office – two of the disputed children claimed to be Syrian and two claimed to be Iranian. The Home Office using Sprakab linguistic analysis tests (by telephone) asserted that both of the claimed Iranians and one of the claimed Syrian children were Iraqi and the other disputed Syrian child was Egyptian.<sup>32</sup> In one of the cases the lawyers withdrew from representing the child at his appeal and his case outcome is unknown. In one case the child's nationality was disputed following his asylum

interview because *'the interviewing officer claimed the child answered the questions incorrectly when in fact they were all correct.'* His nationality was later accepted.

Lawyers should be alert to challenge the appropriateness of language (Sprakab) tests to test the claimed nationality of unaccompanied children and adolescents. While such tests are commonly used for adults, there are likely to be different issues associated with the testing of children – the fairness of the test procedures, whether the telephone format is suitable for children, the differences in and the speed of language acquisition by children and that changes in their syntax, accents and vocabulary can occur in the course of their journeys to the UK or when displaced in refugee camps. [It is arguable that language testing such children may have limited cogency when the children have been exposed to so many different languages in the course of their flight, displacement and journeys.](#)

Each of the nationality disputed children were still accepted as children. There was evidence of good social work practice noted for one such child as arrangements were made for the 'linguistic test' to be carried out in the social services office and the allocated social worker was very supportive to the child throughout.

## **Trafficking**

Of the six cases in this study involving child victims of trafficking all had been accompanied on their journey – some with their traffickers, others with 'family members' (later found to be unrelated). Some entered the UK through the use of false and/or fraudulent documentation facilitated by the traffickers.

There was evidence of good Home Office practice promptly identifying potential child victims of trafficking:

*Looking at the interview notes from the airport it is clear that the child felt bewildered, first claiming asylum, then wanting to speak to his father and wanting to go home. Did not know the person he was supposed to meet. It is clear that HO officials decided that social work was best placed to deal with the matter. Trafficking suspicions were raised straight away by the HO.*

*A referral was then made to the National Referral Mechanism and Police Scotland due to indicators of human trafficking. A Joint Investigative Interview with the Local Authority and Police Scotland regarding human trafficking. This resulted in a positive conclusive decision that the child was a victim of human trafficking. This was a good decision given that the child did not articulate any actual exploitation. Although intention to exploit is sufficient for the definition – this is not always picked up in practice.*

However, there was also evidence that trafficking indicators were not being picked up early by the Home Office or the local authority on arrival and/or at screening, particularly in more complex cases:

*Client was a victim of trafficking for purposes of forced labour in a European country – this was clear on the face of his disclosure but not initially detected by social work.*

*Client disclosed that she was internally trafficked as a child in [country]. There was also some concern about the level of abuse suffered by her brother and the intention behind bringing her to the UK. This was not identified at the screening process.*

*Client confirmed that she had been left at an address with an unknown man, with three other young women/ girls, the man tried to force her to have sex with him and threatened to kill her when she refused. This should have been enough to indicate there were trafficking indicators present!*

*Trafficking indicators present as child had stayed in [European country] for 10 months. Not identified as potential trafficking.*

Six of the sampled cases were referred to the National Referral Mechanism (NRM) as potential trafficking victims of whom four were found to be victims of trafficking, one was not accepted, and at the time of writing, the other child's trafficking assessment was pending.

In this area, as with other status issues, the sample comments suggest a lack of coordination between various agencies involved in these trafficking cases.<sup>33</sup>

Both the Home Office and local authorities are required to identify and safeguard potential trafficking victims.<sup>34</sup> While the statutory guidance advises that Care must be taken to ensure that the child does not become lost between the agencies involved and their different systems and procedures the sampled cases suggest this is what happened in some cases.<sup>35</sup> Some of these problems are a result of the design of the trafficking identification system which nominates certain agencies, but not lawyers, as 'First Responders' who are permitted to refer cases to the NRM for investigation and identification as possible trafficking victims.

The six potential trafficking cases in this survey were referred to the NRM by the Home Office, local authority and Barnardos. In one case the social worker declined to refer a child to the NRM where trafficking was suspected by the child's lawyer and the lawyer contacted Barnardos who undertook the referral. In that case the lawyer commented that 'it was very difficult to liaise with the social worker' and the 'referral of a vulnerable child was delayed'.

The sample suggests that in this, as in other associated decision-making, the children may have difficulty understanding the process, the significance of the decision or the roles of professionals engaged with the decisions. In one case for example Barnardos was involved supporting the young person and initiated the NRM referral, but when the NRM decision was negative the Barnardos case worker, who formerly supported the child, ceased to be involved with her. Organisations are often limited by their funding and remit, but it can be very distressing and confusing for a child to lose the support of an adult they had learned to trust.

Where the children were found to be victims of trafficking prior to their asylum decision, this had a positive bearing on the asylum claim outcome. However not all NRM decisions were completed in time. In one case the NRM decision was pending despite the asylum determination having taken place and the application being refused.

### **Family contact and tracing**

In this – as in other studies<sup>36</sup> – there was little evidence of the Home Office or the local authority assisting children as soon as possible after they made their claims for asylum to help contact or trace their families – notwithstanding that they had a duty to endeavour do so, – including in cases of risk where such inquiries could be made on a confidential basis so as not to jeopardise the child’s safety.<sup>37</sup> Of the 60 sampled children 25 were recorded as having contact with family / friends at some point during their journeys and in the asylum process. Some of the children lost contact with their families during their journeys or on or after their arrival in the UK (11 children). Others (three children) succeeded in making a first or retaining existing contact with family following arrival, albeit under often difficult and stressful circumstances.

Some 20 lawyers reported their child client being asked by the Home Office for information relevant to family tracing, most of them at the screening interview. Of the 24 who gave a clear answer to the question as to whether the Home Office made any efforts to trace the child’s family, only five lawyers recorded some efforts in this regard. The efforts were modest, for example informing the local authority in two cases. The lawyers noted various reasons why there had been no tracing including that the family’s whereabouts were already known to the child (four cases), that there were risks in tracing because the family was complicit in exploiting the child (five cases), there were no facilities to trace in the home country (one case); the child turned 18 (one case) and in one other case that the local authority was undertaking this role.

Local authorities were somewhat more active in family tracing (in seven cases) Five children had accessed Red Cross help to find their families.

In 10 cases professionals and experts were noted to have commented on the impact of family separation and loss on the child and their distress at the lack of information concerning their family's whereabouts and welfare. The lack of meaningful assistance in family tracing is a serious omission (in law) and in these circumstances.

### **Physical, mental and emotional health**

Article 39 of the UNCRC states: "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

Unaccompanied asylum seeker children are shown to have higher rates of mental illness than other children.<sup>38</sup> The Department for Education's statutory guidance for local authorities recognises the complex needs of unaccompanied and trafficked children, that their experiences can be severe and traumatic and the need to ascertain any particular psychological or emotional impact of their experiences and the relevant psychological or mental health support needed to help the child deal with such experiences in addition to needs in relation to their general health, disability, education, religious persuasion, racial origin, cultural and linguistic background.<sup>39</sup>

The lawyers' comments in response to a number of the survey questions make reference to the emotional distress and anxiety experienced by the children.<sup>40</sup> The distress is variously attributed to the young person's past experiences, anxiety about their family, homesickness and concern about their asylum claims and their futures.

Child is emotionally disturbed due to complex circumstances but not harmed as such.

*Self-harming, presents as disturbed and distressed.*

*Distressed by separation from carers and anxious about the future.*

*Ongoing migraines.*

*He still appears withdrawn and anxious.*

*Very withdrawn.*

*She is hyper sensitive about her past.*

*She has consistently refused counselling, but probably needs it. I think she may react badly as she realises that she can do nothing for her siblings left in [country X], (in the care of the man who abused her).*

*The client seems distracted and has expressed that he has a low mood because he misses his mother.*

*Client appears quite disengaged from the process and does not provide information about his experiences willingly or in great detail. He appears distrustful. I have spoken to him about the availability of counselling and other therapies. At present he states that he is not interested in exploring this and just wants to forget about it. Will return to this but it would be helpful to speak to his carer; and for her to attend my office occasionally which she doesn't.*

As with other children in the UK, separated children can be referred to mental health services via referrals by schools, a GP, social services or self-referral and as our study illustrates, sometimes through their legal representative.<sup>41</sup>

Research into such referrals has found that unaccompanied children are more likely to be referred to mental health services by social services.<sup>42</sup> However, some social work studies have found that social workers may have little understanding of unaccompanied children's needs or underestimate the difficulties they face, including their health needs.<sup>43</sup>

This study suggests that even where the children exhibit signs of distress, anxiety and/or trauma, they have not been referred for mental health services. The lawyers recorded that only four of the 60 children were receiving regular medical treatment (three were receiving counselling) and a GP had referred another child for mental health treatment.

Children's charities and research studies have reported that there is "limited provision of specialist therapeutic support for children, and this may be affected by a young person's immigration status or transition into adulthood."<sup>44</sup> While children's continued residence in the UK is uncertain, their status as refugees or trafficking victims unresolved and they are in a care system designed to be temporary, the child's long term needs are neglected.

The provision of health support can assist the child to deal with the asylum process, its detailed narration and recall of traumatic events.

*It is key to note that often when a child receives health support they may also wish to engage with the asylum process.*

In the above case the lawyer who had prepared the child's history of past events further commented:

*[The child] withdrew [from me] a bit – the key workers made the phone calls etc. I thought that was OK as I was a continual reminder of the past.*

## **Accommodation**

Article 20 of the UNCRC states concerning the “special protection and assistance to be provided to separated/unaccompanied children that such assistance includes ensuring alternative care for the children which could include, foster placement, kafalah (guardianship) of Islamic law, adoption or if necessary placement in suitable institutions for the care of children and that in considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.”

The age of a separated child will generally determine the level of support and accommodation the assigned local authority will provide. Children under the age of 16 will usually be placed into the care of a foster family.<sup>45</sup> Children over the age of 16 were, until recently, usually placed in semi-independent living arrangements, for example supported / supervised accommodation and/or shared housing; residential care; private rented accommodation with ‘floating’ support provided by private or voluntary housing agencies. These arrangements continue for many children, but local authorities are becoming more aware of the need for greater levels of support and more children are now placed in foster care even when they arrive at age 16 or 17. It is hoped that the austerity- inspired cuts and the increased numbers of young asylum seekers do not cause local authorities to reverse these positive arrangements for vulnerable children.<sup>46</sup>

As noted in Chapter 3, 24 of the sampled children were aged under 16 years and the remaining 36 were aged between 16 and 17 years. At the early stage of the legal representation the participating lawyers were asked to record the type of accommodation in which the child was accommodated. Of the 58 who responded, those then being looked after by the Local Authority under Children Act provisions were housed:

- 2 were in B&B accommodation.
- 9 were in a Children's residential home.
- 31 were in foster care.
- 13 were in semi-independent living.

And at this juncture in the process three young people who were aged disputed were in B&B, private rented accommodation and an Immigration Induction Centre while awaiting the outcome of challenges to their assessed ages.<sup>47</sup>

This survey suggests that the children's experiences of foster and residential care were largely positive. The younger children and some vulnerable older adolescents were placed in foster care or residential care. Most of the older adolescents were placed in residential units designed for their age group or semi-independent accommodation.

As one would expect some of the children did not settle and had poor relations with other children and their carers, but these issues seem to have been addressed by social services departments in most cases, and where there was a good fit between child and residential/care arrangement, it was a positive experience for the children.

[Indeed our survey makes clear that separated children need access to relationships that can offer friendship, stability and care as well as professional support – that is 'close' and 'professional' relationships.](#)

These relationships include foster carers, voluntary agencies, guardians, social workers and lawyers. These supportive, trusting relationships were consistently commended in the study and the significance for the child noted.<sup>48</sup> Foster care and the positive peer support in residential care can be very important in this regard.<sup>49</sup> Some separated children may not wish to be in foster care, and others exhibited challenging behaviour and proved difficult to maintain in foster placements, but the majority in such care appeared to value being included as one of the family.<sup>50</sup> Three very clear comments reflect this:

*The client expressed that he felt safe with his foster carers and that he had a better relationship with his foster father than he did with his own father who had been abusive. The foster carers were supportive of the client's asylum application and provided useful written evidence to support the claim.*

*Child very appreciative of ordinary things such as birthday cake and days/meals out. I have found client's support/social worker to be very supportive and understanding of the challenges faced by separated children. My client has since in fact been placed with an Eritrean foster family in London notwithstanding that social services are [outside London].*

*[X] is an experienced foster carer and Albanian interpreter who is a migrant herself. She is dedicated and her placements tend to be successful. Her mother and sister also foster and they support each other and each other's foster children, creating a 'big family' where foster children always have peers.*

There were also examples of differences, behavioural disputes and foster relationships breaking down:<sup>51</sup>

*The child was unhappy in the foster care- cultural differences.  
The foster care placement was suspended and the social worker  
arranged a semi independent living arrangement with key worker.*

*Client was not happy with the foster carer. Client was a bit  
distressed. ...the foster carer and client were blaming each other and  
the social services was dealing with this issue... but he was happy  
with the fact that it was dealt by his support worker and later he was  
able to move to a different foster carer.*

*Child is high-maintenance, unsurprisingly due to past experiences,  
and has been quite demanding of carers who have been mixed in  
their responsiveness.*

**There was similar mixed commentary on children's residential care and semi-independent living experiences:<sup>52</sup>**

*Child is staying in a residential unit for 16-18 year olds that only  
accommodates asylum seeking young people – there is a high level  
of support and staff are experienced in working with this client  
group.*

*She was placed in appropriate supported residential  
accommodation for young girls of her age... [client] continued to  
be supported appropriately in terms of access to accommodation,  
health and accommodation.*

*Following a social work assessment... the child's living  
circumstances improved from a Homeless Unit to appropriate  
supported living. Attempts were made by social work and Barnardos  
to source a foster carer but none were located. Child however  
appeared to be happy with his accommodation. He started English  
lessons and college and became more confident and independent...  
which led to quicker and more effective integration.*

*The child stated that he does not like living in the children's home  
and the other children are very horrible and not nice to him. He  
said that he does not feel safe there.*

*Child was very distressed by treatment during first month after  
arrival and claim ...Key worker reports that she has settled in and  
has made friends and I have not received any complaints.*

**The sample included children who had multiple foster and care placements and were troubled and unsettled.<sup>53</sup> Social and support workers appeared to be proactive and generally successful in resolving these issues:**

*He was later in accommodation with other boys and got into a fight. He was arrested for affray but not charged.*

*The child went into new foster placement and child missed their old foster carer and was not happy with the new.*

*First arrangement did not work out, child was moved and the second seems to be working.*

*The client clearly expressed that he was not happy with the accommodation. This was more linked to the fact that he arrived with another ...boy and they did not get on.*

*Social Work and Barnardos were working to locate a foster placement.*

### **Experiences in local authority care**

There are clearly organisational difficulties evident in the care arrangements for these unaccompanied children. As the lawyers were asked at different times in the asylum process to record whether the child then had an allocated social worker, it would appear that there were times when children who previously had such allocated a social worker, were then without that support.<sup>54</sup>

With so many professionals involved, so many potential decisions to be made the coordination of the children's care appears to be a challenging task for local authorities. From the lawyer's vantage point these difficulties occurred when:

- There was a delay in referral of the child to legal services and the child commenced asylum screening without a legal representative.<sup>55</sup>
- The child had a lawyer but had not been allocated to a local authority – as described above.
- Lawyers provided their advice on trafficking indicators and mental health symptoms exhibited by the child but social services did not refer the child to the NRM or arrange mental health treatment.
- The lack of planning or the child's unhappiness with their social worker or carer or accommodation placement caused distress to the child, affecting their ability to engage with rigorous asylum or appeal processes.

*There was no clear plan or process for this client... There were no proactive steps taken around about her needs or how these should be met. This would have had a worse impact on the client in terms of the asylum process but for the support of the Scottish Guardianship Service. They carried out a lot of the duties that the local authority should have done.*

*...There were concerns over her safety as she had been the victim of abuse at the hands of certain family members... dependency on abusive/potentially abusive family members.*

*Child was scared for her safety and that of her baby daughter, she... had no money and nowhere to go she was not able to engage with the asylum process at this stage.*

*This case is unusually complex...the Local Authority has messed case around not bringing child to us until January 2014.*

*...We have however complained to the Home Office and the responsible LA that a proper assessment of her situation has not been carried out. The child does seem to be safe here from her own description however; no formal placement assessment has been carried out.*

Lawyers were asked to provide information on whether the child's present life (either negative or positive) was practically impacting on their engagement with the asylum process.

- 27/60 – said that support from guardians and foster carers had a positive impact on the child's engagement with the asylum process. All the Scotland cases replied positively to this.
- 11/60 said that the failure of social services to attend and support children to legal appointments had a negative practical impact on the child's engagement in the asylum process.<sup>56</sup>
- 3/60 said that lack of any monetary support to fund a child travel to legal appointment alone was also a significant negative impact on a practical level.

They were also asked to comment on their understanding of the child's experience of local authority care and the child's satisfaction with the care they received.

*26 – somewhat satisfied to very satisfied.*

*10 – somewhat to very dissatisfied.*

*17 – neutral.*

*17 – unclear.*

Individual social workers/ care workers won praise:

*The client engaged well with the asylum process and was brought to appointments by a social careworker from the Local Authority. The client was always brought to appointments and interviews on time and appeared to be comfortable with the social care worker who is an Albanian speaker. The social worker was active in arranging doctor's appointments in order to obtain medical evidence.*

Of the 10 children whose care and asylum processing was undertaken in Scotland, the lawyers gave very positive praise to the role and work of the Scottish guardians:

*Child expressed appreciation of support he received from Social Work and Scottish Guardianship Service.*

*Child has 2 social workers and a guardian and has good support.*

*Scottish Guardianship Service supported child to legal appointments and made sure that she had suitable accommodation she was happy with.*

*Improvement in health / wellbeing due involvement of guardianship service. Improved engagement and fuller disclosure as part of the asylum process, which led to positive decision.*

*If there was no guardian, this would have had a significantly negative impact taking into account the vulnerability and lack of trust from this child.*

*In this case, the child was fully supported by social work services and the Scottish Guardianship Service. He was always supported to attend interviews with legal representative and he was fully prepared. Key issues for him related to his accommodation, his diagnosis of [medical condition] (and severe anxiety over this) and isolation in a city... All of these points were taken on board by this support team and addressed. His understanding and capacity were very good throughout. This was demonstrated through his relaxed but confident attitude to the preparation of his SEF and interview.*

### **Care leavers and transition at 18**

As a large number of separated children are young adolescents, and it may take time for the asylum processes to be concluded, many children move from 'looked after child' status to 'former relevant child' status during the asylum process.<sup>57</sup> At the time of writing, of the 54 sampled children who had received decisions, 13 of them had transitioned into 'care leaver' status by the time of decision.

The majority of separated young care leavers will be entitled to support and services provided for by the leaving care regime which makes particular provision for the needs of unaccompanied and/or trafficked young people.<sup>58</sup>

The position of young adult 'former relevant children' is complex and deserving of a study in its own right. The issues associated with this group of young adults will be dealt with in more detail in the proposed second report from this survey but at this processing stage, it is noticeable that their transition to adulthood brings additional practical difficulties which these vulnerable young adults may be ill-equipped to deal with.

*I don't know what the child's views were at the beginning- but once he became 18 during the asylum process- I tried to contact the social worker several times with a view to him getting his [travel] ticket arranged for the substantive interview and received no replies- eventually after numerous calls etc I was informed that as he turned 18 they no longer had any responsibility for him – after few further calls- I arranged for child to have his tickets paid- but once he turned 18 he was lost- not knowing who to turn to in social services or how to fill out forms etc.*

*Once child turned 18 which was right before completing his SEF... I had to take the SEF with no one other myself and interpreter present as no one from social services attended his appointments.*

*The child's health improved as a result of specialist counselling. However, social work continued to support her under the incorrect provision, which meant that she did not have an allocated social worker; appropriate assessments and reviews and did not receive the correct support amounts. This would also affect throughcare and aftercare, which they stated they did not need to provide. All support was to be stopped at her 18th birthday. This would have affected educational opportunities. The child was upset about this. We threatened judicial review on this matter after protracted correspondence. The local authority conceded that she was a looked after child just before 18th birthday and undertook to do an assessment in terms of throughcare and aftercare support. We asked the child to get back in touch if there were further problems in the implementation of this. The child clearly articulated that she felt that she needed support as she moved to more independent living.*

The processing, care and support issues identified in this chapter are further considered in Chapter 6, which considers the lawyer's role in challenging decisions, working with care and support workers and ensuring full presentation of the child's claims.

- 1** For example, this was noted of one child: 'Client entered unaccompanied but was reunified with sister and therefore in a private fostering relationship (which subsequently broke down). Her asylum and trafficking claim were dealt with as an unaccompanied child and she was not dependent on sister.' In another case, the child's case was referred to the local authority by the Law Centre due to child protection concerns raised during first contact and the child was taken into care shortly thereafter. Of the four children in 'family' or 'private fostering' arrangements, three lawyers confirmed that the local authority had been notified of the arrangement. The local authority was recorded as having assessed one such placement and, following assessment, to have provided additional support to the 'carer'. Under the Children Act 1989, it is the duty of every local authority to satisfy itself that the welfare of children who are privately fostered within its area is being satisfactorily safeguarded and promoted.
- 2** There were 27 local authorities reported as involved with the sampled children - Bath (1); Bolton (1); Bristol (1); Buckinghamshire (1); City of London (1); Coventry (2); Croydon (6); Dumfries & Galloway (1); Ealing (1); Edinburgh (2); Glasgow (10); Greenwich (1); Hampshire (2); Haringey (1); Harrow (1); Kensington & Chelsea (2); Kent (1); Kirklees (1); Lambeth (1); Northampton/shire (4); Solihull (1); Southwark (3); Stafford (1); Surrey (1); Tower Hamlets (1); Wakefield (1) (disputed); Warwickshire (8).
- 3** As the sampled children were all residing in England & Scotland this chapter will focus on relevant provisions applicable in both territories.
- 4** See: Wade, J., Mitchell, F., & Baylis, G. (2005) *Unaccompanied Asylum Seeking Children: The response of social work services London* (BAAF); Chase, E. et al (2008) op. cit.; UNICEF *Levelling the playing field: A UNICEF UK report into provision of services to unaccompanied or separated migrant children in three local authority areas in England 2010*; Legal Services Agency, *Legal issues in the accommodation and support of asylum seeking and trafficked children under the Children (Scotland) Act 1995, 2014*; Wade, J. 'Preparation and transition planning for unaccompanied asylum seeking and refugee young people: A review of evidence in England' *Children and Youth Services Review* 33 (2011); Kohli, RKS, & Connolly, H. (2009) 'Young People Seeking Asylum' in Petch, A. (ed.) *Managing Transition: support for individuals at key points of transition* Policy Press; Kohli RKS (2008) 'Unaccompanied asylum seeking children and the transition into care' in Lefevre, M. & Luckock, B. (eds) *A guide for social work practice in foster, adoptive and residential care* British Association of Adoption and Fostering pp.204-212; Wade, J., Sirriyeh, A., Kohli, RKS, & Simmonds, J. (2012) *Fostering unaccompanied asylum seeking young people: creating a family life across a world of difference*. BAAF London.
- 5** Jim Wade describes foster carers 'working in the dark' because of the lack of information about young people that is available to them or shared with them.
- 6** Crawley, H., and Kohli, RKS. (2013) 'She Endures With Me'. *An Evaluation of the Scottish Guardianship Service Pilot*. Available at: [www.scottishrefugeecouncil.org.uk/guardianship](http://www.scottishrefugeecouncil.org.uk/guardianship).
- 7** Two of the sampled children were recorded as having been supported under s17 of the Children Act 1989 at the time of initial reporting and the survey results suggest that referrals were made on behalf of children to challenge this provision of support. Following the decision of the House of Lords *R (G) v Southwark LBC* [2009] UKHL 26, separated children should be supported under s20 of the Children Act 1989 (see Baroness Hale at para [28]).
- 8** Similar to the provision for children in England and Wales under s20 of the Children Act 1989.
- 9** Similar to the provision for children in England and Wales under s17 of the Children Act 1989.
- 10** The policy debate surrounding this change in position was heavily facilitated and influenced by the work of the Legal Services Agency in Scotland, a participating Law Centre in this study. See further their report Legal Services Agency, *Legal Issues in the Accommodation and Support of Asylum Seeking and Trafficked Children under the Children (Scotland) Act 1995, 2014*.
- 11** The Children (Scotland) Act 1995 states: Section 17 Duty of local authority to child looked after by them. (1) Where a child is looked after by a local authority they shall, in such manner as the Secretary of State may prescribe— (a) safeguard and promote his welfare (which shall, in the exercise of their duty to him be their paramount concern); Section 22 Promotion of welfare of children in need. (1) A local authority shall— (a) safeguard and promote the welfare of children in their area who are in need; and (b) so far as is consistent with that duty, promote the upbringing of such children by their families, by providing a range and level of services appropriate to the children's needs. Section 25 Provision of accommodation for children, etc. (1) A local authority shall provide accommodation for any child who, residing or having been found within their area, appears to them to require such provision because— (a) no-one has parental responsibility for him; (b) he is lost or abandoned; or (c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care. (2) Without prejudice to subsection (1) above, a local authority may provide accommodation for any child within their area if they consider that to do so would safeguard or promote his welfare. (3) A local authority may provide accommodation for any person within their area who is at least eighteen years of age but not yet twenty-one, if they consider that to do so would safeguard or promote his welfare.
- 12** Section 11 of the Children Act 2004 places a duty on public authorities - including the police - to ensure their functions, and any services that they contract out to others, are discharged having regard to the need to safeguard and promote the welfare of children.
- 13** A child originally in a 'private fostering' arrangement at the time of referral to the Law Centre.
- 14** Kohli, R. (2006) 'The Comfort of strangers: social work practice with unaccompanied asylum-seeking children and young people in the UK' *Child & Family Social Work* 11 (4).
- 15** Association of Directors of Children's Services (ADCS) *Age Assessment Guidance, Guidance to assist social workers and their managers in undertaking age assessments in England* October 2015, p.10.
- 16** In these cases the protection issues were first identified by teachers, by a GP and as a result of domestic violence and referred to the local authority.
- 17** The Home Office fund local authorities to support and accommodate unaccompanied children through a grant scheme "...there is a per capita formula for the grant reclaim for unaccompanied asylum seeking children which is contingent upon their age...There are exceptions to the 'per capita' grant reclaim process. A number of 'gateway' authorities are remunerated through an additional grant in recognition of the higher numbers of unaccompanied children who enter care with the authority due to its location". See: Matthews, A. (2014) op. cit. p.20.
- 18** The Pan London Local Authorities Emergency Accommodation Protocol. Available at: [http://enfield.proceduresonline.com/chapters/p\\_unacc\\_asylum.html](http://enfield.proceduresonline.com/chapters/p_unacc_asylum.html).
- 19** Crawley, H. *When is a child not a child? Asylum, age disputes and the process of age assessment* Immigration Lawyer Practitioners Association May 2007 p.21, in our politically and legally constructed model of childhood, documentary evidence of identity and birth are very important. This is not necessarily the case in other parts of the world from which asylum seekers originate and many separated asylum seeking children are unable to present documentary evidence of their age. There is evidence that issues relating to documentation including birth certificates and ID cards can be a significant factor in the decision to dispute age and that this can be exacerbated by the use of different calendars in some countries of origin (for example, Iran and Afghanistan).
- 20** 13 of the children were age disputed by a local authority; 8 by the Home Office.
- 21** One lawyer records 'the client originally gave a false name and date of birth because her agent told her to do so. She said that she was 14 although she was actually 16'.
- 22** As noted by the Refugee Council in their report *Not a minor offence: unaccompanied children locked up as part of the asylum system*, May 2012, p.6 Home Office figures 'do not include those who are treated as adults immediately on arrival. Their claims to be a child are only recorded by the UKBA if the official registering the claims believes them or is in some doubt. The statistics from the Home Office will also not include all those whose age is first disputed by the local authority.'
- 23** Current Home Office policy allows immigration officials to dispute a child's age if, in the opinion of the immigration officer, with the agreement of a Chief Immigration Officer, s/he believes that the child's 'physical appearance / demeanour very strongly suggests that they are significantly over 18 years of age.' Immigration officials do not have a duty to refer the case to social services and can continue to process the child's case as an adult. The most recent Age Assessment Guidance for social workers published by the Association of Directors of Children's Services (ADCS), in October 2015 advises social workers that 'Physical appearance and demeanour should not be the sole basis on which age is assessed' and goes on to confirm that even in the rare cases where 'it will be very clear that the individual is an adult well over the age of 18...you are still undertaking an assessment, albeit a brief one, and you must record the rationale for your decision as well as share your decision with the individual being assessed'.
- 24** Two of the disputed children challenged the age determination in judicial review claims.
- 25** HM Government, *Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children*, July 2014 p.22. Available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf); Guidance to assist social workers and their managers in undertaking age assessments in England, produced by the Association of Directors of Children's Services (ADCS), October 2015 also states '...young people should not be subjected to multiple assessments for administrative purposes only' On 15

October 2015 the Government commenced the 'Presumption about Age' provision (section 51) in the Modern Slavery Act 2015 for child victims of trafficking in England and Wales. The provision ensures that where there is uncertainty over a suspected trafficked victim's age, the presumption is that the victim is under 18. This presumption only ends when a local authority age assessment takes place or the person's age is otherwise determined.

**26** The lawyer noted 'Assessment was done when the child first arrived as he had no documentation to establish his birth. An interview process was undertaken using a phone interpreter. A full age assessment was however later abandoned when he was referred to a specialist team who accepted his age.'

**27** HM Government, Care of unaccompanied and trafficked children op. cit. p.54. At page 15 the guidance states: *Facilities such as police stations would not be considered appropriate for conducting age assessments, and every effort should be made to take a child or young person out of a police station in order to conduct a lawful assessment. If you have difficulty in securing the release of the child or young person into your care for the purpose of age assessment, you may wish to refer to the Age Assessment Joint Working Guidance which states that police stations are not appropriate settings for age assessments. If necessary you can make an initial assessment 'without prejudice' to secure release, before conducting a further assessment at a more appropriate place and time.*

**28** See: Crawley, H. and Lester, T. *No Place for a Child: Children in UK Immigration Detention: Impacts, Alternatives and Safeguards*, 2005; Amnesty International, *Seeking Asylum is Not a Crime: Detention of People who have sought Asylum*, 2005; Office of the Children's Commissioner for England, *Claiming Asylum at a Screening Unit as an Unaccompanied Child*, 2008; Bail for Immigration Detainees (BID), 'Briefing paper on children and immigration detention', 2009; Detention of Children, ILPA, 2009; Refugee Council, *Not a minor offence: unaccompanied children locked up as part of the asylum system* May 2012. Significant concerns over the detention of young people subject to age disputes have been raised by a number of organisations and agencies over the years as noted by the Refugee Council in its 2012 report: "...the mental and physical health of children is severely damaged by keeping them under lock and key, even for short periods of time.... Aquent policy and practice is not providing adequate protection for a number of young people in the asylum system. It is clear from our work that children are being held in immigration detention, after wrongly being judged to be adults." The report calls on the Home Office to "...refer all asylum applicants claiming to be children for a local authority assessment. Immigration officers should not make decisions on an applicant's likely age.

**29** The HM Chief Inspector of Prisons for England and Wales Annual Report 2014–15 found that children were being age assessed by Home Office staff instead of social workers and unlawfully assessed in detention instead of released for assessment, reporting that in the first six months of 2015, five children (three aged 16 or less) were held in one detention centre HM Chief Inspector of Prisons for England and Wales: Annual Report 2014–15 House of Commons, 2015.

**30** See for example: Coram Children's Legal Centre, *Happy Birthday? Disputing the age of children in the immigration system* May 2013; Office of the Children's Commissioner *The fact of age: Review of case law and local authority practice since the Supreme Court judgement of*

*R (A) v Croydon LBC* [2009] July 2012; Joint Committee on Human Rights Human Rights of unaccompanied migrant children and young people in the UK 2013–2014 p.85; A. Kvittingen, *Negotiating childhood: Age assessment in the UK asylum system*, Refugee Studies Centre, Oxford University Nov 2010; Crawley, H. *When is a child not a child? Asylum, age disputes and the process of age assessment* ILPA, 2007.

**31** See: Heaven Crawley, *When is a child not a child?* op. cit. pp.102 & 181. All the evidence points to the fact that children themselves experience being age disputed as one of the most distressing things that happens to them in the UK .... This is because the dispute over a child's age represents a dispute over the child's identity and life history...For many children there is evidence that mental health difficulties are directly associated with, or exacerbated by, the experience of being age disputed. ...Many children expressed a deep sense of 'being wronged' when their age was disputed .... Social work studies have previously reported the detrimental impact age assessments can have on the emotional wellbeing of unaccompanied children: Wade, J. et al (2005); Chase, E. et al (2008) op. cit. found 'Age disputes on arrival in the UK cause significant distress for young people...contributed greatly to young people's anxieties about the asylum process ... They did not understand why they were not being listened to about their age and why they were not believed.'

**32** "Linguistic analysis reports" from Sprakab, a Swedish body which provides opinions on a person's country of origin on the basis of a conversation with an expert analyst, can be controversial. See concerning their mode of analysis: *Secretary of State for the Home Department v MN and KY* [2014] UKSC 30, [2014] 1 WLR 2064; *RM (Sierra Leone) v The Secretary of State for the Home Department* [2015] EWCA Civ 541

**33** As supported by findings in a 2013 report by Refugee Council and The Children's Society, *Still at risk: A review of support for trafficked children*.

**34** Department for Education, *Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children*.

**35** *ibid* p.10.

**36** In Wilding, J. & Dembour, M. *Whose best interests? Exploring Unaccompanied Minors' Rights through the Lens of Migration and Asylum Processes*, University of Brighton, October 2015 it is stated - The Home Office had not attempted to trace the family members of any young person interviewed (11), despite the legal duty to do so. The Eritrean children interviewed all had telephone contact with family members, although this was sometimes complicated by concerns for the family's safety. One young person from Afghanistan had been in phone contact with family members who then disappeared and he was informed by others in the area that they had vanished following targeting by the Taliban. Others had contact with family members who were no longer in the country of origin. Two young people had found family members once in the UK - one had an older brother who had been in the UK for many years but with whom contact had been lost; another became separated from a younger brother while travelling and they were reunited more than five years later (p.32); Greater Manchester Immigration Aid Unit, *Children's Best Interests: A primary consideration?* June 2013 found that in an analysis of 34 cases of unaccompanied asylum seeking children's cases only 5 cases were noted as having any activity in relation to the tracing duty. In 4 cases children were advised of the Red

Cross tracing services and in only 1 case were active steps take to trace family.

**37** See endnotes 9, 50; 56 – 58 of Chapter 2.

**38** Hodes, M. & Tolmac, J. (2005) *Severely impaired young refugees* Clinical Child Psychology and Psychiatry, 10, 251–261; Hodes, M., Jagdev, D., Chandra, N. & Cunliff, A. (2008) *Risk and resilience for psychological distress amongst unaccompanied asylum seeking adolescents* Journal of Child Psychology and

Psychiatry, 49, 723–732; Simmonds, J. & Merredew F. *The Health Needs of Unaccompanied Asylum Seeking Children and Young People*. 2009 available at <http://www.nice.org.uk/guidance/ph28/evidence/looked-after-children-ep23-unaccompanied-asylum-seeking-children-john-simmonds-and-florence-merredew2>.

**39** Department for Education *Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children* p.26.

**40** See Ehntholt, K., Smith, P. & Yule, W. "School-based Cognitive-Behavioural Therapy Group Intervention for Refugee Children who have Experienced War-related Trauma"; 2005 *Clinical Child Psychology and Psychiatry*; Hodes, M. (2002) *Implications for psychiatric services of chronic civilian strife or war: Young refugees in the UK* Advances in Psychiatric Treatment, 8, 366–374; Hodes, M. (1998) *Refugee Children* British Medical Journal, 316, 793–794.

**41** On recent study reported 'An NGO worker described attending the surgery with two young people who had been refused registration because the receptionist had misunderstood the basis of their entitlement to register' and 'One young interviewee had been told by the pharmacy that he had to pay for prescription medication, which is incorrect for asylum seekers, and he therefore was not accessing medication' Wilding, J. & Dembour, M. *Whose best interests? Exploring Unaccompanied Minors' Rights through the Lens of Migration and Asylum Processes (MinAs)* University of Brighton, October 2015 p.23.

**42** Hodes, M. & Tolmac, J. *Severely impaired young refugees* op. cit.; Hodes, M., Jagdev, D., Chandra, N. & Cunliff, A. *Risk and resilience for psychological distress amongst unaccompanied asylum seeking adolescents* Journal of Child Psychology and Psychiatry, 49, pp.723–732 (2008).

**43** Wade, J. et al (2005) at 131 reported that although most initial needs assessments by social workers included health, detail was sparse, including general phrases such as 'no major health problems', 'appears in good health' or simply that the child needs to register with a G.P. Whilst finding that 49% of young people in the study were identified as having health problems that required one-off or longer treatment and 13% had longer term health problems.

**44** Chase, E. et al (2008) op. cit. para 183 *There appears to be a gap in terms of appropriate mental health services that social care and health professionals can refer young people on to. There is also a gap in appropriate services for young people once they reach the age of 18* Joint Committee on Human Rights *Human Rights of Unaccompanied Migrant Children and Young People in the UK* HL Paper 9, HC 196 (June 2013).

**45** Wade, J. et al (2005); Chase, E. et al (2008) op. cit.

**46** For examples, most local authorities have restructured resulting in the disbandment of specialist asylum teams within children services departments nationally, including gateway authorities. Wilding, J., Dembour, M, *Whose best interests? Exploring Unaccompanied Minors'*

Rights through the Lens of Migration and Asylum Processes op cit. p.30.

**47** Young people should not be accommodated in B&B accommodation, including on an emergency basis and/or even where the child's age is in dispute: See *R (G) v Southwark LBC* [2009] UKHL 26; Department for Children Schools and Family, Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation: Guidance to children's services authorities and local housing authorities about their duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to secure or provide accommodation for homeless 16 and 17 year old young people. Issued: April 2010 available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/8260/Provision\\_20of\\_20accommodation.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8260/Provision_20of_20accommodation.pdf); Association of Directors of Children's Services (ADCS), *Age Assessment Guidance: Guidance to assist social workers and their managers in undertaking age assessments in England* (October 2015) op cit. p.11.

**48** UNICEF UK report into provision of services to unaccompanied or separated migrant children in three local authority areas in England, entitled *Levelling the playing field: A UNICEF UK report into provision of services to unaccompanied or separated migrant children in three local authority areas in England 2010* op. cit. p.119 'One significant factor determining a child's ability to access services is the presence of a reliable and consistent adult in their lives'.

**49** Wade, J. 'Preparation and transition planning for unaccompanied asylum seeking and refugee young people: A review of evidence in England' Children and Youth Services Review 33 (2011) pp.2424-2430 op. cit. found that young people in foster or residential care were more likely to be engaged with education and strong networks of social support. Only 6% were not engaged in education compared to 32% of those housed in semi-independent accommodation. The UNICEF UK, *Levelling the playing field* op cit. found that those who had access to strong sources of support and networks were usually under the age of 16 and living in foster placements.

**50** The UNICEF UK *Levelling the playing field* op. cit. at p.54 "Almost without exception, practitioners thought that foster care was the best placement for unaccompanied or separated migrant children; they are seen to get a 'far better deal'. They get taught about 'expectations, routines, rules, respect, how to treat women, how to be respectful to others, taking responsibility for themselves, supported to get up in the morning, making sure their school uniform is washed'. These things are seen as being accomplished sooner and more successfully, because of the more intense support that foster placements provide. "They get them into schools, with the right support, and open up a huge vista. Language and education provide a huge head start. They are often quite resilient young people, but education and language boosts this. Young people are helped more in a foster setting." Social services manager, Solihull.

**51** Hek, R. (2005) *The Experiences and Needs of Refugee and Asylum Seeking Children in the UK: A Literature Review* found mixed views on foster care from unaccompanied children with some describing them as both positive (if it was somewhere they felt 'liked, valued and cared for') or negative (if they felt isolated, uncared for and/or were treated differently).

**52** Studies of children in residential care have found the quality of the relationships that they established with staff within the residential care home was important for young people (Chase, E. et al (2008) op. cit.) and found a high level

of satisfaction amongst children, feelings of residential homes being 'safe havens' and more capacity to attend to cultural and identity needs well (Stanley, K. *Cold comfort. Young separated refugees in England*, Save the Children 2001)

**53** Chase, E. et al (2008) op. cit. Placement changes experienced by young people risk isolating them from important support networks and this needs to be taken into account when decisions are made about placement moves; levelling the playing field p.58: These systems are rarely clear to unaccompanied or separated migrant children, and a number of them experienced regular and disruptive changes in their social or support workers, which impacted on their ability to form trusting relationships. This was the case for unaccompanied or separated migrant children and young people across the placement spectrum.

**54** Matthews, A. (The Office of the Children's Commissioner) (2014) op. cit.: Those aged 16 and 17 are normally expected to live in less expensive semi-independent accommodation with others in their situation. This latter group receive 'arm's-length' support from local authorities via independent reviewing officers, social workers and key workers who will ensure that a care plan and a pathway plan (detailing the trajectory into adulthood) is in place for them as for any child in public care; UNICEF UK, *Levelling the playing field* op. cit. 'very few unaccompanied or separated migrant children or young people received intensive personalised support from their social workers. In many cases, especially for those in semi-independent or supported accommodation, contact only took place when they called social workers to make an appointment with them.' [p.124]. For some, regular disruptions to social care support occur 'while the 'basic needs' could usually be covered ('food, clothing, a roof') fulfilling the role of the corporate parent and spending time with a child was difficult [p.54]. Constraints on social worker's time meant that often 'they were doing little more than trouble shooting and sign-posting.' [p.119]. Interviewees in a recent study reported 'staff turnover and great variability between social workers and social work teams' and noted that it 'was widely recognised that social workers were overworked and this could have an adverse impact, for example on foster placements, promptness of dealing with problems, access to education or the amount of support given to the child' noting that in some cases young people did not know who their social worker was (Wilding, J. & Dembour, M. 2015 op. cit. [29]

**55** In the 55 cases in which the Local Authorities were involved when the child was to undergo asylum screening - only 33 had been referred to a lawyer available to represent them at the screening interview.

**56** As commented on by Matthews, A. (The Office of the Children's Commissioner) (2014) op. cit. p.43 there also appears to be no separate funding for foster carers to attend legal interviews with children so attendance is seen as a financial burden. It is not known whether social workers can claim travel expenses for attendance at legal interviews. While these issues could usefully be researched further, the problems raised could be easily solved by the appointment of a guardian to the unaccompanied child.

**57** Former relevant children are those aged 18 to 21 years old and have either been an 'eligible' child (16 or 17 years old and 'looked after' under section 20 of the Children Act 1989 for at least 13 weeks since the age of 14 and continued to be looked after) or 'relevant' child (16 or 17 years old, have been 'looked after' under section 20 of the Children Act 1989 for at least 13 weeks since

the age of 14 and ceased to be looked after) or both. Children and Families Act 2014 introduced 'staying put' arrangements which allow children in care to stay with their foster families until the age of 21 years, if agreed).

**58** The Care Planning and Care Leavers (Amendment) Regulations 2014 (SI 2014/1917) amended the Care Leavers (England) Regulations 2010 to require that the care leaver's needs in relation to their status as a victim of trafficking or an unaccompanied asylum seeking child must be considered when the local authority is preparing an assessment of needs must consider whether their related needs are being met when reviewing the child's pathway plan (regulations 7 & 8).



**Put Yourself in Our Shoes:**  
Considering Children's  
Best Interests in the  
Asylum System

## **Chapter 6**

"By their side, on their side"  
Practical and ethical issues  
in the representation  
of unaccompanied children  
seeking asylum

"This is hard for us.  
Now is more hard  
if we go back"

This chapter deals with the role of lawyers in providing effective representation for child asylum seekers in respect of their protection and immigration claims. This analysis is focussed on the process up to the service of the Secretary of State's asylum decisions for 53 of the children. The Project will consider the substance of the refusal decisions and the appeal system, including the role and function of lawyers in asylum/human rights appeals, in the proposed second report on these surveyed cases.

## **“By their side, on their side”<sup>1</sup>**

Practical and ethical issues in the representation of unaccompanied children seeking asylum

“Refugee determinations involve the most intensely narrative mode of legal adjudication. The hearing depends largely – sometimes entirely – on the story of the applicant; this story is told in writing, orally re-told in full or in part, questioned, believed or disbelieved to varying degrees, and finally weighed against an assessment of future risk based on available documentary sources of information about the sending country to determine if the applicant faces a well-founded fear of persecution. The refugee determination is at once the smallest, most personal of inquiries: what happened to you? It is also a wide, speculative, political decision: is this government an on-going danger to (some of) its citizens?” Jenni Millbank (2009) “The Ring of Truth’: A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations’ International Journal of Refugee Law 21(1).

The starting premise is that unaccompanied child asylum seekers require effective legal representation. This statement is uncontroversial. Even so there are several reports suggesting that many children do not receive appropriate representation for their asylum applications or appeals. These reports criticise the general quality of legal representation for children in the immigration jurisdiction and note that many young people ‘struggle to get good quality representation’ and that solicitors ‘able to properly explore a child’s [protection and human rights] case are rare’.<sup>2</sup>

All of the children in this study were represented by Law Centre lawyers. The research undertaken is directed to a better understanding of what is effective representation for young asylum seekers and how to achieve it. The commentary and evaluations in response to the detailed surveys form the core data on this issue, but the Project combined wider research as well as focus group interviews with young people concerning their experiences of the asylum system, the analysis of the children’s claims and processing, and the provision of specialist training to Law Centre lawyers. The study has been careful to ensure children’s views are well represented and taken as informative on issues associated with their legal representation.

The issues raised in this analysis of legal representation concern both practice and ethical matters. This chapter focusses on three core issues concerning the legal representation of unaccompanied asylum seeker children.

- i. The ethics of child representation in protection and immigration proceedings.
- ii. The young person's participation in their case preparation.
- iii. Guidance on case preparation, including on credibility and best interests issues.

This survey completed by Law Centre lawyers was not designed to critique but to understand the lawyers' practice and representation. Where we have identified departures from good practice or omissions in preparation, this is not to criticise particular lawyers or Law Centres but to seek to identify the tasks, approaches, insights and preparation required for effective representation of child asylum seekers including in challenges to age disputes or their international protection or immigration claims. As the previous chapters make clear these unaccompanied children are caught up in two sets of legal processes – care processes which are not well understood by many immigration lawyers and immigration procedures and outcomes not always communicated to or understood by care or support staff and professionals.

The legal representation under exploration is marked by the vulnerability of the child clients, by the fact that they are without family support and have substitute, multi layered and not always well-coordinated institutional care and support, and by the fact that lawyers in Law Centres and the involved social workers and support staff are almost certainly overburdened, understaffed and underfunded. The issues on which the children seek legal assistance are lifedefining and intended as their 'durable solution'. The questions to be decided include whether the children are at real risk of serious harm if returned to their home countries, whether they could be safely reunited with their families somewhere, or whether they are permitted to remain in the UK. These matters call for a protective oversight.

### **Children's views**

This study included focus group interviews with young people (not part of the surveyed group) some of whom had been refused and others granted international protection. These young people spoke of their experiences of the asylum process (highlighted in previous chapters) and their lawyers' representation. It is telling that the young people (whether granted international protection or not) generally attributed their success or failure, in large measure, to their lawyer.

*This is my third lawyer. Two of them left their job. I had him for one and a half years. When he left, I went home and I cried. When I met the second lawyer, first I was scared because I did not know her. But then she was good. Then she left. Now I have (XX). My luck comes in three. They all helped me and were very helpful solicitors. They did not ask me any bad questions, but they helped me every time. They don't want to upset you... They helped with my asylum case, my age,*

*my house, my doctors, they helped me everywhere. I am very happy, and my worker from the Red Cross, every time I asked to speak to my solicitor, she helped me to see him every time. (Child granted international protection.)*

*It depends on what a lawyer does and how they do it. My lawyer has thing about him. It feels as if he understands us, and he knows that if a kid was in that type of situation, how would he handle it, so he understands who we are and our situation. I think a lawyer needs to understand the kid to absolutely defend and hold the case. (Child granted international protection.)*

*A bad lawyer would be someone who does not care about you. All this person cares about is just money. And not putting himself in others' shoes. And not caring if a young person gets asylum or not. Or does not push a case along...but for me it's hard to say, because I am lucky, I have never met a bad lawyer. (Child granted international protection.)*

*I want to stick to this lawyer, because I believe I was very lucky to have such a guy that absolutely understood me, that worked hard, that kept going. (Child granted international protection.)*

*Sometimes you know that that lawyer knows the law more than the other lawyer. If they are not qualified enough they don't do good. (Child refused international protection.)*

*We need a bit more trained lawyers. And the kind of people who will put some effort into what they are doing. The lawyers we have are not qualified, they don't know about [named country of origin]. (Child refused international protection.)*

*They give you false hope. (Child refused international protection.)*

*My lawyer said "your case is strong, let's go to court, I'm going to win your case". So me and my social worker, we go to court. When we go to the court, there is no solicitor, just me and my social worker...(Child refused international protection.)*

*I went to the court 4 weeks ago. In my statement they did not mention anything about my family here, my girlfriend or anything. I got the refusal letter in 9 days. I think they should put everything down [in the statement]. They should also mention about the situation in [my country]. They should mention that. They didn't. (Child refused international protection.)*

*The lawyer they sent me helped me to understand everything. And he understood me. He could say, "Did I miss anything? What would you like?" Things like that... (Child granted international protection.)*

## **The lawyers' views**

The legal representation of unaccompanied child asylum seekers is a singular exercise. Lawyers who provide immigration and asylum advice and services for payment via a legal aid contract in England and Wales must be accredited to the Level 2 Senior Casework standard of the Law Society Immigration and Asylum Accreditation Scheme (IAAS)<sup>3</sup> and must have an enhanced Disclosure and Barring Service check in the 24 months prior to instruction.<sup>4</sup> Unlike other areas of law<sup>5</sup> there are no additional mandatory training or prequalification requirements for immigration lawyers representing children, despite calls and aspirations for specialism.<sup>6</sup> Legal practices wishing to conduct immigration and asylum work on a legal aid basis in Scotland must register to provide Civil Legal Assistance but the lawyers are not subject to the IAAS accreditation scheme as in England & Wales.<sup>7</sup>

As a general rule lawyers are obliged to act on their client's instructions and where their client is a child those instructions can be given via a guardian or next friend in family or civil proceedings or facilitated by the young defendant's family in criminal proceedings.<sup>8</sup> The social workers allocated to unaccompanied children seeking asylum do not act as their guardians in immigration or asylum proceedings. Indeed this sample suggests that some social workers do not always attend interviews or appeals or keep informed about the child's asylum claim. [The lawyer's role as the representative of the unaccompanied child thus assumes a critical importance and complexity.](#)

This study began with preliminary views from a number of the participating Law Centre lawyers about their experiences of working with unaccompanied children (unconnected to the surveys of the sampled children). Their analyses of the difficulties and constraints in their representation are a reminder that any recommendations emanating from this study need to begin with an understanding of the work context, the child client base and their challenging interactions with different agencies and professionals. The lawyers' descriptions of the practice of child asylum seeker representation include the following:

*You're armed with your knowledge of immigration laws – ready to diagnose and tackle your next client's immigration matter. You then find yourself sitting across the table from a vulnerable young client, afraid and alone having been dropped off at your door by social services. They may be bewildered, even distant, trying to grapple with why they are there to see you. You try your best to reassure them, comfort them in another official and alien environment – try and help them understand your role, the State's*

*responsibilities, their rights and entitlements – in a culture they have little understanding of and in a language they do not speak. You communicate through another adult, hoping that your sensitive approach to questioning will be properly conveyed to the child. Trying to make them feel at ease before you begin questioning them on events that may cause them pain, ask them about loved ones they have lost or left behind and details of the violence they may have witnessed, suffered or fear. You fear that your questioning may be causing them further harm, watching them become overwhelmed, distressed, withdrawn or even angry. But the time you have is limited – you open the envelope that the child has containing letters and forms to complete. A SEF deadline in 5 days and a substantive interview with immigration officers not long after.*

*In taking instructions, one is normally constrained by the legal aid strictures and the fact that many children come to a legal solicitor with certain baggage [they are reticent to disclose information, or come with a pre-fabbed and bland narrative] as they have already had contact with other agencies and government officials, not only in the UK but in their home countries and en-route to the United Kingdom, and this might be difficult to overcome. Giving advice in lay terms adapted to a child with little if any education and no knowledge of the intricacies of the UK asylum system can be very challenging.*

*Time constraints can put up obstacles in putting my priorities into practice. Although usually given around 20-30 days from screening, this is not often enough to ensure a full statement and evidence is submitted. Problems can easily arise – if a child is placed in care further away from our location, if there is a lack of interpreters, mental or physical health issues. In addition, children often have their answers picked apart and analysed, particularly if they have given a number of statements (police, NRM, age assessment, initial meeting, screening) and there is often not enough time to complete a statement incorporating all of these aspects which could be used as evidence of child being incredible. Services can be stretched, particularly medical services, which means that evidence is not ready in the time it takes before a decision is made. Services are also not consistent nationwide. Interpreter issues can mean that statements have to be checked again, as do interview records.*

*In order to implement a human rights based approach with a child, the systems that lawyers work within need to be turned on their head. The asylum process and the legal structures/legal aid we work within – have all been designed to meet the needs of the process and the people they work within. Any attempt to make them 'childsensitive'; is an add-on by way of policy/immigration rule*

*that is not always easy to implement in practice within the confines of the asylum system and the legal structures we operate in.*

The time and funding constraints and training needs identified by the lawyers are addressed below.

### **The child asylum seeker's right to representation**

Before analysing the data on legal representation in this study it is important to set out the domestic and international laws and guidance relevant to the legal representation and guardianship of unaccompanied children and young people.

The Reception Directive Article 19<sup>9</sup> and the Qualification Directive Article 30<sup>10</sup> require Member States 'as soon as possible' to 'take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation'. The Procedures Directive<sup>11</sup> provides the following basic 'guarantee' to unaccompanied minors (at least to those under 16<sup>12</sup>) that Member States shall

(a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application.

(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, within the framework set by the person who conducts the interview.

This 'guarantee' is now incorporated into the Immigration Rules for all children (para 353ZA).<sup>13</sup>

The UK has not signed and is not bound by the recast versions of these Directives, which is unfortunate as these provide a clearer, broader exposition of the representation rights accorded to young asylum seekers and the expected role of the representative.<sup>14</sup> Thus the recast Reception Directive Article 24<sup>15</sup> and the recast Procedures Directive Article 25<sup>16</sup> adopt the same text on this issue, as rendered here in the recast Reception Directive Article 24:

## Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of the representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2)<sup>17</sup>, and shall have the necessary expertise to that end. In order to ensure the minor's well-being and social development ..., the person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives...

4. Those working with unaccompanied minors shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

The recast Directives not only provide this fuller description of representation rights for all unaccompanied children (with discretion concerning their application to those who will in all likelihood reach 18 before a decision at first instance is taken) but the Directives also identify the modes of representation available. The recast Procedures Directive Article 2 (n) – for example – defines ‘representative’ to mean

(n) ....a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary...

Notwithstanding that the UK has not signed these recast directives, it would be helpful for these clearer representation rights to be included as amendments to the Immigration Rules (para 352ZA). The Directive provisions on representation rights do not conflict with government policy. Indeed, in explaining its opt-out to Parliament the government did not list the recast representation rights as a reason for its decision, and restated its statutory commitment to safeguarding children's welfare.<sup>18</sup>

## Ethical roles in legal representation

The recast Directives cited above implicitly model the two types of legal representation roles generally afforded to children – a direct representation model where lawyers advise and assist the child and act on his/ her instructions, and a model allowing for the lawyer to advance a case in the child's best interests (‘exercising legal capacity for the

minor'), even if this is not on the child's instructions. The issue of the representation model is a matter for the lawyer's professional associations not the government. It is our view that the Directive guidance can serve to prompt legal professional consideration of the ethics of representation of separated children in the immigration jurisdiction and, depending on any resulting recommendation, for the Upper Tribunal to incorporate any necessary procedures in its guidelines for vulnerable witnesses and parties.

This survey also provided an opportunity to consider the ethical representation models that need to be provided for unaccompanied children in immigration and protection procedures and appeals. This consideration is important because of the singularity of this particular area of practice – the need for lawyers to both take the child's instructions and assist the child client to attain the necessary competence for the direct instruction representation model to work,<sup>19</sup> and because there are few options for dealing with very young, mentally incapacitated child clients or those, such as trafficking or debt bondage victims, who keep secret their exploitation, abuse and risk because they may fear they or their families will be punished if they disclose their refugee claims.<sup>20</sup> For these most vulnerable children the direct representation model is often inappropriate.

The participating lawyers noted that certain children were withdrawn and fearful and appeared to be withholding information about traumatic experiences.<sup>21</sup> Their non-disclosure may have been resolved in time as the child's trust developed. However, some children maintain their silence despite the support of carers or lawyers.<sup>22</sup> The World Health Organisation's *Ethical and Safety Recommendations for Interviewing Trafficked Women* (which has equal resonance for children) recommends against interviewing trafficking victims if the interview itself will cause harm or compromise their safety or mental health.<sup>23</sup> The child's feeling of risk and fear create ethical difficulties for the instructed lawyer.

There is no explicit provision for the appointment of a guardian or litigation friend for child appellants before the Tribunal.<sup>24</sup> The Official Solicitor does not act for incapacitated children or adults in these proceedings<sup>25</sup> and the *Mental Capacity Act 2005* generally applies to those aged 16 or over lacking mental capacity.<sup>26</sup> These options, which might otherwise allow for substitute instructions to be provided by a responsible adult, are unlikely to assist with children affected by trafficking, debt bondage or other coercion.

This report does not recommend a best interests' representation model for these vulnerable young claimants. However, the difficulties arising in such cases have been debated by the American Immigration Law and Bar Associations and they advise the use of a third representation model for unaccompanied children in asylum or immigration cases where a

child does not provide instructions concerning the objectives of the representation or is not competent to do so. Under this model, and in these circumstances, it is recommended that the lawyer should advocate for the child's legal interests 'preserving to the greatest extent possible any immigration remedies available to the child'.<sup>27</sup> This model prevents lawyers acting on their interpretation of a child's best interests – a model inapt for older children. It preserves the lawyer's professional focus on legal interests and allows these outcomes (such as a finding that the child is a victim of trafficking, familial abuse or is at risk from debt bondage) to be advocated when a separated child does not/ cannot instruct the lawyer to seek this status or finding.

This is not a radical departure in child representation but an extension for lawyers of the approach already imbedded in the Immigration Rules which allow greater weight to be given to country and expert evidence where a child's state of mind and understanding means they cannot substantiate their asylum claim. [This approach should be available to lawyers where country or expert evidence is available to show the child to be the victim of abuse, in debt bondage, trafficked or, for example, at risk of forced marriage or FGM and the child is unable or unwilling to give instructions to advance such a case because of fear, or the control by or loyalty owed to a trafficker or their family, or their own shame at abuse.](#)

Our study suggests that this legal interest model has a place in the representation of unaccompanied children and young people in an asylum/international protection case. The suggestion is advanced in the knowledge that any departure from a direct representation model is a serious matter for lawyers and that the lawyer could be required to disclose to the Tribunal/ Home Office that he /she is adopting this legal interests role and the reasons for it. This study recommends that a working party including legal aid lawyers work with the Upper Tribunal to debate and develop an appropriate representation model or arrangements for these cases.

### **Child participation and case preparation**

It is very widely accepted that children should be encouraged to express their views, to participate in the asylum and immigration proceedings and to be heard. The survey exposed some of the barriers to their participation, showed some of the techniques used by the lawyers to encourage the children to participate, and heard from the children the rewards and disappointments from their engagement.

The lawyers made clear in their commentary and survey responses that they exercised representative, facilitative and protective roles for their separated child clients. They spoke of:

- The problems arising from the ‘rotating array’ of adults engaged with the children, that some of these adults were unsympathetic or hostile or ‘detached, distracted uninterested’ causing isolation, confusion and distress to some children.
- The need to win the child’s trust and to work to understand the child’s perspective.<sup>28</sup>
- The need to make clear their duty of confidentiality and that the explanation of their role should be clearly given and patiently explained.
- That children disclosing information about traumatic events needed to be allowed to go at their own pace and without pressure. Such approach was said to increase the claim’s credibility, to help the child feel safe and secure and to have a voice.
- The need to impress upon children that they are in control of the claim and that the representative is there to advise rather than direct them, commenting for example: “I use words like ‘on your side’ to explain my role...I try to encourage the children to ask questions...sometimes I say ‘you are the [boss] I work for you’ to try to empower them”.

In one example the lawyer described working with a young person who was perceived as a troublemaker by his key workers:

*“They didn’t believe anything he said and were quick to accuse him of further bad behaviour, or refuse to accept his version of events...I challenged the language used by key workers in front of my client, and made it clear that I acted for him, and was not going to be swayed by their view of him as a troublemaker. Gradually as he saw that I was not writing him off my client began to trust me, and felt able to give me important information about his past experiences and his private life.”*

The first interview between lawyer and their young client is important, and where possible should be a planned event. The setting is important. For example, if the child has spent time confined in a lorry or detained by a trafficker or other abusive adult it can be important to choose a room that is light and quiet. Whatever the child’s experiences, a discreet space where the child and the lawyer can interact uninterrupted is key to encouraging the development of trust and the sharing of important information. The interpreter should have the necessary communication and social skills, should make the child feel comfortable and if a good fit should be retained for all interviews.

It can be very important for a separated child client in a first interview with their lawyer to be assured that the lawyer knows something about their background.<sup>29</sup> Information gathered in the initial needs assessment undertaken by social services, a preliminary conversation between lawyer and child, or information gathered in initial contact and screening processes, can provide the child’s home address or home area and it

may be a simple matter to undertake an internet search to locate the village or town or suburb name and download relevant information and pictures to help engage the child client. This is the starting point with a child client, getting to know his/her background including for example family, siblings, friends, activities and schooling and, in time, an account of their departure (what was said and what they understood concerning their flight and the details of their journey). Their home background can illuminate details of considerable relevance to the child's claim – their particular attachment to their mother and that her relatives arranged the child's flight; their comfortable financial circumstances and/or strong family attachments (suggesting their flight is not for economic benefits); that the child secluded at home as a result of a blood feud waited each day to speak to former school friends through a small gap in the fence. These small details are often the recognisable indicators of the veracity of the child's account. While many of the participating lawyers recorded such detailed background facts there were a minority who appeared not to have elicited these relevant insights.

Such focus on the everyday detail of the child's life not only helps to develop trust, it allows the child's participation and is vital to explain the child's individual case. It also guards against the common lawyer fault of 'filling', under which approach, for example, each Afghan or Albanian boy is unconsciously assumed to be like other such clients. The lawyers assume they have heard it before and, unconsciously armed with a general mental picture of the case, allow their expectations to direct the narrative with children explaining events through narrow questions focussed on their flight and claimed risk. Not only does such focussed questioning result in the loss of important information, it can also result in the child feeling he/she was never heard and understood. One of the focus group young people described this approach from his lawyer:

*Sometimes they don't know the system, or the history of a place [i.e. the countries of origin]... The lawyers don't understand this, they never think about this. We know what is the problem in [country of origin] but they don't know. They are born here, grow up here, and they don't know how we come on the way here. (Child refused international protection.)*

This 'filling' fault is a serious barrier to child participation. Certain other potential barriers – and their significance in case preparation – deserve particular mention.

## Time and funding pressures

There were repeat comments from lawyers and children concerning the pressures of time, which were variously mentioned as not enough time for some lawyers to prepare statements or case materials or lost time for the children when interviews were cancelled at short notice due to interpreting or other problems or delays in receiving decisions.

As noted in Chapter 4, it is instructive to consider the time taken from the child's departure from home to the making of an asylum decision on his/her case. See Table at Appendix D, which shows such timelines for each of the 60 children, identified only by their nationality.

There are no final entries for those children still awaiting a decision. The table shows the time recorded for the child's journey, the claimed age of the child at the date of claim and the date of their asylum decision and the time

- From initial contact to screening (generally from 4 days to 3 weeks).
- Between their screening and the asylum interviews (generally between 2-4 weeks, though five children experienced significant delays between 8 months and 3 years).
- Between the interview and the service of the asylum decision (generally under 6 months).

The table makes clear that in some cases there were excessive delays. Related commentary suggested the delays occurred because interviews were cancelled due to the unsuitability of the interpreter (in one case twice), in another case due to child's serious ill-health and in one case the child temporarily absconded from care due to fear of removal.

Several of the lawyers commented on their time pressures dealing with children's cases. The survey asked the lawyers to calculate the time they had spent with their child client preparing for the substantive asylum interview. Of the 60 lawyers who responded, the recorded times were: 20 hours (1 lawyer); 12 hours (2); more than 10 hours (11); 8-10 hours (7); 6-8 hours (10); 4-6 hours (18); 2-4 hours (8); 1-2 hours (2); less than 1 hour (1).<sup>30</sup> Lawyers were then asked whether they felt that this was sufficient time to prepare papers and the child for the asylum interview in the individual case. Of the 58 who responded to this question, 57 said yes and one said no.

Unlike adult asylum applicants children's cases are paid at an 'hourly rate' under the immigration legal aid contract.<sup>31</sup> However, the work is initially capped at £800 for legal casework<sup>32</sup> and £400 to pay disbursements.<sup>33</sup> Additional payments are made for attendance at interviews.<sup>34</sup> If legal casework reaches the hourly rate cap lawyers will be required to submit an application for an extension of funding to the Legal Aid Agency (LAA) by email. Further costs requested will need to be justified in the

application. Further costs cannot usually be incurred without approval from the LAA.

The majority of lawyers reported having enough funded time to prepare the child's full application and did not report difficulties with obtaining extensions for further preparation time. However, some lawyers reported that they had insufficient funded time to prepare the child client and difficulties with delays in LAA decisions on their extension applications whilst working within the timeframes of the asylum process. One lawyer reported an extension application being refused by the LAA despite time needed with the individual child.

Time constraints of LAA contracts placed pressure on time spent with a child.

Lack of funding and capacity to spend more time with client.

Building trust and rapport takes time with a child; because of legal aid cuts and work load it is not always easy to build rapport on 'cue' with the client given the time constraints.

The lawyers were also asked if they requested the Home Office to postpone key scheduled events in order to allow further time for case preparation. Of the 47 lawyers who responded nine requested an extension; seven obtained a re-scheduling of the interview and one had the deadline for case submissions extended. In one case the Home Office refused to postpone the interview date because the '*events disturbing the child were in the UK and did not relate to risk on return*'. This refusal was clearly open to a challenge.

As detailed in Chapter 4 the survey data on the Home Office processing times showed in general timely asylum processing and decision-making with excessive delay in a minority of cases. Even so the delay caused real detriment to the young people and lawyers need to be proactive in pressuring for a decision in such cases where the delay is unreasonable and unfair. Of the nine young people refused international protection and leave to remain, and who experienced unreasonable delays, five had turned 17½ or 18 while awaiting their decisions and were thus facing removal and the loss of the protective assumptions applying to a child claimant.

### **Understanding roles**

Child asylum seekers may understand the role of their carers as it closely parallels adult roles known to them. Most will have little if any understanding of our legal system or the lawyer's role in it and, if coached or misinformed by agents, older asylum seekers or others they may be suspicious of the lawyer's motivations.<sup>35</sup> The lawyer's role can be confusing for these children because it is outside their experience.

*It can be easy for a child just to say yes to everything and instruct a solicitor to do whatever.*

In addition, the process requires that a lawyer asks probing and intrusive questions on private and distressing matters and also relies on the unlikely premise that the child is an active and directing participant, willing to share painful experiences and memories. Some of these children will have no expectation that they will be asked for their opinion, or that they can question an adult.<sup>36</sup> It is important for lawyers to anticipate how their role might appear to the child and over time provide simple explanations concerning their functions and why the child's story is so important and how it will be told.

As one lawyer records involving a case of a 14 year old young client who suffered violence and neglect throughout her childhood:

*The girl hid behind giggles, one word answers and a bit of a 'yeah whatever' attitude. I never do much hard core story/legal work in my first meeting as young people need a chance to stare at me for a while and make up their mind about me, so we talked about school, foster care, favourite subjects, friends, learning English...[after some time] She confided that she was scared about having to go to Home Office interview following a nasty experience at screening where she was asked if she was pregnant as a 12 year old Muslim girl... we spent time drawing a picture of the room and I asked her to decide who she wanted to sit next to her...*

## **Narration skills**

The Immigration Rules expect asylum seekers to substantiate their asylum or humanitarian protection claims (para 339L). This means the child claimant will be required to provide details of, explanations for, and a sequence to key events.

Particular skills are needed to interview children, and other professions undertake extensive training to equip them to undertake this challenging task. Skills needed by lawyers are set out helpfully in the Immigration Law Practitioner Association's (ILPA) Practice Guidance.<sup>37</sup> In summary these guidelines suggest the lawyer uses short simple questions, avoids the passive voice, nominalisation, unclear hypothetical questions, is patient, gives praise, avoids leading questions and helps a child's recall by asking many short direct questions about key incidents – (what was she wearing; was she carrying anything; what was her expression?) – each question designed to prompt a further memory about the occasion.

Children who formerly lived in small, close communities may have had little experience narrating their background or describing events because these matters are generally known within their community. The narration

of events relevant to their asylum claim will require new skills. It is easy to forget how such skills have become unexceptional in the UK because from nursery school we have learnt to 'show and tell', and to tell and write stories of our families and holidays. [The ability to tell our stories is a learnt skill and some of these child asylum seekers will have to be helped to learn the skill in a short space of time.](#)

Much Home Office questioning is directed to the sequence and dating of events – yet the children may come from rural communities where, for example, time is marked by seasonal or religious events rather than a calendar (or our calendar). It follows that it may also be important to help such children to order information and to utilise a time marking for key events (the seasons/ a religious festival/ the birth of a sibling) that is familiar and apt to their experience. The surveyed cases show a number of credibility challenges premised on inconsistencies over the timing and sequencing of events. Commenting on the child's asylum interview questions the lawyers noted:

*It appears from child's account that he is academically not at all able, gets confused easily especially about dates and reasons.*

*Questions of chronology were asked which were outside the child's ability due to lack of education and the fact that time was not marked.*

The survey also showed how frequently children are asked to comment on the motives of others – their parents/ police/ invading militia – the list is long.<sup>38</sup> One lawyer commented for example concerning a child's interview questions:

*Too often child was asked to guess about adults' decisions and actions.*

While there are good arguments to challenge the appropriateness of such questions, their routine use shows that children will need to be prepared for such questions and encouraged as part of the case preparation to think about the adult players in key events, to recall their behaviour, their words or how they were perceived. Such insights may allow their motives to be properly inferred or the child's lack of knowledge to be better understood. Again this can be a new analytical skill for children whose culture does not expect children to question adults or to consider their motives.

### **Providing detail**

Children's credibility is also often challenged on the basis that their accounts are 'vague' and do not contain sufficient detail. This lack of detail may simply reflect the child's age at the time of the event(s), or a family dynamic which excluded children from adult affairs, or that the

event is too traumatic for the child to speak of it. Lawyers noted 17 cases in which children were unable to provide full details of events in their asylum interview and in all but one of the cases observed that either the lack of detail was because the questions concerned a recent traumatic event (in some cases recent and raw) or concerned events that occurred some time ago when the child was younger and could be expected to have only a limited understanding of the event. Lawyers need to challenge the decision-maker's assumptions where the decision-maker has unreasonably assumed that the child should know or could easily relate the missing information and has held against the child that the detail was unknown.<sup>39</sup>

While challenging Home Office approaches to credibility, it is also important for lawyers to seek to address factual omissions in the child's account. Lawyers need to explore the wider circumstances of a child's claim both to provide a fuller explanation for their claimed fear of persecution and, if needed, an explanation for the child's lack of knowledge of risk or of key events.<sup>40</sup> Some lawyers recorded their approach to information gathering with child clients:

*I ask the client questions about their life and what their day to day activities were and who they shared these with. I ask the client what their interests are and what they like doing. Look at all the documents I have. If necessary, and possible, speak to others about their life.*

*I look at objective evidence or have some knowledge of the culture the child comes from but ask simple questions about their life and if there are gaps, why they do not know or why it is not expected of them. I would also talk about their family and who they grew up with, what they did, how that fitted to the child's life and develop it from there.*

Sometimes the missing detail can be provided by general information on the child's family circumstances. Some children can be encouraged to draw pictures and maps of their home area, and through alternating broad and focussed questions ('what can you remember', rather than 'what happened next') children may be encouraged to give a picture of home life and key events. The child's lack of knowledge of a Taliban raid in his home may require details of the lay-out of his home, where he was sleeping, what was in the room, whether there was any lighting, how precisely he was hidden, how and in what circumstances he emerged from hiding and that relatives living nearby arranged his exit soon after the incident. Fine and full detail of key events is important. As the child narrates the story, the lawyer should be 'seeing' the picture and using that emerging understanding to ask further questions. Where the child cannot provide the necessary detail, country evidence dealing with their locality or particular events can supplement the account. The lawyers commented:

*A child's asylum case will require as much research and detailed information as possible. In fact a child may be less aware of the reality in their home country and so research may prove more important than with an adult's case.*

Separated children can be encouraged to participate in the search for understandings of the events which prompted their flights. Their capacity and willingness to participate may change over time. These changes can occur as a result of their growing maturity and their developing understanding of the political circumstances in their home countries or their positive experiences in the care system.

### **The child's emotional state**

Lawyers need to be alert to signs that the child client may be suffering from emotional difficulties, depression, anxiety and trauma as these conditions may evidence a past trauma or current abuse, can affect memory and concentration, and can blunt a child's presentation.<sup>41</sup> The UNHCR study *The Heart of the Matter* notes that while many displaced children are resilient (having been forced to find ways to survive without their families), they are 'at heightened risk of developing mental health problems because of the stressors to which they have been exposed'. The sustained absence of a parental figure, the uncertainty of their legal status and residence and anxiety about family left behind all contribute to mental health problems. The report cites European studies showing that PTSD disorders are ten times higher among refugee children as compared with their non-refugee peers, and unaccompanied migrant children are five times more likely to have emotional problems than accompanied migrant children.<sup>42</sup>

The Thomas Coram research project, *Promoting the emotional wellbeing and mental health of unaccompanied young people seeking asylum in the UK* provides some guidance from clinical practice with young separated asylum seekers which can assist lawyers to understand how children manifest and respond to these conditions:<sup>43</sup>

- A wide spectrum of difficulties in emotional wellbeing was observed and described by young people. These ranged from missing family, feelings of isolation and loneliness, disturbed sleep patterns, general anxiety, headaches, panic attacks, depression, eating difficulties and in some cases ... more severe mental health problems requiring specialist support and sometimes hospitalisation.
- A common theme was that young people often did not identify with what might be thought of as western notions of treating emotional difficulties as a mental health issue. They frequently situated their emotional responses to the various traumas and experiences they had encountered in their 'heart', and were at times perplexed by the suggestion that these responses should be addressed through the 'mind'.

- Older young people participating in the research (age 16 plus) far more frequently expressed anxieties than the younger children.
- Young men tended to be less likely than young women to talk or seek advice about the emotional difficulties that they were facing.
- Many young people participating in the study resisted the idea of counselling or other therapies.

Social workers, foster carers, support workers, advocates, counsellors and teachers – some of the professionals in close contact with the children – can provide important information and evidence concerning the child’s well-being. Children in Need assessments, records of planning meetings, and LAC (Looked After Child) reviews in the child’s social work file can also be helpful sources of information on the child’s emotional state, maturity, social development and any contacts with his/her family.<sup>44</sup> This will all be relevant to the assessment of the child’s asylum claim. As part of their statutory duties and responsibilities local authorities will undertake regular reviews, assessments and care planning in unaccompanied children’s cases. As part of these reviews and assessments foster carers, social workers and other professionals will routinely address difficulties and challenges the child may be facing in their daily life or concerning their past life. Evidence of the child’s homesickness and concern about and lack of contact with his/her family may be relevant to whether the child would have family support on return. A foster carer’s evidence of the child’s nightmares or bedwetting can assist in showing the child may have experienced trauma.<sup>45</sup> A teacher can give evidence about whether the child is self-harming, anxious, depressed or withdrawn, his/her maturity, behaviour, self-sufficiency or the school’s assessment of the child’s age. Teachers’ insights on how a child expresses themselves in their daily lives may be telling, for example, artwork depicting conflict, sadness or loss.

While 10 of the lawyers recorded that they included social work evidence as part of the child’s asylum application and medical evidence was submitted in six cases, this appears to be a relatively small proportion considering the profile of the children and their claims.

One reason for the limited use of professional or expert reports is almost certainly the legal aid funding restrictions. This was evidenced in the different resourcing of Scottish and most English claims. There are not the same restrictions on the provision of legal aid in Scotland – and four of the six claims supported by medical expert evidence were submitted by Scottish lawyers.

Lawyers subject to legal aid restrictions in England and Wales reported difficulties in obtaining legal aid funding for medical and other experts and for the fees required by skilled interpreters. One lawyer commented on the Centre’s experience that:

*It was standard practice for the LAA not to grant funding for experts at the legal help stage [asylum application and preparation stage].*

Lawyers reported difficulties in obtaining funding for psychological assessments of children:

*Suspected she suffered trauma related mental ill health but could not get funding for an assessment from the LAA.*

*We, Barnardos and myself, have always felt that the client was not disclosing all of the details of her account. We felt that she needed a psychological assessment but the LAA refused this, repeatedly.*

Funding for expert and interpreters fees under civil legal aid are governed by new regulations and guidance, which set out the rates and conditions of payment for fees that are/will be payable.<sup>46</sup> The regulations and guidance provide a list of experts with a ‘benchmark’ of the types of activities that may be funded and list of applicable rates.<sup>47</sup> The LAA will not usually pay for expert fees that exceed the rates listed in their guidance save in exceptional circumstances. Rates for experts in and out of London differ.<sup>48</sup>

These funding restrictions underline and justify the importance of gathering information and evidence from a number of sources including social work, foster carer and teaching and other professionals associated with particular children, as described above. If there are concerns about the child’s capacity, mental health or emotional wellbeing it will be important to ascertain what steps are taken by carers or social services to address these concerns. Social services intervention may be necessary. It will be important to keep appraised with all assessments and referrals being made outside of the ‘immigration’ prism, which will also aid the understanding of decision-makers when considering the evidence required to substantiate and support a child’s case.

This survey also showed a further problem evidencing the children’s emotional well-being – that the children’s disclosure of past abuse often took some time and patience from carers and lawyers. This and other studies confirm that children may disclose when they feel safe to do so (which may be after their asylum interview) or when they feel they have to because their future safety requires it. Some children appeared to steel themselves to disclose their exploitation and abuse at or close to the time of the asylum interview. In one such case the lawyer commented:

*Before the substantive interview the full extent of the abuse suffered in [named home country] and the UK became clear. A full disclosure meant referrals by us to appropriate support providers. These providers evidenced the vulnerability of the child. This led to special arrangements for the interview. Adding that the ‘establishment of*

*trust, number of meetings with child and her understanding of the asylum process*' played a vital role in disclosure.

The lawyers were asked for their assessment of whether the child's care arrangements in the UK affected their engagement with the asylum processing system. Of the 32 lawyers who gave clear answers to this question, 24 assessed their child clients as feeling safe and their care arrangement having a positive impact on asylum processing and nine assessed the care arrangements as having a negative effect, with children disengaged and distracted. As detailed in Chapter 5, some of these problems arose when foster placements broke down or were changed, if the child struggled in residential accommodation or had difficulties with school or their peers. Some of the children were exploited and subject to violence or abuse whilst in the UK. Again, it is important for lawyers to be aware of any difficulties the child is experiencing in the UK. These can be relevant to the assessment as to their maturity and self-sufficiency and thus to whether they can be self-protective on return.

If a child is very troubled and unsettled, this may impact their engagement with the asylum process and may be a reason to postpone their asylum interview. Home Office decisionmakers will require information to assist with timetabling of the asylum process and as noted in Chapter 4, such requests are generally adhered to following receipt of representations from the child's lawyer.

### **Understanding credibility challenges**

It is also important for lawyers to understand how to present the child's claim as deserving acceptance, how the credibility of a child's claim is likely to be and should be assessed, and the common errors in credibility assessment shown in Home Office and tribunal decisions. This knowledge assists their presentation of a child's case and informs their submissions. The UNHCR report, *The Heart of the Matter* is an excellent guide, its aim being to help decisionmakers assess the credibility of children's claims in a fair, objective and consistent manner.<sup>49</sup>

The Immigration Rules provide the starting point for this analysis. The Rules (paragraph 339L) confirm that it is 'the duty of the person to substantiate' the asylum, humanitarian protection or human rights claims – but also notes that 'where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

- (i) the person has made a genuine effort to substantiate his claims;
- (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
- (iii) the person's statements are found to be coherent and plausible and congruent with country information;

- (iv) the person has made their claims at the earliest possible time or has a good reason for not having done so; and
- (v) the general credibility of the person has been established.

The child's asylum statement should detail compliance with these requirements – a necessity where the claim is largely dependent on the child's statement. As the Rules make clear it is important to show (perhaps through a carer's statement or reference to the hours spent compiling the statement) that the child has made a genuine effort to substantiate his/her claim; to provide and to list the country data supporting the child's account, and that the account is coherent and congruent with country information. The participating lawyers itemised the supportive country evidence as including Home Office and US State Department country reports. These general reports can provide useful corroborative information, but it is also important to undertake wider research to deal with the precise details of the claim.<sup>50</sup> It can be important to provide supportive country evidence on even small details of the claim – finding the child's village on a map; an internet map search to show the precise location of house or school or church/mosque; a name search on any prominent people mentioned, and focussed country reports on FGM, forced marriage or, for example family displacement from the child's home area in Afghanistan or Pentecostal churches in Eritrea. An assessment of child protection and support systems in the proposed country of return will also be necessary.

While Rule 339L refers to the general credibility of the person being established, the UNHCR recommends that the focus is on the credibility of the asserted material facts rather than the whether the claimant is credible.<sup>51</sup> This approach is most important where the claimant is a child. Children may give a truthful account of events but the related facts may be incomplete or even inaccurate or unreliable. All too often decision-makers (and some lawyers) conflate these factors. Children frequently know only partial facts about or may have misunderstood the events which prompted their flights. In the many retellings to different professionals their stories may change, details may be forgotten or remembered, influenced by questions asked, the tone of the interviewer to certain answers and, as stated, the child's own developing understanding or their depressed or traumatised states.<sup>52</sup>

The UNHCR Handbook states that it is unlikely that refugees will be able to prove every aspect of their claim and that they should be given the 'benefit of the doubt'.<sup>53</sup> The Court of Appeal case *Karanakaran v Secretary of State for the Home Department* concurred as to "the notorious difficulty many asylum-seekers face in "proving" the facts on which their asylum plea is founded", the complexity of the evaluation of a protection claim, and that there is "a more positive role for uncertainty".<sup>54</sup> In this respect, as the Court explained "decision-makers may have to take into account a whole bundle of disparate pieces of evidence" and

while there will be evidence they are certain about, evidence they think is probably true, and evidence to which they are not willing to attach any credence at all, unusually in refugee determination a decision-maker is not bound to exclude evidence to which they are willing to attach some credence, even if they could not go so far as to say it is probably true although such evidence would be excluded if the decision-maker were deciding issues that arise in civil litigation.<sup>55</sup> In practice there has been consistent neglect of the 'benefit of the doubt' principle and the 'positive role for uncertainty' in asylum decision-making.

Children's participation in and understanding of the asylum process can be enhanced if the lawyer explains the Home Office approach to credibility – their concern with sequence, the amount of factual detail, internal consistency, plausibility and the child's manner and conduct, including their disclosures concerning their journey. In a characterisation which many immigration lawyers will recognise, one study divides decision-makers into 'lie detectors' and those comfortable dealing with complexity. It is suggested these decisionmakers can either become embedded sceptics or can become facilitators grappling with and understanding the evidential complexity in these cases.<sup>56</sup>

## Best interests

As outlined in the previous chapters, the UNCRC and the best interests' principle requires a child sensitive processing and decision-making of children's international protection claims. As the UNHCR has helpfully outlined in its *Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* this means consideration of child-specific rights and harms relevant to whether the child has experienced or is at future risk of persecution, of the particular risks faced by children, their susceptibility to exploitation and abuse, their need for appropriate adult protection and their limited options for relocation.

The Home Office guidance endorses this child-centred approach, noting at paragraph 16 of the *Asylum Process Guidance: Processing an asylum application from a child* the importance of:

- Assessing credibility taking into account additional child specific factors.
- Being proactive in the consideration of country evidence including child-specific Country of Origin Information.
- The factors to consider including: evidence from people with knowledge of the child – including post arrival in the UK, any child psychological and physical health and development reports or information from welfare and health support professionals to whom the child may have disclosed relevant evidence (such as rape) which he/she may not have felt able to disclose to others.

- Assessing the child’s protection claim (their fear, persecution, risk and relocation) in accordance with the UNHCR child asylum guidance.

The Home Office guidance further notes at paragraph 17.8 of the Guidance that the factors relevant to the balancing exercise where children are subject to removal can include:

- Physical and mental health & medical needs.
- Level of education.
- Emotional and behavioural development.
- Family and social relationships.
- Self-care skills.
- The child’s views.
- The child’s age and maturity.
- Experience of mental or emotional trauma.
- Compassionate factors.
- The duration of absence from the home country and level of integration in the UK.
- Whether the child is settled in education in the UK and the disruption caused to those arrangements by a decision to refuse outright.
- The desirability of continuity in the child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.
- The child’s right to preserve their identity, including nationality, name and family relations.
- The availability of care arrangements, the safety and security of the living arrangements, and the socio-economic conditions.
- The availability of education, work or training opportunities in the country of return.

Notwithstanding this commendable Home Office guidance a ‘best interests’/ child-specific focus is not always demonstrated in the Home Office asylum decision-making. In evidence to the Joint Committee on Human Rights the UNHCR said that: “the current practice of the UK is only to consider the best interests through an immigration prism, rather than as a process where the decision maker is required to weigh and balance all the relevant factors of a child’s case.”<sup>57</sup>

This survey serves to confirm the UNHCR observation concerning asylum refusals for the surveyed children. At the time of writing, 26 of the 60 children had received decisions refusing their international protection claims. Although, this report is not dealing in detail with the decision-making in these cases, it is important to note that of the 26 decisions, only 14 refusal decisions explicitly referred to the s55 guidance, largely by way of a generic paragraph (in identical terms) cited at the beginning (10) or the end (4) of the refusal letter.

There is little additional evidence of decision-makers ‘having regard to’ or undertaking a child-specific analysis of the facts and issues in the reasons advanced for refusal.

- The UNCRC is mentioned in only six of the 26 decisions, and the above UNHCR Guidelines for children’s claims are mentioned in only seven refusal letters – and again in standard paragraphs.<sup>58</sup>
- The recognition and/or importance of finding a durable solution is mentioned in only one of the 26 decisions (when refusing a 16 year old child ‘UASC’ leave).<sup>59</sup>
- There is limited reference to the children’s maturity and development.
- The following standard paragraph is mentioned in three cases: “more weight has been placed on objective indications of risk than to your state of mind and understanding of your situation. It is considered that at your age you would still have some understanding of the situation.” And in one of the three cases: “Careful regard has 20 been given to your age at the time of interview and the above answers provided in relation to the inconsistency presented.” Manifestly such generic reasons obscure rather than reveal whether the child’s credibility has been properly assessed.

This survey also suggests that some lawyers are also overlooking and confining the best interests’ case to an Article 8 proportionality assessment rather than as the working premise for the child’s protection claim. There may be two reasons for this restricted view of the application of the best interests’ principle by some lawyers. The case law guidance on children’s best interests has largely concerned removal and deportation decisions and the application of this principle in proportionality assessments. Some may take an erroneous message from these cases – that the best interests’ principle is limited in its application to these human rights claims.

For lawyers, the further reason can be traced to legal aid funding restrictions in England and Wales which distinguish between asylum and immigration claims. Thus while all asylum/ humanitarian protection applicants are entitled to publicly funded legal advice and representation under the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (LASPO), immigration matters (which includes Article 8 claims) have been removed from the scope of legal funding. For the purpose of ‘controlled work’, the funding for anything that is not an asylum claim is treated as an immigration matter for which the lawyer cannot be remunerated. Legal aid in Scotland administered by the Scottish Legal Aid Board (SLAB) under the *Legal Aid (Scotland) Act 1986* continues to provide legal aid in most areas of civil law in Scotland, including asylum and non-asylum/ immigration work.

Significant concerns over the detrimental impact of LASPO on separated and unaccompanied children have been raised by a number of children's charities,<sup>60</sup> the Justice Select Committee,<sup>61</sup> the Joint Committee on Human Rights<sup>62</sup> and the Office of the Children's Commissioner for England.<sup>63</sup> This survey would confirm and reiterate these concerns.

In 2014 the Office of the Children's Commission for England reported that lawyers representing unaccompanied asylum seeking children in England and Wales who previously obtained evidence from carers or other adults to build the child's protection case now felt forced to limit their evidence gathering for fear of not being paid. Information concerning a child's vulnerability and attachment to a foster family is clearly relevant to a private life claim but evidence from the foster family is also likely to be relevant as to whether the child has had any contacts with his/her family, is homesick, traumatised, is mature, can be selfprotective or could live unsupported and without family protection.<sup>64</sup> Lawyers are understandably concerned with how the legal aid authorities will characterise such evidence and the risk of being 'nil assessed' (not paid for the work that they have done).

Some evidence upon which it can be inferred that this funding concern is affecting case preparation amongst English lawyers is shown in the responses giving details of any additional witness statements prepared in the children's cases. Lawyers were asked to list any independent witness statements prepared and submitted with the asylum claims to help understand and establish past harm suffered by the child, the case facts and credibility of the child and his/her future risk. All such statements were prepared and submitted by participating Scottish lawyers. The Scottish lawyers also submitted the majority of medical reports. There would appear to be no reason for this difference in case preparation other than the different funding model in Scotland.

The English lawyers reported an array of difficulties with legal funding including:

- No funding to attend interviews with young people, particularly in cases where the child's age was in dispute and/or where the child has turned 18 during asylum processing.<sup>65</sup> *That funding limited the time they had with children through the process noting: Time constraints of LAA contracts placed pressure on time spent with a child. Lack of funding and capacity to spend more time with client; Building trust and rapport takes time with a child; because of legal aid cuts and work load it is not always easy to build rapport on 'cue' with the client given the time constraints.*
- Difficulties in securing funding for medical and expert reports and for quality interpretation – one lawyer for example noting '*Suspected she suffered trauma related mental ill health but could not get funding for an assessment from the LAA*'.

- Inability to access funding to prepare evidence surrounding the child's welfare, development and support needs.
- Evidence from the study highlighted that where medical reports were submitted to support a child's claim (seven) in all but one case refugee status was granted to the child.

Some of these difficulties arose because of the complexity of funding guidance and regulations. Lawyers did not always know that funding was available for the particular task or event. What is clear however that is the distinction between asylum and immigration work has created real difficulties in separated children's cases.

Lawyers were asked to comment on their ability to prepare adequately for the Article 8/best interests' aspects of the child's claim and how they justified preparation of the claim in light of legal aid changes. Of the 19 who replied stating that they were able to prepare this part of the case adequately, 13 of the lawyers were from Scotland. Of the six out of 47 lawyers from England that replied:

- One lawyer confirmed that the local authority provided some funding to prepare the child's human rights claim.
- One lawyer prepared all of the human rights evidence and submissions on a pro bono basis.
- One lawyer explained their ability to use other Law Centre funding to assist with part of the preparation.
- Two lawyers made submissions on a pro bono basis but did not prepare evidence on this issue.
- One lawyer justified this work as part of the s55 work on the asylum application.

As detailed in Chapter 2 in *JO* the Upper Tribunal gave guidance on the careful, rigorous, evidence based decision-making required of the Home Office when considering children's welfare and best interests. [While the Home Office has proactive duties of inquiry in this regard, it is clearly more satisfactory for the child's case that this detailed 'best interests' evidence is prepared by their lawyers.](#)

Lawyers must therefore pro-actively inquire and gather evidence from a number of sources as part of their casework preparation. They should access their child client's social work file. The care and pathway plans will have set out the child's circumstances, attachments, goals and vulnerabilities, aiding any best interests' assessment. As stated, children's teachers, close friends, foster family, support workers, guardians, medical professionals and a number of other professionals and individuals involved in the child's life can all provide relevant evidence upon which this assessment can be made. If the lawyer has fully and properly prepared the child's asylum claim, a good deal of this evidence will have been obtained. It is the clear recommendation of this study that lawyers

prepare evidence on the child's presentation and welfare as part of the funded asylum claim. While this evidence may also be relevant to the child's Article 8 claim, it is equally relevant to the child's protection claim and aids decision-makers determination of the child's claim.

**1** Taken from the title: Kohli RKS., Connolly, H. & Beckett, H. (2014) *By their side and on their side: Reviewing the evidence for guardianship for separated children in Northern Ireland* Northern Ireland Commissioner for Children and Young People (NICCY).

**2** Joint Committee on Human Rights, Human Rights of Unaccompanied Migrant Children and Young People in the UK, CM 8778, 2014 at paras 225–234. This assessment of poor representation was the evidence of the Children's Society, ILPA, Asylum Aid, the Refugee Council, Coram Children's Legal Centre. In the Refugee Council's study, *Lives in the Balance: The Quality of Immigration Legal Advice given to separated Children Seeking Asylum*, 2011 their research showed "the number of quality legal representative able to work effectively is limited" – with their advisers estimating "currently fewer than 20 representatives in London able to provide the desired service and the figure significantly lower in other areas of England" p.13. Similar concerns are identified in the Kent Law Clinic research report, *How Children Become Failed Asylum Seekers*, 2014 at p.10.

**3** See [www.lawsociety.org.uk/support-services/accreditation/immigration-asylum/](http://www.lawsociety.org.uk/support-services/accreditation/immigration-asylum/) for further details; 2013 Standard Civil Contract, Section 8, Immigration Specification, Paragraph 8.20.

**4** (Previously called Criminal Record Bureau check) 2013 Standard Civil Contract, Section 8, Immigration Specification, Paragraph 8.15 (c).

**5** For example, membership of the Children Law Accreditation Scheme, see further: [www.lawsociety.org.uk/support-services/accreditation/children-law/](http://www.lawsociety.org.uk/support-services/accreditation/children-law/).

**6** "...Ideally, the [immigration] advisor would specialise in working with children" *The Department for Education Care of unaccompanied and trafficked children*: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children July 2014 p.14; "...We recommend that the Law Society gives consideration to how the quality of immigration lawyers providing services to children might be improved" Matthews, A. (Office of the Children's Commissioner) (2014) op. cit. p.46; 'Accredited training should be designed to enable legal practitioners to be specifically recognised for their work with children in the asylum system' in Refugee Council, *Lives in the Balance*, 2011 p.3.

**7** The Law Society of Scotland also run accreditation scheme, which offers recognition of solicitors who develop specialist knowledge during their careers, including in immigration law, see: [www.lawscot.org.uk/members/membership-and-regular/accredited-specialists/](http://www.lawscot.org.uk/members/membership-and-regular/accredited-specialists/) for further details.

**8** Crawley, H. (2012) 'Working with children and young people subject to immigration control: guidelines for best practice' Immigration Law Practitioners Association (ILPA).

**9** Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

**10** Directive 2004/83/EU of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection, and the content of the protection granted.

**11** Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

**12** See Procedures Directive Article 17(2); (3).

**13** The Immigration Rules (Para 352ZA) state

concerning legal representation to be provided to unaccompanied asylum seeker children to assist with the processing of their claims: 352ZA. *The Secretary of State shall as soon as possible after an unaccompanied child makes an application for asylum take measures to ensure that a representative represents and/or assists the unaccompanied child with respect to the examination of the application and ensure that the representative is given the opportunity to inform the unaccompanied child about the meaning and possible consequences of the interview and, where appropriate, how to prepare himself for the interview. The representative shall have the right to be present at the interview and ask questions and make comments in the interview, within the framework set by the interviewer.*

**14** The recast Procedures Directive Art 25(4) states that Member States may refrain from appointing a representative where the unaccompanied minor will in all likelihood reach the age of 18 before a decision at first instance is taken.

**15** Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

**16** Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

**17** Article 23(2) concerns the requirement to give primary consideration to a child's best interests and in particular to take due account of the following factors: (a) family reunification possibilities; (b) the minor's well-being and social development, taking into particular consideration the minor's background; (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking; (d) the views of the minor in accordance with his or her age and maturity.

**18** The House of Lords European Union Committee First Report, *Asylum Directives: Scrutiny of the UK opt-in decisions*, 2 December 2009 available at: [www.publications.parliament.uk/pa/ld200910/ldselect/lddeucom/6/602.htm](http://www.publications.parliament.uk/pa/ld200910/ldselect/lddeucom/6/602.htm). At Annex 4 and 5 of this report, the Committee includes the government's Explanatory Memoranda to the Qualification and Procedures Directives. The concerns are reflected at Annex 5, paras 19–23 – namely: "The Government is committed to safeguarding children and this is reflected in the new statutory duty on UKBA to safeguard and promote children's welfare when the Borders, Citizenship and Immigration Act became law in October 2009. We do, however, have some concerns about the proposals that would unaccompanied minors from the application of accelerated procedures, and from the safe third country concept in the directive. We believe that it is in children's best interests to clarify their immigration status as soon as possible, which means that it should be possible to accelerate consideration of their claims. We are also concerned that the new provision may lead to more applicants claiming to be minors and therefore increase the number of age dispute cases and the risk of placing adults into Member States' child care systems."

**19** Writers on child representation suggest that child clients are rarely found to be 'competent' to direct their own representation; rather the lawyer this attribute has to be encouraged or developed by the lawyer and support workers. See: Federle, K.H. (1996) 'The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client' *Fordham Law Review* 64:4 art.17; Ross, C.J. (1996) 'From Vulnerability to Voice: Appointing Counsel for Children in Civil

Litigation' *Fordham Law Review*, 64:4 at 1655 and 1571.

**20** Their fears can be real. The Child Exploitation and Online Protection Centre (CEOP) in association with the British Embassy in Hanoi, has compiled a detailed study entitled *The Trafficking of Women and Children from Vietnam* (2011). The CEOP/ British Embassy report pp.17–18 para 4.5 and pp.21–22 para 5.2 further states concerning debt bondage and trafficking: "Debt bondage occurs when a victim is illegally bound to financial debt determined by the trafficker/trafficking network. The victim is then obliged to carry out the trafficker's wishes, often labour or sexual exploitation, until the debt is deemed settled. The debt commonly covers the inflated cost of travel arrangements, accommodation, food, a work arrangement fee and miscellaneous trafficker fees... the level of debt attributed to Vietnamese children trafficked to the UK was identified in two cases as £17,000 and £20,000... Debts may not be placed on the victim in their entirety – in many cases parents are expected to pay half of the fees... Those family members who cannot pay off the debts have been subject to violence and maiming, and some may have been killed. In one case a girl's hand was burned in a fire as a warning for her family to pay their debts to the traffickers. Such debt related violence has spilled over to the UK and is currently one of the challenges faced by UK police. It is likely that debt bondage is an excuse to keep a child in slavery indefinitely... debt bondage is the most common tool used to control victims, placing them in exploitation for an indeterminate period, until they have worked off debt which frequently covers transport, food, rent and other miscellaneous costs. In reality, it is likely to be until their earning potential has eroded to the point where it is no longer worth keeping them in exploitation."

**21** Comments included: He alluded to rape being common in Libyan jails, where he spent time on his journey to the UK, and was very distressed by his time there but...refused to discuss the issue further... may not be willing to disclose for a long time, if ever.

**22** Issues around disclosure can be varied and complex when concerning children, particularly where children have experienced violence or oppressive regimes, community or family networks or suffering trauma, see Melzak, S. (1992) *Secrecy, Privacy, Survival, Repressive Regimes, and Growing Up*, Anna Freud Centre. See also UNHCR *The Heart of the Matter* (2014) op. cit. chapter 3.

**23** Zimmerman, C. & Watts, C. *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women*, 2004, p.5.

**24** The Upper Tribunal has the power to appoint a litigation friend, at least when exercising its judicial review jurisdiction – see: R (on the application of AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 00118 and given its wide-ranging case management powers and its over-riding objective to ensure as far as practicable that the parties are able to participate fully in the proceedings, there is no discernible reason why the Upper Tribunal / First Tier Tribunal should not have the power to appoint a litigation friend/ guardian for the child or give a direction for another person to provide submissions to the Tribunal on the issue. Tribunal Procedure (Upper Tribunal) Rules 2008 r5(3)(d); Tribunal Procedure (First Tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 r2; r4(3)(d).

**25** This is reflected in the Official Solicitor's response to the Ministry of Justice Consultation Paper CP14/2013, 'Transforming Legal Aid: Delivering a More Credible and Efficient System' that "...save in wholly exceptional circumstances [...] the Official Solicitor does not act in asylum

and immigration claims, which are Tribunal matters, there being no provision for a litigation friend within the Tribunal system'. [para.21] available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/384402/official-solicitor-response-senior-courts.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384402/official-solicitor-response-senior-courts.pdf). The response gives an example of the 'exceptional circumstances' in which they acted - namely a woman in a minimally conscious state who entered the UK as a spouse and then was set alight with turpentine in suspicious circumstances... The impact of the residence test meant that she did not have access to legal aid funding to bring an appeal. The Official Solicitor applied on an urgent basis for authority to bring legal proceedings in her name and on her behalf. The court made an urgent order enabling the Official Solicitor to instruct solicitors to obtain legal aid for the purpose of appealing the decision.

**26** The exceptions to the *Mental Capacity Act 2005* - at sections 2(5), 18(3) and 44 are not relevant here.

**27** Jackson, K. Linsky, M. & Steglich, E. (2014) 'Representing Children in Removal proceedings - Ethical and practical Issues' *Immigration Practice Pointers* American Immigration Law Association; ABA Commission on Immigration (2004) *Standards for the Custody, Placement and Care, Legal representation and Adjudication of Unaccompanied Alien Children in the US*.

**28** See UNHCR *The Heart of the Matter* (2014) op. cit. p.63 which notes concerning the key component of trust in facilitating disclosure - that the essence of trust is best understood as the belief that the others are fair, that they will not take advantage of us, although they could.

**29** The importance of preparation and understanding of a child's background and home country prior to interview has been highlighted by the UNHCR UK who noted that good interview preparation by immigration officers interviewing children allows for well-structured interviews with children and lack of preparation can contribute to a lack of focus. This guidance equally applies to legal representatives see UN High Commissioner for Refugees (UNHCR), Quality Initiative Project, Sixth Report to the Minister, UNHCR UK asylum quality initiative project - children, UNHCR UK 2009 3.5.4 - 3.5.8.

**30** In the preliminary focus survey the participating lawyers were asked to note on average how long they usually spend with a child, prior to their substantive asylum interview. (There were 22 responses.) The lawyers stated :

>10 hours (4)	18.18%
8-10 hours (5)	22.73%
6-8 hours (4)	18.18%
4-6 hours (6)	27.27%
2-4 hours (2)	9.09%
1-2 hours (1)	4.55%

**31** A standard fixed fee sum is paid to providers for each stage of the adult applicant's asylum case (A fixed fee is one in which the same fee is charged regardless of the length time spent). Enhanced remuneration will be paid for fees that cross the escape fee threshold (three times the value under the standard fixed fee). These cases are sent to the LAA for an assessment with lawyers justifying time spent to meet the escape fee. Those assessed as falling below the escape fee will only be paid the standards fixed fee despite work claimed.

**32** Capped at £950 in Scotland. Time includes all attendance and advice to the child throughout the asylum process, including advice on the asylum process and procedures, relevant laws, rights and entitlements, roles and responsibilities of others,

investigating the child's protection application; taking instructions on the child's history, family, pre-flight experiences, journey, drafting, checking and finalising the child's statement; advice and preparation prior to the interviews; preparing legal submissions and evidence, including objective evidence and obtaining and preparing evidence from third parties.

**33** Disbursements are costs incurred for payment of various fees associated with the case including, interpreter's fees, expert fees obtaining medical and social services files or commissioning an expert report to support an application.

**34** Funding is available for lawyers to represent children at all immigration interviews, including screening and substantive asylum interviews 2013 Standard Civil Contract, Section 8, Immigration Specification, Paragraphs 8.52 & 8.53.

**35** As noted by The Children's Society (2011) *Into the Unknown* op. cit. "...as adolescents they are more easily influenced by the advice given to them by others, including adults in their surroundings and their peers."

**36** *ibid* "...many refugee children will have grown up in cultures where they have been taught to be obedient to their elders. They are more likely to be submissive to adults, particularly those in positions of authority. Our services find that young refugees are often unwilling to complain if something is wrong or ask questions."

**37** Crawley, H. (2012) op. cit.; Also see Kau, K (2012) *Current issues in best practice Voice of the Child Working with refugee children*. Immigration Law Practitioner Association's (ILPA) 2nd ed. Chapter 2.

**38** See chapter 4 where some of the following examples of asylum interview questions are quoted: Why authorities refused to let him defer military service and it confused client. Why his captors may have behaved in a certain way. Why his father would want to kill/beat him. He answered that father must not like him. Why a [named] Commander beat him. Why a local mafia leader would have a grudge against child because of parents' activities. 'When your uncle joined the Taliban did he want to or was he forced'. The motivations of their traffickers and/or perpetrators of harm. The motives of people who took him to [country X] and kept him there.

**39** See: UNHCR *The Heart of the Matter* (2014) op. cit. pp.150- 153.

**40** As noted by the UNHCR UK Quality Initiative Project, Sixth Report to the Minister, 2009 op. cit. 'neglecting to question the child on relevant matters also places an inappropriately high burden on the child to 'prove' their claim (see 3.4.12).

**41** *ibid* pp.61-63. In one case, the lawyer noted that the child had received a health diagnosis [for an infectious condition] and this impacted on his general well-being. He was very anxious about this and a lot of appointment time was spent on this, requiring legal aid enhancements and medical treatment arranged by his social worker.

**42** UNHCR *The Heart of the Matter* (2014) op. cit. pp.61-63.

**43** Chase, E. et al (2008) op. cit. pp 3-5.

**44** In one case the lawyer recorded that he/she was unaware of the extent of the child's distress/mental illness until the day set for the child's interview when the social worker provided a GP's letter confirming the child unfit to be interviewed.

**45** In Matthews, A. (Office of the Children's Commissioner) (2014) op. cit. it is noted: "As in other child protection assessments there may be evidence from third parties that are relevant to understanding the child's fears or behaviour. One lawyer told us: A child may be unable to articulate

their fears due to their capacity and minority. For example, we recently had a case where the child said very little about their feelings and fears but evidence from their foster carer confirmed that the child suffered from nightmares causing distress and bedwetting. Both the foster carer and the social worker were seeking professional help and support for the child. It was vital that this evidence was gathered and put before the decision maker." p.40.

**46** Guidance for reporting Controlled Work & Controlled Work matters, October 2013; 2013 Standard Civil Contract, Section 8, Immigration Specification; The Civil Legal Aid (Remuneration) (Amendment) Regulations 2013; Escape fee electronic handbook, July 2014; Guidance on the Remuneration of Expert Witnesses, April 2015.

**47** For example, child psychiatric services (see Guidance on the Remuneration of Expert Witnesses, April 2015 at 6.1); psychotherapists (at 6.10-6.11); independent social workers (at 6.2-6.4) etc.

**48** Guidance on the Remuneration of Expert Witnesses at 2.1 - 2.3; Guidance on the Remuneration of Expert Witnesses at 6.26-6.27 available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/420106/expert-witnesses-fees-guidance.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420106/expert-witnesses-fees-guidance.pdf).

**49** See UNHCR *The Heart of the Matter* (2014) op. cit. p.14

**50** UNICEF have been funded by the European Commission to prepare Child Notices for a number of the refugee producing countries providing information on the living situation of children in those countries of Origin (COL reports). This initiative is designed to deal with the lack of child specific research available and is to focus on evidence on - for example - local child protection arrangements, child-specific persecution. In July 2015 UNICEF published a child notice on Albania (UN Children's Fund (UNICEF), Child Notice Albania, 23 July 2015, available at: [www.refworld.org/docid/55b0dda14.html](http://www.refworld.org/docid/55b0dda14.html)).

**51** Matthews, A. (Office of the Children's Commissioner) (2014) op. cit. p.22.

**52** See: *UNHCR Response to Consultation Paper Code of Practice for Keeping Children Safe from Harm* available at: [www.unhcr.org.uk/fileadmin/user\\_upload/pdf/UNHCR\\_Response\\_to\\_Keeping\\_Children\\_Safe\\_from\\_Harm.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/UNHCR_Response_to_Keeping_Children_Safe_from_Harm.pdf). UNHCR considers that it should be borne in mind that a child asylum seeker may not be able to substantiate his/her claim initially. He or she may only later develop the requisite maturity and confidence to report traumatic experiences. It is therefore important that appropriate safeguards ensure that the examination of children takes such constraints into account.

**53** UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, pp.203, 196.

**54** *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11; [2000] 3 All ER 449 para 53.

**55** *ibid* para 55.

**56** See: Rousseau, C. & Foxen, P. (2005) 'Constructing and Deconstructing the Myth of the Lying Refugee' in Dongen, E.V. & Fainzang, S.S. (eds), *Lying and Illness. Power and Performance* at 74, 84.

**57** Joint Committee on Human Rights, Human Rights of Unaccompanied Children and Young People in the UK, First report (2013-2014, HL9, HC196), p.24.

**58** The standard paragraphs state: "your degree of

mental development and maturity has been taken into account when this decision has been made. The same burden of proof applies to you as it would an adult, although greater dispensation has been given to you throughout your asylum claim as a result of the understanding that you are a minor and that the problem of 'proof' is compounded in the case of children" (UNHCR Guidelines on Protection and Care 1994).

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**59** Unaccompanied asylum seeking child leave, granted to unaccompanied children who are refused asylum and subsidiary protection but cannot be reunited with family or otherwise removed. It is granted for 30 months or up to the age of 17.5, whichever is the shorter period.

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**60** Most recently, The Children's Society's report by Connolly, H. & Pinter, I. (2015) 'Cut off from Justice: The impact of excluding separated migrant children from legal aid'. Available at: [www.childrensociety.org.uk/sites/default/files/LegalAid\\_Full\\_0.pdf](http://www.childrensociety.org.uk/sites/default/files/LegalAid_Full_0.pdf).

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**61** Justice Select Committee published a report on the impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) March 2015.

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**62** In March 2015 the Joint Committee on Human Rights also published a report heavily criticising the Government's record on children's rights and the detrimental impact of the legal aid cuts on access to justice for children, particularly migrant and refugee children.

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**63** The Office of the Children's Commissioner for England *Legal aid changes – Child Rights Impact Assessment* Sept 2014.

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**64** Matthews, A. (Office of the Children's Commissioner) (2014) op. cit. See also Wilding, J. & Dembour, M. (2015) op. cit.; Greater Manchester Immigration Aid Unit *Children's Best Interests: A primary consideration?* June 2013.

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**65** Funding is available for lawyers to represent children at all immigration interviews, including screening and substantive asylum interviews under the Immigration Legal Aid Contract (Section 3 of the Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012 No. 2683) and this will include all interviews including screening and asylum interviews (2013 Standard Civil Contract, Section 8, Immigration Specification para 8.25). For the purposes of legal aid, a legal matter for the unaccompanied child can be opened even where the child's claimed age is disputed by the immigration authorities. One lawyer reported an inability to attend an interview where the child had turned 18 whilst waiting for the interview date. Lawyers must be alert to the fact that legal aid continues to be available to the young person so long as the legal help matter was opened when the young person was a child (See 13.7: Calculating the Applicable, Escape Cases electronic handbook, 10 July 2014) NB funding for any appeal work related to a refused application (CLR) will then be paid under the Fixed Fee scheme, and not the hourly rate, as in the case of adults.

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**Put Yourself in Our Shoes:**  
Considering Children's  
Best Interests in the  
Asylum System

## **Conclusion and Recommendations**

"If they were  
looking,  
I would have  
heard something  
by now"

Having considered the data and commentary on the asylum process to date, we observed a gap between the children's experience of the asylum process and what the law – international or domestic codified law as well as case law – prescribed that it should look like. The asylum system is not built to find the best interests of the child, but rather to establish grounds for granting asylum

The asylum process concentrates on the immediate pretext to a child asylum seeker's departure from their country of origin. In so doing it fails to take in other highly relevant factors about their life prior to leaving, or from their experience during their flight, which would better inform evaluations of their best interest.

An important interaction with the children seeking asylum was in their interviews. While some concerns were expressed about unnecessary and intrusive interviewing, interviews were considered mostly fair by the children and their legal representatives, and there was evidence that requests for special arrangements are given due regard.

Separated asylum-seeking children live with a high degree of uncertainty about their future, which can have a destabilising influence on their mental health and wellbeing. Even dedicated professionals working with them can find it hard to make plans with the young person and sometimes need to approach their care on a day-to-day basis. Delays in making decisions regarding durable solutions can exacerbate the stress and distress of children.

Overall, current asylum practice for unaccompanied children shows their distinct lack of agency: from being sent to flee to a succession of agents working on their case, things are being done to these children and for them with little or no seeking of their opinions, thoughts, feelings or desires. Conversely, the common assumption that separated children benefit from ample support of foster carers, social workers and others was not borne out by this research. Even among the many professionals associated with this vulnerable group we found lack of coordination, and in particular between the asylum and care systems – both necessary for determining the welfare and protection needs of separated children.

Evaluation of this survey has suggested many areas for change concerning the practice of effective representation for young asylum seekers and the realisation of their best interests.

## **Recommendations**

- The Home Office and Department for Education must develop reliable and relevant statistical data concerning unaccompanied child asylum applicants. Such data should include:
  - i. The concentrated and dispersed placements of 'looked after' children subject to immigration control throughout the UK and the broad age profile of children accommodated in each local authority area.
  - ii. The numbers of children whose age is first disputed by the Home Office and by the local authority.
  - iii. The total number of children whose age is disputed, whether by the Home Office or local authority and the outcomes in such cases – including the numbers of children whose claimed age is

disputed but later accepted and those children whose claimed age is disputed but whose assessed age is that of a child.

- The Home Office must immediately cease conducting ‘visual age assessments’ of young people. Their officers are not qualified to undertake such assessments and the consequences of a wrong assessment (the young person’s detention, their accommodation with adults, the attack on the young person’s credibility and possible detrimental effect on their claim for protection) are very serious for the child.
- Home Office caseworkers should be trained to be supportive of the role of the Responsible Adult in interviews and should be discouraged from seeking at the start of the interview and without cause to frame and limit the Responsible Adult’s role from one of safe-guarder to that of mere observer.
- The Home Office should establish a system of training and accreditation for interpreters working with children within the asylum/immigration system in the UK.
- All unaccompanied and separated children should be appointed an independent guardian who can work with the child to help them to navigate the asylum and care systems, and who can work effectively to co-ordinate other agencies involved with the child.
- All professionals making life changing decisions on children should be provided with best interests’ training. This survey supports the recommendation in this regard by the Joint Committee on Human Rights 2013 report on the Human Rights of Unaccompanied Migrant Children and Young People in the UK, which recommended that the “Government work with child welfare and safeguarding experts to develop a specific training programme to improve awareness and understanding of the UNCRC and its application to unaccompanied migrant children, particularly with respect to properly considering children’s best interests”. It also said that “such a programme, delivered by external providers, should be rolled out first to staff in frontline immigration and asylum roles, and to those in local authorities that deal regularly with unaccompanied migrant children. The programme should then be rolled out more widely as resources allow.”
- The First Reporting Event should be dispensed with and the Home Office should develop more child friendly and effective methods of contact management with the child through their social worker and/or lawyer.
- The Legal Aid Agency (LAA) must provide clear and accessible guidance on the funding and special measures in children’s cases. Guidance regarding funding arrangements under the civil legal aid contract are currently scattered across various pieces of regulations and guidance.
- Guidance on legal aid available to children and those representing them should be publicly available in accessible form so that those

assisting the child, including local authorities and other advocates, understand the legal aid regime.

- The LAA should set up a system for considering urgent applications for funding for unaccompanied children (similar to the system which has been established for emergency funding for other cases such as removals).
- An order should be made under section 9(2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to reinstate legal aid for all immigration related legal matters involving separated children. This will allow for full and proper representation for this vulnerable group of young people. The evidence in this study suggests that the enactment of LASPO is having a detrimental impact on the representation of separated children in England & Wales, whilst legal aid remains intact for children in Scotland and fuller representation is allowed and is effective.
- A working party including legal aid lawyers should be set up to work with the Upper Tribunal to develop an appropriate legal representation model or arrangements for these children's cases. Notwithstanding that the UK has not signed to the recast directives it would be helpful for the clearer representation rights included within these directives to be included as amendments to Immigration Rules Para 352ZA.
- Young people must not be placed in adult or bed and breakfast accommodation pending an assessment of their disputed age assessment and need.
- Local authorities should take full account of the immigration processes which a child or young person is grappling with when making decisions to move separated children from a foster family to semi or fully independent living accommodation, or indeed any decisions about placement moves.
- Separated children seeking asylum should be referred to an immigration lawyer as soon as possible after their arrival and/or identification, so they are represented by their assigned lawyer at the time of the screening interview.
- All legal representatives must attend asylum screening and interviews with their child clients.
- All immigration lawyers representing children should be required to have specialist training, and should be rewarded accordingly.
- Lawyers must proactively work to obtain relevant information from the child and from other professionals involved with him/her (for example the child's social worker, carer and teachers, medical professionals, other advocates) about the child's past life, their experiences before, during and after flight, their current hopes and fears, and their mental, emotional and physical health. Only by elucidating a full picture of the child can lawyers effectively assist in ensuring that a fair and reasoned decision can be made on the child's future.

Lady Hale observed in ZH Tanzania concerning the need to consult children that ‘Children can sometimes surprise one’.<sup>1</sup> In this consultation it was one young person’s observation that lawyers needed to stand in the child’s shoes – that is, to understand their child client – that aptly summed up a core feature of effective legal representation for these young clients.

This understanding takes some effort for each particular child. Given the time and funding pressures in representation, the communication difficulties and a case practice that too often deals with generic claims, it is all too easy to begin the child’s representation via assumptions about the background, experiences and risk to an Afghan boy fleeing the Taliban, an Eritrean Pentecostal Christian or conscription evader or Albanian blood feud victim. It is essential to avoid this temptation – to begin country research with a focus on the child’s home village or town, the child’s family and education and the child’s particular journey to the UK. This engagement takes experience, empathy, skill and focused research into the background of the particular child. One specialist project based at a Law Centre has been piloting a legal research project that undertakes detailed country and child-specific research to support children’s cases – so as to avoid reliance on generic ‘country of information’ (COI) reports.<sup>2</sup>

This research requires as a first step that the lawyer identifies the particular facts in the child’s claim which could be corroborated – their address, school, church, a militia attack in their locality at the approximate time identified by the child, the routes used by traffickers – these concrete, ascertainable pieces of information are now often verifiable through detailed research via the internet. [Refugee case preparation is frequently compared with completing a jigsaw. This child-specific research helps to place some pieces in the picture. The more ‘pieces’ identified or found the greater the prospect that the child will be believed and will feel his/her story has been understood and told.](#)

It is also necessary for the lawyer undertaking this representation to know something of the effects of trauma and of the signs or markers of adolescent emotional distress or PTSD. The lawyers clearly noted such signs in the children in this survey but there was little evidence produced to explain or diagnose these symptoms or assist the decision-makers to assess whether this rendered the child vulnerable to repeat harm or re-trafficking if they were returned to their home countries. There is extensive evidence concerning the disabling effects of depression and PTSD – including general evidence on these issues accepted by the Upper Tribunal.<sup>3</sup> While this survey showed the difficulties some lawyers experienced obtaining LAA funding approval for medical expert reports, these child clients may be able to obtain such evidence through social work intervention.

One of the disheartening features of this survey is shown in the professional involvement in the care of separated children. Each of the entities associated with the separated child has protective functions. The Home Office is required to give particular priority and care to a separated child applicant's asylum claim and to have regard to the need to safeguard and promote the child's welfare. Local authorities stand in loco parentis with regard to the child and have the same welfare obligations. The lawyers, particularly those in Law Centres, have a national asylum practice and a commitment to assisting vulnerable clients. Notwithstanding these obligations and approaches, there appears to be limited cooperation between these individuals and agencies and limited coordination with regard to the care of these children. [Important information about the child is missed or misunderstood because the various professionals fail to consult, to keep each other and the child informed and to cooperate on the investigations and decision-making concerning the child.](#) From our survey a significant contribution of Scotland's guardians was to coordinate the work of the various professionals and to ensure that relevant information and evidence held by the various professionals was put to effective use for the child's claims. This is also a role to be undertaken by lawyers.

The need for coordinated working is, as stated above, most clearly demonstrated in respect of the preparation of evidence on the child's circumstances, vulnerabilities, emotional health, 'family' attachments, cognition, medical condition – the factors that assist to show his/her potential risk and need for international protection and which allow for the careful, holistic evaluation of best interests as recommended by the Upper Tribunal in JO. The listed factors are matters to be routinely considered in care and pathway plans prepared by the child's social worker in conjunction with other professionals involved in the child's life, including health and other social care practitioners and agencies. Lawyers are often unaware of the varied assessments undertaken by a child's social workers and that the child's carers, teachers, support workers from statutory and non-statutory agencies can provide relevant evidence and information to help examine and prepare the child's protection claim.

[In this report we recommend that lawyers seek to establish cooperative working relationships with the child's social worker, carer, support staff from statutory and non-statutory agencies, medical practitioner, and possibly an engaged teacher as a first priority when undertaking the child's representation.](#) Lawyers are bound by confidentiality, but can keep professionals informed of key events – and with the child's permission can inform the social worker and/or other professionals of particular information or issues of concern. The child may give permission for his/her case files, care assessments and plans to be disclosed to the lawyer. In any event, the lawyer should seek disclosure of the social services care file when preparing the child's asylum application or any appeal. This evidence can assist with fixing the timetable for Home Office events. The

surveyed lawyers noted that the Home Office was generally cooperative when special interview facilities were requested or where variances were needed for the lodging of the SEF, evidence and legal representations or where the postponement of the child's asylum interview was sought for good reason.

This study clearly demonstrated the complexities and the heavy demands in the legal representation of separated children and young adults. Their representation is a formidable responsibility, and requires multiple social, legal, organisational and advocacy skills. Law Centre lawyers undertake this work for modest fees and under considerable workload pressure. It was the intention of this survey to seek to identify good working practices, and to provide research and training support for these lawyers. The survey provided a window for case analysis – the long term aim of the survey was to help structure improved and effective representation by this important legal sector with a view to helping and improving decision-making in children's cases.

This survey asked the lawyers about their training needs. The lawyers were clear – that they would benefit from training on the duties and roles of local authorities to unaccompanied children; how to identify and challenge local authority decisions particularly regarding age assessments; how to improve their child interview skills; their case and witness or medical expert statement preparation; their research of relevant country evidence; and to enhance their skills on child rights issues and child trafficking. Expert training from members of the Project team and Advisory group was provided and welcomed throughout the Project term.

These training requests and the participating lawyers' conscientious recording of survey data are heartening. They suggest a real desire for improved and informed representation of separated children who, in the absence of their parents, family and home community, do need representatives who can through empathy, research, patience and support, come to understand and convey children's stories and their welfare and protection needs.

**1** ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4 at [37].

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**2** The Migrant & Refugee Children's Legal Unit (MiCLU), hosted by Islington Law Centre, in partnership with Allen & Overy; Berwin Leighton Paisner; White & Case and Mayer Brown.

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**3** See for example AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) – the evidence of Dr Agnew-Davies and paras 35-41.

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**Put Yourself in Our Shoes:**  
Considering Children's  
Best Interests in the  
Asylum System

## Appendices

"If you've  
been here for  
6, 7 or 8 years,  
you make  
friends,  
you make a  
family"

# Appendices

## Appendix A

Project details and methodology

## Appendix B

Relevant international legislation, instruments and guidance defining protections for unaccompanied children

## Appendix C

Relevant domestic legislation, instruments and guidance defining protections for unaccompanied children

## Appendix D

Table: Recorded length of child's journeys to the UK by nationality

## Appendix E

Table: Time taken through the asylum process (from initial contact to Home Office decision) for individual children in the study

## Appendix F

Tables: Outcomes – Home Office decisions on asylum applications (general and for children in the study)

## Appendix G

Table: Children's characteristics – age, nationality, gender and the Home Office decisions on age, nationality and their asylum applications.

## Appendix H

Table: Ages and gender of children in the study

## Appendix I

Details of participating Law Centres

## Appendix A – Project details and study methodology

### Law Centres and the Law Centres Network

Law Centres are not-for-profit legal practices providing free legal advice and representation to disadvantaged people, groups and communities. The Law Centres are all registered charities, based around the United Kingdom (UK). The Law Centres Network is the representative body for the national network of Law Centres, supporting and promoting the work of Law Centres.

In autumn 2012 the Law Centres Network (LCN) secured funding from Unbound Philanthropy and Metropolitan Migration Foundation and another donor to deliver the ‘Principles to Practice’ Project, developed by children’s rights advocates within the Law Centre movement. The Project was developed with the aim of bringing child-centred principles and an understanding of child development into the asylum process, thereby improving the process and decision-making for these children. For some time, lawyers and other actors concerned for the welfare of separated children seeking international protection have expressed concern that certain principles enshrined in other spheres of work with children are seemingly misunderstood or disregarded in the asylum arena.

The Project planned to use the breadth and depth of the Law Centres Network to create a comprehensive national evidence base on the experiences of unaccompanied children within current asylum processes across the UK. Key aims of the project were:

- To report and analyse children’s experiences of the UK asylum system;
- Highlight the importance of, and bring to bear, child-centered legal principles and their application in asylum processing, legal representation and decision-making;
- Promote awareness of the special needs of unaccompanied children and bring an understanding of such needs into asylum assessment and determination processes;
- Help structure improved and effective representation with a view to improving decision-making in children’s cases; and
- Provide specialist training to Law Centre lawyers representing unaccompanied children seeking international protection.

#### Phase 1: Project set up and Law Centre Participation

At the start of 2013 the LCN established a P2P Committee to help develop the project across the Law Centres and recruited a P2P Project Manager to help deliver the project.

Law Centres from England, Wales, Scotland and Northern Ireland, holding immigration legal aid contracts, were invited to complete ‘expressions of interest’ (EOIs) to participate in the Principles to Practice (P2P)

Project. Each Law Centre completed EOIs highlighting their experience of working with unaccompanied children, signed an agreement to join the project and were then invited to meet with the Project team to develop a national Casework audit tool.

#### Project Committee

- Tamzin Brown – P2P Project Manager;
- Julie Bishop – Director of the LCN;
- Noeleen Adams – Director of Development at LCN; and
- Baljeet Sandhu – Solicitor & Director of the Migrant & Refugee Children’s Legal Unit (MiCLU), based at Islington Law Centre.

A Project Team of experts and an Advisory Group were established to provide expert support and input into the design of the project.

#### Project Team:

- Tamzin Brown / Helen Johnson – P2P Project Manager;
- Baljeet Sandhu – Solicitor & Director of the Migrant & Refugee Children’s Legal Unit (MiCLU), based at Islington Law Centre;
- Dr Kathryn Cronin – a practicing barrister and Joint Head of Garden Court Chambers;
- Professor Ravi Kohli – Professor of Child Welfare at the University of Bedfordshire.

#### Project Advisory Group:

- Sarah-Jane Savage and now Helen-Marie Fraher– Senior Protection Associates (UK Focal Point for Children), UNHCR;
- Adrian Matthews – Principal Policy Advisor (Asylum & Immigration), Office of the Children’s Commissioner;
- Zoe Given-Wilson – Child psychology postdoc researcher at the Centre for the Study of Emotion and Law;
- Karen Goodman – Professional Officer, The British Association of Social Workers;
- Helen Johnson – Children’s Services Manager, Refugee Council.

### Phase 2: Casework Audit Tools

The Project Team drafted 4 surveys, with input from the Advisory Group and the participating Law Centre lawyers, which would be used to conduct a casework audit of Law Centre cases:

- Survey One: Practice experiences – a general survey was distributed to Law Centres nationally about lawyers’ existing practice;
- Survey Two: Case specific questions – relating to children’s individual cases;
- Survey Three: Additional questions for age disputed cases;
- Survey Four: Additional questions for appeals.

## Survey Two

The second survey, dealing with the substantive and individual casework data, was initially based on Home Office internal auditing tools and UNHCR auditing tools, used for its Quality Initiative and Integration Project. However, the survey evolved following a range of input and the inclusion of child specific considerations and re-designed to capture data about children's experiences throughout the current asylum process; their lives outside the legal process; parallel care and support experiences; and concerning the substantive decisions made about them.

LCN would like to thank Allen & Overy LLP for their research support during the design phase of the project audit tools. 35 Allen & Overy volunteers, including trainees and associate solicitors, carried out wide ranging research on child-centered principles used in the UK and other jurisdictions. The researchers analysed domestic and international laws considering child centered principles and child adapted practices in different, but comparable processes, including asylum, trafficking, criminal justice, family and education law.

621 questions across 16 sections were compiled by the Project Team to help capture data from individual children's cases. It was made clear that lawyers should only answer the questions to which they already knew the answers, through representing the child. The participating lawyers were specifically instructed not to ask the child client any additional questions simply to complete the survey and details were to be provided for through the lawyers own understanding of the case facts and through an analysis of the case file. If lawyers did not know the answer to questions from this assumed knowledge they were asked to respond with '*not known / unclear*'

The 16 sections covered in Survey Two:

- Law Centre information.
- Case selection criteria.
- Basic case information.
- Details of the child's journey and arrival.
- The child's circumstances at the start of the lawyer's involvement.
- The asylum process:
  - Pre-screening contacts and interviews
  - Screening interview
  - First Reporting Event (FRE)
  - Statement of Evidence Form (SEF)
  - Substantive asylum interview
  - Home Office decision
  - Decision to appeal
- Related Processes:
  - Information sharing
  - The child's capacity and understanding throughout
  - Recording change in the child's life

In autumn 2013, lawyers from Law Centres from around the UK met to discuss and finalise all the project surveys.

LCN would like to thank Newcastle Law Centre for piloting the draft surveys using existing casework to ensure that the audit tool was user friendly and precise as possible.

### Phase 3: 18 month asylum casework audit

Throughout 2014, 11 participating Law Centres represented and supported their unaccompanied child clients through the asylum process. At the same time they began to upload anonymised data onto the research database (see Appendix I for a list of the participating Law Centres).

### **Qualifying Criteria:**

The cases analysed in this report met the following selection criteria:

1. The child was under 18 years old (the child's claimed age) at the point they claimed asylum.
2. The Home Office treated the child as under 18 years old (even if age was disputed by an authority).
3. The child was unaccompanied or separated.
4. The child was seeking asylum alone (i.e. they were not a dependent on any adult's asylum claim).
5. The child's substantive asylum interview took place between 1 December 2013 and 31 December 2014.

The Law Centres selected the first cases that came to their attention meeting the above criteria.<sup>1</sup> A total of 60 children's cases were analysed, examined and inputted into the research database.

### Specialist Training

At the start of the project Law Centres lawyers were asked to provide their views on their individual and collective training needs as lawyers representing unaccompanied children. Lawyers confirmed that they would benefit from training on:

- Duties and roles of local authorities to unaccompanied children.
- How to identify and challenge local authority decisions particularly regarding age assessments.
- How to improve child interview skills.
- Understanding child rights in international protection claims.
- Gathering evidence in children's claims (witness, medical expert statement preparation, their research of relevant country evidence)
- Enhancing their skills on child rights issues and child trafficking.

<sup>1</sup> In a few instances a lawyer uploaded the first cases coming to their individual attention meeting the criteria, in order that they could complete data for their own cases.

In response, Masterclasses were run throughout the project including:

- Children seeking international protection: Special status and protections / evidence gathering and preparation (Kathryn Cronin & Baljeet Sandhu).
- Representing child victims of trafficking (Kathryn Cronin & Baljeet Sandhu).
- Child psychology: Trauma exposure and memory recall (Zoe Given-Wilson & Ravi Kohli).
- Considering the best interests of the child in asylum decision making (Baljeet Sandhu, Sarah-Jane Savage & Kathryn Cronin).
- The duties and roles of local authorities (designed by Karen Goodman).

### Child participation

The Project was keen to hear from children and young people about their experiences and views of the current asylum process. Initially, we considered that a sample of children should be drawn from the cohort under study in the project, so that their voices could be linked, where appropriate, to individual experiences in each case. Via Survey Two we had asked the survey respondents to indicate whether the individual child was interested in participating in a semi-structured interview on a confidential basis. Only three children expressed a possible interest in so doing. The Project Team and Advisory Group considered the ethical and practical difficulties of child participation within the project, and whether it was wise for children to be drawn into reflecting on processes that were 'live' or very recent for them. Apart from the low numbers of potential child interviewees, we decided that for children to individually comment on their lawyers, the Home Office, or their asylum may not be beneficial to them – for reasons of exhaustion with being asked questions, or fear of giving answers that might create jeopardy for them, rather than safety. We determined instead, to hold focus groups, so that children and young people could come together in solidarity, and give their general views of such experiences, without the fear of individual repercussions.

Two focus groups were held to obtain the views of young people who had recent experience of the asylum process, but not directly linked to the cases under consideration in the project. These young people had all been children at the time of their asylum applications. Two groups took place: one for young people who had been granted refugee status by the Home Office and one for those who had received refusals to their asylum applications and were at various stages of appeal. The first group was conducted in Glasgow through the Legal Services Agency Ltd (Law Centre in Glasgow) and the second through the Kent Refugee Action Network (KRAN). The young people were asked questions around seeking asylum, the role of the lawyer, going to the Home Office, the asylum decision and looking forward. Fourteen young people participated in the project. Their views are expressed throughout this report. All participants received a

small financial incentive for participating, to cover their time and travel costs.

The LCN and the project team would like to say a special thanks to all the young people who gave their time so generously to inform this piece of work. Their insights were illuminating, helped to craft our collective understanding of children's experiences and inspired the title of this report.

**2** Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), entered into force February 12, 2002; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000), entered into force January 18, 2002;

## **Appendix B – Relevant international legislation, instruments and guidance defining protections for unaccompanied children**

- UN Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990 and Protocols<sup>2</sup>
- UN Committee on the Rights of the Child, General Comment No. 14 (2013), The right of the child to have his or her best interests taken as a primary consideration (art. 3, para.3), UN Doc. CRC/C/GC/14
- UN Committee on the Rights of the Child, General Comment No. 12 (2009): The right of the child to be heard
- UN Committee on the Rights of the Child, CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6
- UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, as amended by the Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967 ( collectively the Refugee Convention)
- Guidance Note of the Secretary General: UN Approach to Justice for Children, September 2008 [https://www.unodc.org/pdf/criminal\\_justice/Guidance\\_Note\\_of\\_the\\_SG\\_UN\\_Approach\\_to\\_Justice\\_](https://www.unodc.org/pdf/criminal_justice/Guidance_Note_of_the_SG_UN_Approach_to_Justice_)
- Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11, entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 (the ECHR)
- Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1 (Dec. 7, 2000) (the EU Charter)
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Reception Directive).
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive).

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Procedures Directive).
- The Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005
- The Council of the European Union and the European Parliament, Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA, Art. 8, 15 April 2011
- The “Action Plan on Unaccompanied Minors for the years 2010-2014”, issued in 2010 by the European Commission.
- The “Council Conclusions on unaccompanied minors”, adopted by the Council of the European Union, 3018th Justice and Home Affairs Council meeting, Luxembourg, 3 June 2010 in accordance with the Stockholm Programme (Action Plan on Unaccompanied Minors (2010-2014)).
- Executive Committee of the High Commissioner’s programme, Conclusion on Children at Risk, 5 October 2007, No. 107 (LVIII)
- Recommendation CM/Rec(2007) of the Committee of Ministers to member states on life projects for unaccompanied migrant minors <https://wcd.coe.int/ViewDoc.jsp?id=1164769>
- UN High Commissioner for Refugees (UNHCR), Refugee Children: Guidelines on Protection and Care, 1994
- UN High Commissioner for Refugees (UNHCR), Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, February 1997
- UNHCR, Guidelines on Determining the Best Interests of the Child, May 2008,
- UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, December 2009
- UN High Commissioner for Refugees (UNHCR), Age, Gender and Diversity Policy, 8 June 2011.
- UNHCR, A Framework for the Protection of Children, June 2012
- UNHCR, The Heart of the Matter: Assessing Credibility when Children Apply for Asylum in the European Union, December 2014
- Joint UNHCR/ UNICEF publication, Safe and Sound: What States Can Do to Ensure Respect for the Best Interests of Unaccompanied and Separated Children in Europe, October 2014
- European Union Agency for Fundamental Rights (FRA), Separated, asylum-seeking children in European Union Member States, December 2010
- Separated Children in Europe Programme, (SCEP), Statement of Good Practice. 4th Revised Edition, March 2010 <http://www.refworld.org/docid/415450694.html>
- Separated Children in Europe Programme (SCEP), Position Paper on Age Assessment in the Context of Separated Children in Europe, May 2012

## **Appendix C – Relevant domestic legislation, instruments and guidance defining protections for unaccompanied children**

- The Children Act 1989
- The Children Act 1989 guidance and regulations. Volume 3: planning transition to adulthood for care leavers
- The Children Act 1989 guidance and regulations Vol 2: care planning, placement and case review
- Children Act (Scotland) 1995
- Children (Northern Ireland) Order 1995
- Housing Act 1996
- The Children (Leaving Care) Act 2000
- Regulation of Care (Scotland) Act 2001
- Children (Leaving Care) (England) Regulations 2001 SI No 2874
- Guidance on the implementation of the Children (Leaving Care) Act 2000 (Welsh Assembly Government, 2001).
- Children (Leaving Care) Act (Northern Ireland) 2002
- Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003
- Children Act 2004
- Supporting young people leaving care in Scotland regulations and guidance on services for young people ceasing to be looked after by local authorities (Scottish Executive 2004)
- The Asylum Seekers (Reception Conditions) Regulations 2005, SI 2005/7
- Children (Leaving Care) Regulations (Northern Ireland) 2005
- Welsh Assembly Government (2007) Safeguarding children: working together under the Children Act 2004
- Protection of Children (Scotland) Act 2007
- Children and Young Persons Act 2008
- Tribunal Procedure (Upper Tribunal) Rules 2008
- Border Citizenship and Immigration Act 2009
- Every Child Matters, Change for Children: Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children (November 2009)
- The Children (Scotland) Act 1995 regulations and guidance (Vol 2): Guidance on the Looked After Children (Scotland) Regulations 2009
- The Care Planning, Placement and Case Review (England) Regulations 2010 (as amended)
- The Care Leavers (England) Regulations 2010 (as amended)
- The Care Standards Act 2000 (notification) (Wales) regulations 2011 and guidance (Welsh Assembly Government, 2011)
- Home Office, Asylum Process Guidance, Assessing Age (June 2011)
- HM Government: Safeguarding children who may have been trafficked: practice guidance (2011)
- London Safeguarding Children's Board: The Trafficked Children Toolkit, 2011 available at <http://www.londonscb.gov.uk/trafficking/>

- Legal Aid, Sentencing and Punishment of Offenders Act 2012
- Home Office, Asylum Process Guidance, Processing an asylum application from a child (April 2013)
- Home Office, Asylum Process Instruction, Identity checking and family tracing via the Albanian authorities: instruction (Jan 2014)
- Home Office, Asylum Process Instruction, Family tracing assistance from the FCO in Bangladesh: instruction (Feb 2014)
- Department for Education, Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children, July 2014.
- Children and Families Act 2014
- Children and Young People (Scotland) Act 2014
- Scottish Government (2014) National guidance for child protection in Scotland: Getting it Right for Every Child, Scottish Government 2014
- Social Services and Well-being (Wales) Act 2014
- Social Services and Well-being (Wales) Act 2014 – Part 6 (to be implemented in April 2016)
- The Department for Education, Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children July 2014.
- The Department for Education, Statutory guidance on children who run away or go missing from home or care 2014
- Tribunal Procedure (First Tier Tribunal) (Immigration and Asylum Chamber) Rules 2014
- Modern Slavery Act 2015
- Working Together to Safeguard Children (March 2015)
- HM Government, Promoting the health and well-being of looked-after children Statutory guidance for local authorities, clinical commissioning groups and NHS England, March 2015,
- UK Government, Policies, practices and data on unaccompanied minors in 2014, National Contribution from the United Kingdom, May 2015 [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/unaccompanied-minors/28a\\_uk\\_uam\\_study\\_2014\\_final.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/28a_uk_uam_study_2014_final.pdf)
- Joint Working Guidance, Home Office and Association of Directors of Children's Services, Age assessment: joint working guidance (June 2015) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/432724/Age\\_Assessment\\_Joint\\_Working\\_Guidance\\_\\_April\\_2015\\_Final\\_agreed\\_v2\\_EXT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/432724/Age_Assessment_Joint_Working_Guidance__April_2015_Final_agreed_v2_EXT.pdf)
- Association of Directors of Children's Services (ADCS), Age Assessment Guidance: Guidance to assist social workers and their managers in undertaking age assessments in England (October 2015)
- Immigration Rules (HC 395). Available at: [www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum](http://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum) (updated on 6 October 2015).

## Appendix D – Table: Recorded length of child’s journeys to the UK by nationality

Child’s Nationality:	Time Taken for Journey to the UK
Afghan (7 children):	2 – 3 weeks (x2); 1 – 2 months(1); 2 – 4 months (x2); 4 – 6 months (x1); 6 – 12 months (x1)
Bangladesh (1 child)	0 – 1 week (x1)
Sri Lanka (2)	0 – 1 week (x1); more than 12 months (4 years) (x1)
Vietnam (3)	1 – 2 months (x1); 6 – 12 months (x1); more than 12 months (x1)
Chinese (2)	1 – 2 months (x1), 2 – 4 months (x1);
Iran (4)	0 – 1 week (x1); 2 – 3 weeks (x1); 6 – 12 months (x1); More than 12 months (x1)
Angolan	2 – 4 months (x1)
Congolese – Democratic Republic of the Congo (2)	0 – 1 week (x2)
Sudanese (2)	0 – 1 week (x1) More than 12 months (3 years) (x1)
Somalian (2)	0 – 1 week (x1); 6 – 12 months (x1)
Eritrean (10)	1 – 2 months (x1); 2 – 4 months (x1); 4 – 6 months (x3); 6 – 12 months (x4); More than 12 months (x1)
Nigerian (1)	0 – 1 week (x1)
Moroccan (2)	More than 12 months (x 2) (18months and 2 years 4 months.)
Egyptian (1)	More than 12 months (2 years) (x1)
Syrian (3)	2 – 3 weeks (x1); 1 – 2 months (x1); More than 12 months (2 years) (x1);
Albanian (12)	0 – 1 week (x6); 2 – 3 weeks (x3); 1 – 2 months (x2); 4 – 6 months (x1)
Kosovo (1)	1 – 2 months (x1)

## Appendix E – Time taken through the asylum process (from initial contact to Home Office decision) for individual children in the study

Child's Nationality	Journey time to UK	Child's claimed age at asylum claim	Time between initial contact and screening interview	Time between screening interview and substantive asylum interview	Time between asylum interview and home office decision	Age of child, as claimed by child, at the time of decision	Decision
Syrian	1 – 2 months	16.5 years	screened same day	2 – 4 months	1 – 2 months	17 years	Refusal of international protection (IP) claim
Vietnamese	1 – 2 months	16 years	More than 4 days	8 months – 1 year	1 – 2 months	17 years	Humanitarian protection granted
Afghan	2 – 3 weeks	14 years	More than 4 days	2 – 4 months	1 – 2 months	14 years	Child granted refugee status
Iranian	0 – 1 week	15.5 years	More than 4 days	1 – 2 months	1 – 2 months	15.5 years	Child granted refugee status
DRC	0 – 1 week	15 years	More than 4 days	2 – 4 months	2 – 4 months	15.5 years	Child granted refugee status
Sudanese	More than 12 months	17	More than 4 days	6 – 8 months	Less than 1 week	17.5 years	Child granted refugee status
Eritrean	1 – 2 months	16.5 years	More than 4 days	1 – 2 months	2 – 4 months	17.5 years	Child granted refugee status
Kosovan	1 – 2 months	17.5 years	More than 4 days	2 – 4 months	4 – 6 months	17.5 years	Refusal of IP claim
Albanian	0 – 1 week	15.5 years	screened same day	4 – 6 months	6 – 8 months	16 years	Refusal of IP claim
Albanian	1 – 2 months	17 years	More than 4 days	2 – 4 months	2 – 4 months	17 years	Refusal of IP claim
Afghan	6 – 12 months	15.5 years	8 days	2 years	8 months – 1 year	18 years	Refusal of IP claim
Sri Lankan	0 – 1 week	10 – 12 years	More than 4 days	3 years 5 months	2 – 4 months	14 years	Refusal of IP claim

Child's Nationality	Journey time to UK	Child's claimed age at asylum claim	Time between initial contact and screening interview	Time between screening interview and substantive asylum interview	Time between asylum interview and home office decision	Age of child, as claimed by child, at the time of decision	Decision
Iranian	More than 12 months	16 years	1 month	8 months – 1 year	2 – 4 months	17.5 years	Refusal of IP claim
Vietnamese	More than 12 months	15 years	More than 4 days	2 – 4 months	8 months – 1 year	16.5 years	Child granted refugee status
Chinese	2 – 4 months	16 years	5 days	1 – 2 months	2 – 4 months	17 years	Child granted refugee status
Eritrean	More than 12 months	16.5 years	More than 4 days	4 – 6 months	1 – 2 months	17 years	Child granted refugee status
Eritrean	6 – 12 months	15.5 years	More than 4 days	3 – 4 weeks	1 – 2 weeks	15.5 years	Child granted refugee status
Syrian		16.5 years	More than 4 days	4 – 6 months	1 – 2 months	17 years	Refusal of IP claim
Bangladeshi	0 – 1 week	14 years		2 – 4 months	1 – 2 months	14 years	Child granted refugee status
Albanian	0 – 1 week	14 years	24 days	2 – 4 months	8 months – 1 year	16 years	Refusal of IP claims
Syrian	2 – 3 weeks	17.5 years	1 day	2 – 4 months	1 – 2 months	18 years	Refusal of IP claim
Albanian	4 – 6 months	15.5 years	More than 4 days	1 – 2 months	2 – 4 months	16 years	Refusal of IP claim
Albanian	0 – 1 week	16 years	1 week	1 – 2 months	2 – 4 months	16.5 years	Refusal of IP claim
Eritrean	4 – 6 months	16.5 years	5 weeks	1 – 2 months	Less than 1 week	16.5 years	Child granted refugee status

Child's Nationality	Journey time to UK	Child's claimed age at asylum claim	Time between initial contact and screening interview	Time between screening interview and substantive asylum interview	Time between asylum interview and home office decision	Age of child, as claimed by child, at the time of decision	Decision
Eritrean	6 – 12 months	16 years	2 – 3 weeks	2 – 4 months	1 – 2 months	18 years	Child granted refugee status
Afghan	2 – 4 months	10 – 12 years	1 – 2 weeks	1 – 2 months	2 – 4 months	13 years	Child granted refugee status
Iranian	6 – 12 months	17 years	29 days	2 – 4 months	1 – 2 weeks	17 years	Humanitarian protection granted
Afghan	1 – 2 months	13 years	2 weeks	6 – 8 months	1 – 2 months	14 years	Refusal of IP claim
Nigerian	0 – 1 week	17 years	More than 4 days	4 – 6 months	2 – 4 months	17.5 years	Refusal of IP claim
Albanian	2 – 3 weeks	17 years	3 – 5 days	4 – 6 months	8 months – 1 year	18 years	Refusal of IP claim
Iranian	2 – 3 weeks	16.5 years	3 weeks	1 – 2 months	1 year plus	17.5 years	Refusal of IP claim
Eritrean	Not known / unclear	17.5 years	More than 4 days	2 – 4 months	Less than 1 week	18 years	Child granted refugee status
Albanian	2 – 3 weeks	15 years	3 weeks	2 – 4 months	1 year plus	16.5 years	Refusal of IP claim
Chinese	1 – 2 months	17 years	2 weeks	6 – 8 months	4 – 6 months	17.5 years	Refusal of IP claim
Eritrean	6 – 12 months	16 years	screened same day	2 – 4 months	6 – 8 months	17.5 years	Child granted refugee status
Eritrean	4 – 6 months	17 years	3 weeks	2 – 4 months	1 – 2 months	17.5 years	Child granted refugee status

Child's Nationality	Journey time to UK	Child's claimed age at asylum claim	Time between initial contact and screening interview	Time between screening interview and substantive asylum interview	Time between asylum interview and home office decision	Age of child, as claimed by child, at the time of decision	Decision
Sudanese	0 – 1 week	17.5 years	2months	1 – 2 months	2 – 4 months	17.5 years	Child granted refugee status
Somali	0 – 1 week	16.5 years	6 weeks (child ill)	8 months – 1 year	3 – 4 weeks	17.5 years	Child granted refugee status
Eritrean	4 – 6 months	16.5 years	4 weeks	1 – 2 months	2 – 4 months	16.5 years	Child granted refugee status
Albanian	0 – 1 week	16.5 years	More than 4 days	1 – 2 months	Other	18 years	Refusal of IP claim
Afghan	2 – 4 months	13 years	14 days	1 – 2 months	2 – 4 months	14 years	Refusal of IP claim
Albanian	0 – 1 week	13 years	12 days	1 – 2 months	No decision		
Albanian	2 – 3 weeks	15.5 years	More than 4 days	1 – 2 months	No decision		
Albanian	0 – 1 week	15.5 years	More than 4 days	2 – 4 months	No decision		
Somali	6 – 12 months	17.5 years	More than 4 days	1.5 years	6 – 8 months	18 years	Child granted refugee status
Eritrean	6 – 12 months	17 years	More than 4 days	2 – 4 months	1 – 2 months	17.5 years	Child granted refugee status
Albanian	1 – 2 months	15.5 years	3 weeks	2 – 4 months	No decision		
Moroccan	More than 12 months	17 years	21 days	4 – 6 months	No decision		

Child's Nationality	Journey time to UK	Child's claimed age at asylum claim	Time between initial contact and screening interview	Time between screening interview and substantive asylum interview	Time between asylum interview and home office decision	Age of child, as claimed by child, at the time of decision	Decision
Angolan	2 – 4 months	15 years	19 days	2 – 4 months	2 – 4 months	15.5 years	Refusal of IP claim
Syrian	More than 12 months	17 years	2 months	8 months – 1 year	No decision		
DRC	0 – 1 week	17.5 years	5 days	1 – 2 months	1 year plus	18 years	Child granted refugee status
Egyptian	More than 12 months	17 years	More than 4 days	2 – 4 months			
Sri Lankan	More than 12 months	17.5 years	1 week	6 – 8 months	3 – 4 weeks	18 years	Refusal of IP claim
Gambian	Not known / unclear	17.5 years	More than 4 days	2 – 4 months	6 – 8 months	18 years	Refusal of IP claim
Afghan	Not known / unclear	14 years	14 days	2 – 4 months	6 – 8 months	15 years	Refusal of IP claim
Afghan	4 – 6 months	10 – 12 years	More than 4 days	2 – 4 months	8 months – 1 year	16.5 years	Refusal of IP claim
Moroccan	More than 12 months	15.5 years	18 days	6 – 8 months	1 – 2 weeks	16.5 years	Refusal of IP claim
Afghan	2 – 3 weeks	15 years	2 – 3 weeks	1 – 2 months	8 months – 1 year	16.5 years	Child granted refugee status
Eritrean	2 – 4 months	16.5 years	screened same day		1 – 2 months	16.5 years	Child granted refugee status
Vietnamese	6 – 12 months	16 years	(client absconded return 1 year)	4 – 6 months	8 months – 1 year	18 years	Refusal of IP claim

## Appendix F – Table: Outcomes – Home Office decisions on asylum applications (general and for children in the study)

3 6 awaiting decision at the time we closed the survey and 1 child has run away so we do not know what has happened.

Initial asylum decisions on all unaccompanied children

2014 Figures	Total	Refugee status	Humanitarian Protection	Discretionary Leave	UASC Leave	Family or Private Life	Outright refusals (with no leave granted)
Home Office	988	418 (42%)	9 (1%)	23 (2.3%)	380 (38.4%)	4 (0.4%)	154 (15.6%)
Surveyed children	53 <sup>3</sup>	24 (45%)	2 (3.7%)	2 (3.7%)	10 (18.8%)	0	15 (28.3%)

Initial asylum decisions on unaccompanied children aged 17 and under, 2014 by most common country of nationality

Country		Total	Refugee status	Humanitarian Protection	Discretionary Leave	UASC Leave	Family or Private Life	Outright refusals (with no leave granted)
Eritrea	Home Office	282	269	1	0	9	0	3
	Surveyed children	11	11	0	0	0	0	0
Albania	Home Office	272	2	0	0	190	0	80
	Surveyed children	12	0	0	0	3	0	5
Afghanistan	Home Office	112	16	0	5	72	0	19
	Surveyed children	8	3	0	1	3	0	1
Iran	Home Office	46	23	5	4	9	1	4
	Surveyed children	4	1	1	0	0	0	2
Syria	UK Gov	36	22	0	0	8	0	6
	Surveyed children	4	0	0	0	3	0	0
Vietnam	UK Gov	36	11	3	1	18	0	3
	Surveyed children	3	1	1	0	0	0	1

Initial asylum decisions on unaccompanied children aged 17 and under

2014 Figures	Total	Refugee status	Humanitarian Protection	Discretionary Leave	UASC Leave	Family or Private Life	Outright refusals (with no leave granted)
Home Office	988	418	9	23	380	4	154
Surveyed children	23	10	0	2	10	0	3

Initial asylum decisions on unaccompanied children who have reached the age of 18

2014 Figures	Total	Refugee status	Humanitarian Protection	Discretionary Leave	UASC Leave	Family or Private Life	Outright refusals (with no leave granted)
Home Office	281	69	1	0	0	2	209
Surveyed children	18+	12	4	0	0	0	8
	17-17.5	18	9	2	0	2	5

**Appendix G – Table: Children’s characteristics – age, nationality, gender and the Home Office decisions on age, nationality and their asylum applications**

Child's claimed nationality and gender	Age at time of events leading to claim	Child's Age at time of asylum claim	Age and nationality as decided by the Home Office?	Was child's account accepted?	Initial Home Office decision
Syrian (M)	16.5 years	16.5 years	Age accepted. Nationality disputed	No	Refusal of claim
Vietnamese (F)	16 years	16 years	Age and nationality accepted.	Yes – in full	Child granted Humanitarian Protection
Afghan (M)	13 years	14 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Iranian (M)	15 years	15.5 years	Age accepted. Nationality initially disputed but later accepted.	Yes – in full	Child granted refugee status
DRC (F)	From 5 – 17	15 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Sudanese (M)	Throughout childhood	17	Age and nationality accepted.	Yes – in full	Child granted refugee status
Eritrean (M)	16	16.5 years	Age and nationality accepted.	[no response]	Child granted refugee status
Kosovan (M)	17	17.5 years	Age disputed. Nationality accepted	Yes – in full	Refusal of claim

Child's claimed nationality and gender	Age at time of events leading to claim <sup>a</sup>	Child's Age at time of asylum claim <sup>a</sup>	Age and nationality as decided by the Home Office? <sup>a</sup>	Was child's account accepted <sup>a</sup>	Initial Home Office decision <sup>a</sup>
Albanian (M)	15 – 16	15.5 years	Age disputed. Nationality accepted	No	Refusal of claim
Albanian (M)	Throughout childhood	17 years	Age and nationality accepted.	No	Refusal of claim
Afghan (M)	15	15.5 years	Age and nationality accepted.	Yes – in full	Refusal of claim
Sri Lankan (M)	10 – 12	10 – 12 years	Age and nationality accepted.	Yes – in part	Refusal of claim
Iranian (M)	Not know / unclear	16 years	Age accepted. Nationality disputed.	No	Refusal of claim
Vietnamese (F)	10 – 15 years	15 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Chinese (F)	15	16 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Eritrean (M)	14	16.5 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Eritrean (M)	14	15.5 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Syrian (M)	n/k or unclear	16.5 years	Age and nationality disputed.	No	Refusal of claim
Bangladeshi (M)	n/k or unclear	14 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Albanian (M)	13	14 years	Age and nationality accepted.	No	Refusal of claim
Syrian <sup>9</sup>	17.5 years	17.5 years	Age accepted. Nationality disputed.	Yes – in full	Refusal of claim
Albanian (M)	15	15.5 years	Age and nationality accepted.	Yes – in part	Refusal of claim
Albanian (M)	14	16 years	Age and nationality accepted.	No	Refusal of claim
Eritrean (M)	15	16.5 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Eritrean (M)	15	16 years	Age disputed. Nationality accepted.	Yes – in part	Child granted refugee status
Afghan (M)	10 – 12	10 – 12 years	Age and nationality accepted.	[no response]	Child granted refugee status

Child's claimed nationality and gender	Age at time of events leading to claim <sup>a</sup>	Child's Age at time of asylum claim <sup>a</sup>	Age and nationality as decided by the Home Office? <sup>a</sup>	Was child's account accepted <sup>a</sup>	Initial Home Office decision <sup>a</sup>
Iranian (M)	16	17 years	Age and nationality accepted.	Yes – in full	Child granted humanitarian protection,
Afghan (M)	13	13 years	Age disputed. Nationality accepted.	No	Refusal of claim
Nigerian (F)	15.5	17 years	Age and nationality accepted.	No	Refusal of claim
Albanian (M)	16 – 16.5	17 years	Age and nationality accepted.	Yes – in part	Refusal of claim
Iranian (M)	16	16.5 years	Age and nationality accepted.	Yes – in part	Refusal of claim
Eritrean (M)	17	17.5 years	Age and nationality accepted.	[no response]	Child granted refugee status
Albanian (M)	15	15 years	Age and nationality accepted.	No	Refusal of claim
Chinese (M)	16	17 years	Age and nationality accepted.	Yes – in part	Refusal of claim
Eritrean (M)	15.5	16 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Eritrean (M)	17	17 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Sudanese (M)	Throughout childhood	17.5 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Somali (F)	Throughout childhood	16.5 years	Age and nationality accepted.	NA	Child granted refugee status
Eritrean (M)	16	16.5 years	Age and nationality accepted.	NA	Child granted refugee status
Albanian (M)	16 & 13	16.5 years	Age and nationality accepted.	No	Refusal of claim
Afghan (M)	13	13 years	Age disputed. Nationality accepted.	No	Refusal of claim
Albanian (M)	5 – 13 years	13 years	Decision awaited		
Albanian (M)	15	15.5 years	Decision awaited		
Albanian (M)	15	15.5 years	Decision awaited		

Child's claimed nationality and gender	Age at time of events leading to claim <sup>4</sup>	Child's Age at time of asylum claim <sup>5</sup>	Age and nationality as decided by the Home Office? <sup>6</sup>	Was child's account accepted <sup>7</sup>	Initial Home Office decision <sup>8</sup>
Somali (M)	Throughout childhood	17.5 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Eritrean (M)	16.5	17 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Albanian (M)	14	15.5 years	Decision awaited		
Moroccan (M)	15 – 15.5	17 years	Decision awaited		
Angolan (M)	14 – 15	15 years	Age and nationality accepted.	Yes – in part	Refusal of claim
Syrian (M)	15	17 years	Decision awaited		
DRC (F)	16 – 17.5 years	17.5 years	Age and nationality accepted.	NA	Child granted refugee status
Egyptian (M)	13	17 years	Child absconded		
Sri Lankan (M)	14	17.5 years	Age and nationality accepted.	No	Other – Please provide details
Gambian (F)	17.5 years	17.5 years	Age and nationality accepted.	Yes – in part	Refusal of claim
Afghan (M)	n/k or unclear	14 years	Age disputed. Nationality accepted.	Yes – in part	Refusal of claim
Afghan (M)	10 – 12	10 – 12 years	Age and nationality accepted.	Yes – in full	Refusal of claim
Moroccan (M)	14 – 15.5 years	15.5 years	Age and nationality accepted.	Yes – in full	Refusal of claim
Afghan (M)	10 – 14 years	15 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Eritrean (M)	15	16.5 years	Age and nationality accepted.	Yes – in full	Child granted refugee status
Vietnamese (M)	13 – 16 years	16 years	Age disputed. Nationality accepted.	No	Refusal of claim

<sup>4</sup> Age according to the child at the time the persecutory / harmful events leading to the claim

<sup>5</sup> As claimed by the child at point of asylum claim

<sup>6</sup> By the Home Office in initial decision

<sup>7</sup> By the Home Office in the initial decision

<sup>8</sup> Home Office initial decision on the international protection claim

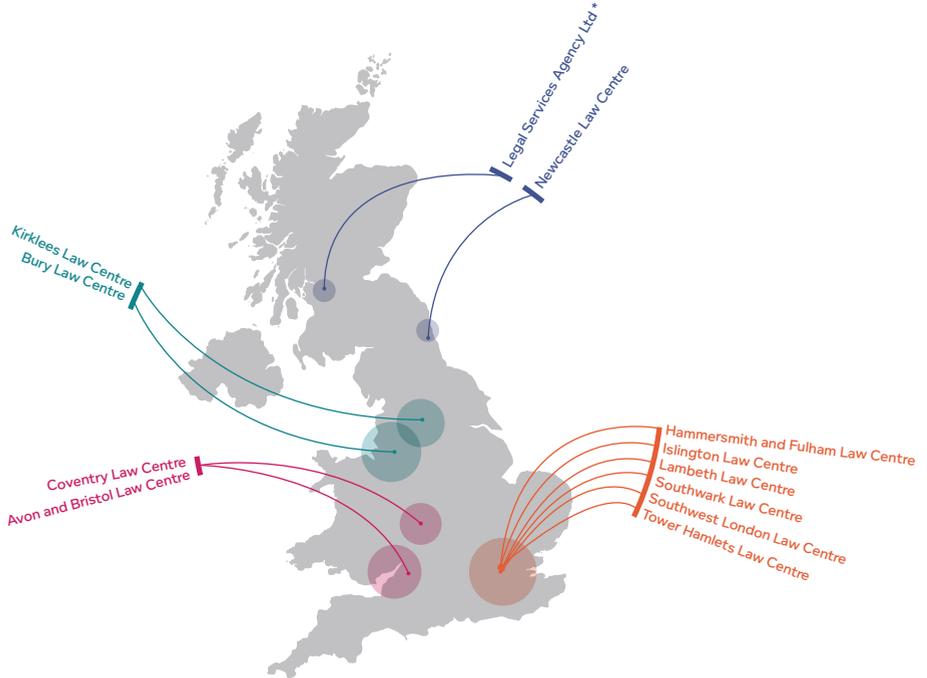
<sup>9</sup> Child's nationality has been disputed by the Home Office in the initial decision

## Appendix H – Table: Ages and gender of children in the study

Age Range	Cases	Boys	Girls
17.5 years	8	6	2
17 years	11	10	1
16.5 years	10	9	1
16 years	7	5	2
15.5 years	9	9	0
15 years	5	3	2
14 years	4	4	0
13 years	3	3	0
10 – 12 years	3	3	0
Total	60 cases	52	8

## Appendix I – Details of participating Law Centres

The 60 sampled children were represented by the following participating Law Centres:



In addition, Ealing, Harrow, Northern Ireland and South Manchester Law Centres provided commentary on their general experiences of representing unaccompanied and separated children. Newcastle Law Centre piloted the study survey tool in Autumn 2013.

\* Law Centre in Glasgow, which is an associate member of the Law Centres Network.



**Put Yourself in Our Shoes:**  
Considering Children's  
Best Interests in the  
Asylum System

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"That's like  
the future has  
just begun"

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