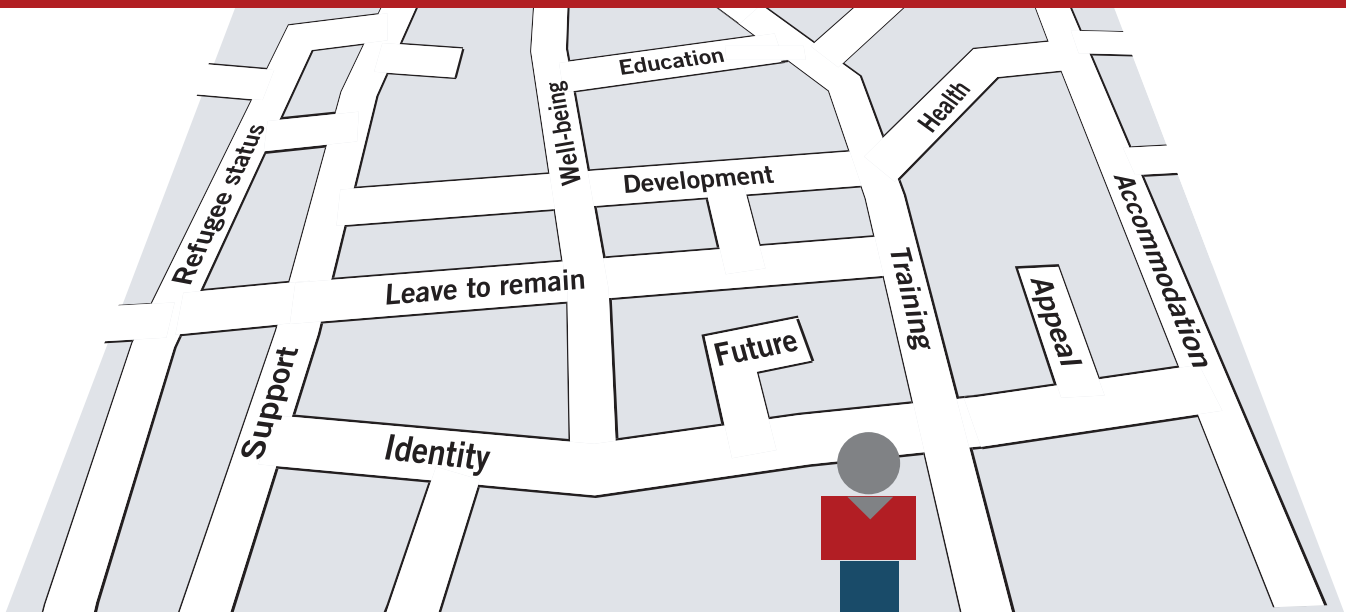


Navigating the System:

Advice provision for young refugees and migrants



May 2012

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Princess of Wales Memorial Fund

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The Migrant Children's Project

The Migrant Children's Project at the Coram Children's Legal Centre (CCLC) provides information and advice on the rights and entitlements of refugee, asylum-seeking and migrant children and young people. Originally called the Refugee and Asylum Seeking Children's Project, it was established in 2004 after a piece of research commissioned by the Children's Legal Centre identified growing concerns among refugee agencies and voluntary sector organisations that asylum-seeking and refugee children were not receiving adequate services to meet their fundamental needs with respect to education, social services and healthcare provision.¹

The project seeks to provide guidance to practitioners on the rights and entitlements of refugee and migrant children and young people, as well as providing advice and representation directly to children, young people and their families and carers. Information provided on the CCLC's website and in its guide '*Seeking Support: A guide to the rights and entitlements of separated children*'² covers a range of topics, including:

- The asylum and immigration system
- Age disputes
- Children's services support
- Leaving care support
- Access to education
- Healthcare
- Trafficking

A typical case for the project might involve clarifying for a social worker the law and policy on leaving care entitlements for a young person who has claimed asylum, or working with a child to challenge an unlawful assessment of age that has found them to be older than the age they claim to be. Much of the advice provided relates the difficulties in accessing further and higher education, or to a child's options in an immigration matter.

Since the project's inception, many of the queries and cases dealt with have highlighted the same problem: children subject to immigration control in the UK have to contend with a number of complex systems and processes, and there remain a number of obstacles to their accessing the support and protection they need. A critical factor is the lack of adequate advice, advocacy and legal representation that would enable them to realise their rights. Indeed, while these children's rights and entitlements may be clearly enshrined in international and domestic standards, this can mean very little in practice if children are unaware of them and do not have the means to challenge a failure to implement or uphold them.

This report explores these problems, and draws on the work of the Migrant Children's Project.

For more information on the project, visit:
www.childrenslegalcentre.com

Introduction

For children and young people, knowledge of their rights, and access to advice and representation, is just as important as it is for adults. Youth Access has highlighted how receiving advice about social welfare issues leads to improvements in the physical, mental, social and emotional well-being of young people: ‘their overall enjoyment of life, their confidence, their feelings about their future, their relationships, their sense of their place in the community’.³ As well as resolving problems and effecting change in individuals, advice services play other important roles, including promoting social justice and the rule of law; improving public services; and preventing problems from occurring in the first place.

For one particular group, separated children and young people subject to immigration control in the UK, this advice and assistance is all the more essential because of the multiple challenges they face and the obstacles that exist to their rights being realised. Separated children include those who have been trafficked; those who are seeking asylum; those who have been separated from their family once in the UK; and those who are being privately fostered.

Refugee and migrant children are children first and foremost and must be afforded the same rights and protection as any other children in the UK. Article 2 of the UN Convention on the Rights of the Child clearly states that the rights within the Convention should be respected for all children within the state party’s jurisdiction, ‘without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status’. The Convention also states that the best interests of the child must be a primary consideration (Article 3) and that state parties must afford children the right to express their views in all matters affecting them – including in judicial and administrative proceedings (Article 12).

In domestic law, refugee and migrant children have the same entitlements as citizen children, including the right to education and healthcare and the rights enshrined in the Children Act 1989. There exists a statutory duty upon agencies, including local authorities and the UK Border

Agency,⁴ to safeguard and promote the welfare of children, and the government’s ‘*Every Child Matters*’ guidance clearly states that ‘every child matters even if they are someone subject to immigration control’.⁵

The duty to have regard to children’s best interests has been considered in a number of recent cases, and in *ZH (Tanzania) v Secretary of State for the Home Department*,⁶ Lord Kerr stated that the best interests of a child who will be affected by an immigration decision is a factor ‘that must rank higher than any other’ and not be ‘merely one consideration that weighs in the balance alongside other competing factors’. The Supreme Court’s judgment is a significant progression from previous UK case law, in which the rights of migrant children tended to be balanced against the need for immigration control in a more generalised way, and has practical consequences for the government in its treatment of migrant children. The same case also recognised that in order to discover what those best interests are, ‘[a]n important part of this is discovering the child’s own views’.⁷ Taking the wishes and feelings of a child into account will require legal representatives, decision-makers and the courts to ensure that they have the skills and processes necessary for ‘child-friendly access to justice’.⁸

‘Every child matters even if they are someone subject to immigration control’

However, many children and young people struggle to understand their rights and entitlements and to feel safe and secure.⁹ Most will be subject to administrative and legal processes that are complex and confusing and advice and/or legal representation will be essential if the child is to benefit from the rights provided. Discriminatory practice towards young migrants and refugees is still evident, and access to support and care is often determined by a child’s immigration status.

In 2002 the UN Committee on the Rights of the Child expressed concern that an action plan to protect the rights of the most vulnerable children in the UK had not yet been developed, and that: ‘...unequal enjoyment of economic, social, cultural, civil and political rights, still exist for

children with disabilities, children from poor families, Irish and Roma traveller children, refugee and asylum seekers, children of minority groups, children in the care system, detained children and children aged between 16 to 18'.¹⁰ The same concerns were raised in 2008 when the UK government was again told to take a more proactive approach to raise awareness about, and prevent discrimination against, particularly vulnerable groups of children, including asylum-seeking and refugee children.¹¹

At present, the lower-quality care received by those children is in part due to 'the government's limited funding for refugee children and negative attitudes to these children within some departments',¹² and also the widespread misconception that immigration issues 'trump' welfare concerns. Despite calls for them to be treated as *children first* and *migrants second*, the opposite approach is often seen in practice.¹³

About this report

Prompted by concerns raised through our advice and casework that many services for refugee and migrant children in England were inadequate, unavailable or facing an uncertain future, this report reviews the level and quality of advice and representation currently provided. For the research 'advice' was broadly defined as covering all oral or written assistance provided to this group of children and young people, from legal representation provided by an immigration or community care solicitor, to the support of an advocate or advice from a social worker or other local authority staff, to information provided by a support or project worker. The term 'professionals' (or 'practitioners') is used to refer to those persons who, within the context of their work, are in contact with refugee and migrant children and young people. 'Children' are those aged under 18, and 'young people' refers to individuals aged up to 25. Further definitions are provided in the appendix.

This study focuses on 'separated' children and young people (often referred to as 'unaccompanied'), who have been separated from their parent/s or primary caregiver, have been deprived of their family environment. It includes those who have claimed asylum as well as those with other types of immigration cases who, while they may not be fleeing persecution, will often face similar legal challenges. While we recognise that many of the issues identified, such as forced destitution,¹⁴ problems with accessing education and healthcare, or difficulties with the asylum process, may apply to accompanied children as much as unaccompanied, in these cases it is generally the

parents rather than the child who seek and receive advice or legal support.

This report has been compiled using a variety of complementary primary and secondary data in order to provide a comprehensive overview of the issues facing young refugees and migrants in England. As well as referring to evidence identified in a literature review, the report draws on findings from a survey conducted with 41 NGOs, charities and law firms, together with interviews of 26 professionals working with this group across England. It was also informed by case studies from the work undertaken by the Migrant Children's Project over the past two years.

By focusing on the needs of these children in relation to advice, support and representation, this report does not seek to play down their agency, efforts and resilience. Indeed, many young people going through the asylum and immigration process demonstrate a substantial knowledge of the systems and procedures described in this report, and often seek to share this knowledge with their peers. Many 'display considerable resourcefulness in their efforts to reconstruct their lives'.¹⁵ Nevertheless, the complexities of some of the legal issues faced cannot be denied, and this report seeks to highlight these and identify points at which consistent and quality advice and representation can be of critical importance. Furthermore, access to this advice and information is also a means of empowering young refugees and migrants to better understand their rights and entitlements, and to 'navigate the system'.

These children are not only vulnerable because of separation from the security of family and home, but also because of their precarious status in this country, and their resulting economic and social insecurity.¹⁶ Many can end up trapped in a 'limbo of illegal impermanence'.¹⁷ The Committee on the Rights of the Child, in its General Comment No. 6,¹⁸ has highlighted the need for 'efforts to find durable solutions for unaccompanied or separated children' outside their country of origin. Work with separated children is not limited to addressing their

immediate needs, but must also incorporate planning for their future and ensuring stability and potential for development.

This report examines the different problems and challenges faced by young refugees and migrants; who they can turn to for advice, support and representation; and how services for this group have been affected over the past few years.

endnotes

- 1 The Children's Legal Centre (2003) *Mapping the Provision of Education and Social Services for Refugee and Asylum Seeker Children: Lessons from the Eastern Region*
- 2 Coram Children's Legal Centre (2012), *Seeking Support: A Guide to the Rights and Entitlements of Separated Children* at www.seekingsupport.co.uk
- 3 Youth Access (2010) *The outcomes & impact of youth advice – the evidence: Key research evidence on the difference made to young people's lives by social welfare advice services*, p 8 at www.ncvo-vol.org.uk/sites/default/files/youthaccessvalue.pdf
- 4 Under Section 55 of the *Borders, Citizenship and Immigration Act 2009*
- 5 UK Border Agency (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*, para 2.7, at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/change-for-children.pdf?view=Binary
- 6 *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4
- 7 *ZH (Tanzania)* para 34
- 8 See Bolton, S. "Best interests': safeguarding and promoting the welfare of children in immigration law and practice' in Immigration Law Practitioners' Association (2011), *Working with refugee children: Current issues in best practice* at www.ilpa.org.uk/data/resources/13326/ilpa_wking_w_refugee_chldrn_May2011.pdf; UN Committee on the Rights of the Child, *General Comment No. 12 (2009): The right of the child to be heard* (CRC/C/GC/12); 'Guidelines of the Committee of Ministers of the Council of Europe on childfriendly justice',
- 9 UNICEF UK (2010) *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* p 118, at www.unicef.org.uk/Documents/Publications/levelling-playing-field.pdf
- 10 UN Committee on the Rights of the Child (2002). *Concluding observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/15/Add.118)*, paragraph 22
- 11 UN Committee on the Rights of the Child (2008), *Concluding observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*, para 25
- 12 New Philanthropy Capital (2007) *A long way to go: Young refugees and asylum seekers in the UK, A guide for donors and funders*, p 23 at www.philanthropycapital.org/publications/education/young_refugees.aspx
- 13 See Immigration Law Practitioners Association (ILPA) (2006), *Child first, migrant second: ensuring that every child matters*. For further information on policy and lobbying work undertaken for refugee children and calling for them to be treated as *children first* please see www.refugeechildrensconsortium.org.uk .
- 14 See, for example, The Children's Society (2012) '*I don't feel human*': *Experiences of destitution among young refugees and migrants*, at http://www.childrensociety.org.uk/sites/default/files/tcs/research_docs/thechildrensociety_idontfeelhuman_final.pdf
- 15 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) 2424-2430 p 2429
- 16 Ayotte, W. (2000) *Separated children coming to Western Europe: Why They Travel and How They Arrive*
- 17 Bhabha, J. (2004) 'Demography and rights: women, children and access to asylum', *International Journal of Refugee Law*, 16(2), 227-243, p 239
- 18 UN Committee on the Rights of the Child (2005) *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin* (CRC/GC/2005/6), para 79

Problems and challenges

Refugee and migrant children in the UK face a number of difficulties, which often include the following interrelated problems:

- Emotional or mental health problems, such as loneliness or depression
- Social isolation
- Language difficulties
- Separation from family and friends
- Personal bereavement
- Discrimination and racism
- Difficulties in accessing mainstream services, such as GPs, appropriate local authority support, and school and college places
- Lack of understanding about how the asylum and immigration system and support systems in the UK function
- Changes in circumstances – for example, a change in a young person’s status or age, particularly when they turn 18 – which can result in having to move from one support system to another, causing major disruption and confusion
- Having their age disputed and being treated as an adult, which in some instances results in a young person being held in immigration detention
- Living with the anxiety of potentially being removed from the country
- Confusing asylum and appeals procedures¹⁹

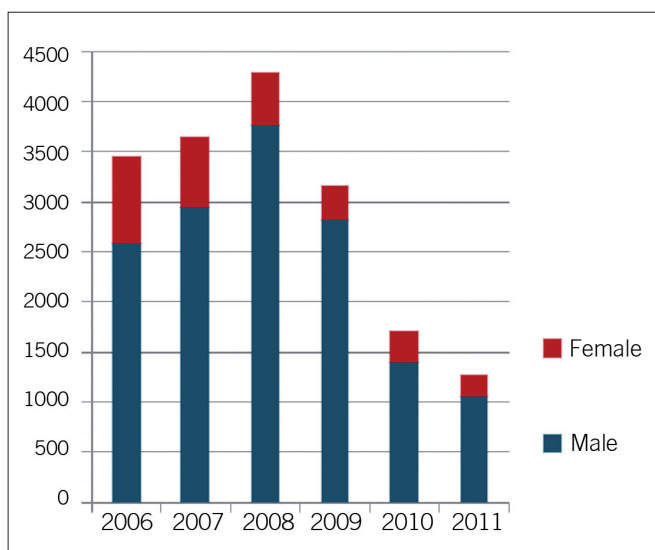
This report explores those issues requiring a certain level of legal knowledge and understanding to address. However, these do not exist in isolation from other problems, and many practitioners emphasise the extent to which legal problems can impact on other aspects of a child or young person’s life, such as mental health and development. Many separated children subject to immigration control may experience frustration and confusion when encountering police officers, immigration officials, social workers and other professionals, many of whom will be questioning their story. They frequently face a long and arduous legal process often beyond their comprehension.²⁰

While separated children and young people, are ‘often remarkably courageous and resilient...in the face of adversity’,²¹ the treatment that they receive once in the UK can have both positive and negative effects on their emotional well-being. Alongside high-quality placements, meaningful and long lasting relationships with adults, and friendships and culturally relevant networks, access to advice and advocacy has been highlighted as a factor that can play a role in alleviating possible stress and depression.²²

Asylum process

Young refugees and asylum-seekers are one of the most vulnerable groups of children and young people in the UK. Some are forced to flee their country of origin on account of a fear of persecution, such as forced marriage, child labour, or conscription into the armed forces. Some flee because of the persecution of a family member, or to escape war and conflict, human rights abuses, or severe social deprivation.²³ Children and young people seeking asylum come from a wide range of backgrounds and with very different experiences of life, but all face the challenges of arriving in a unfamiliar country and all need support and protection.

Over the past decade, the numbers of separated children claiming asylum in the UK have remained relatively stable, with an annual figure of around 3,000 applications, peaking at 4,285 in 2008. However, in the past two years the numbers have dropped significantly, with only 1,277 applications in 2011 (a further 354 applicants in 2011 were made by young people who had their age disputed, see pages 14 to 17).²⁴

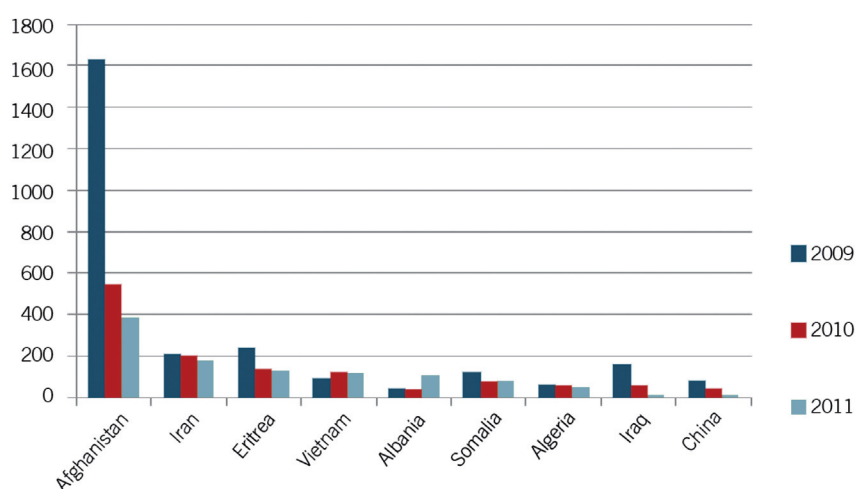


Unaccompanied asylum-seeking children, applications received in the UK, 2006-2011²⁵

The majority of separated and unaccompanied asylum-seeking children arrive from countries experiencing armed conflict or serious repression of minority groups or political opponents. Over the past three years, the top countries of origin of unaccompanied children seeking asylum in the UK included Afghanistan, Iran, Eritrea, Vietnam, Albania, Somalia, Algeria, Iraq and China.

Applying for asylum

An asylum application can be made either at the port of entry or after entry at the Asylum Screening Unit in Croydon. Children are additionally able to apply at local immigration service enforcement offices. A Screening Interview will be undertaken, in which the child will be asked about their personal details and very briefly about their journey and reasons for coming to the UK. If over five years of age, they will be fingerprinted (this must happen in the presence of a Responsible Adult) and photographed. Children aged 12 or over will be given a date for a First Reporting Event with a case owner. A child will also be given a Statement of Evidence Form to be completed with details of the asylum claim and returned within 20 working days, with the support of an immigration solicitor/accredited caseworker. This form should be usually submitted with a witness statement, prepared with the legal representative. If a child is 12 years or older, they can – and normally will – be interviewed about their asylum claim at an Asylum Interview conducted by a trained children’s case owner. A child under 12 can be interviewed if they are willing and it is deemed appropriate. At all children’s Asylum Interviews, a Responsible Adult must be present (for example, a social worker, voluntary sector staff member, or foster carer).²⁷ Under legal aid funding rules, the legal representative can attend both the Screening Interview and the substantive Asylum Interview, though in practice the legal representative may only be instructed and have conduct of the case once the Screening Interview has occurred.



Unaccompanied asylum-seeking children, applications received in the UK, by country of origin, 2009-2011²⁶

The outcome of an asylum claim will be one of the following:

- A grant of asylum (refugee status)
- A refusal of asylum but grant of humanitarian protection, or
- A refusal of asylum and humanitarian protection but grant of discretionary leave to remain, or
- A refusal of asylum and any leave to remain.

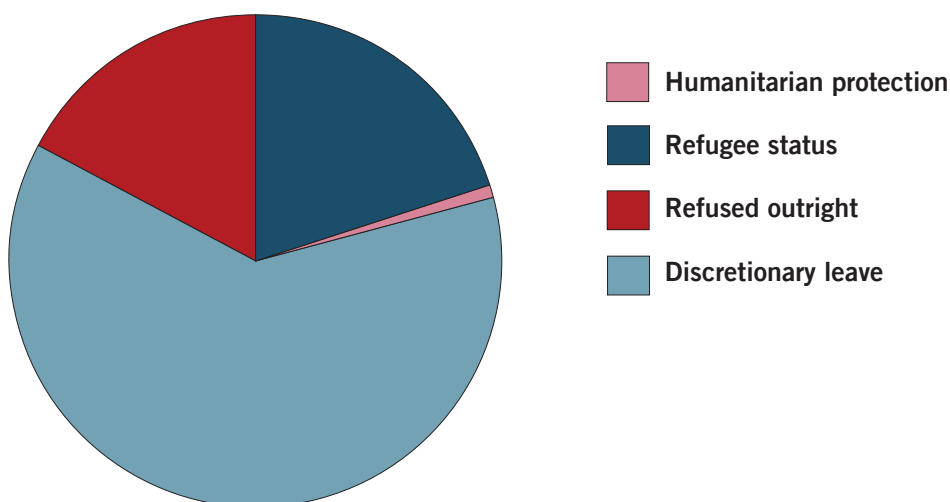
The UN Convention Relating to the Status of Refugees 1951 defines a 'refugee' as a person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country'.²⁸ If a person is recognised as a refugee in the UK, they are ordinarily granted five years' leave to remain and will have access to public funds and be eligible to work. After five years they may apply for settlement (indefinite leave to remain). The majority of separated children are not considered to have a 'well-founded fear of persecution' by the UK Border Agency at initial decision stage. In 2011, the government granted refugee status to only 20% of child applicants. In the two preceding years, the numbers were even lower, with 16% granted refugee status in 2010 and 11% in 2009.²⁹

Humanitarian protection is a form of subsidiary protection, granted to those who are not granted refugee status but who face a serious risk to life or person arising from the death penalty, unlawful killing, or inhuman or degrading treatment or punishment. This status gives effect to the absolute protection from torture or inhuman or degrading treatment provided by Article 3 of the European Convention on Human Rights. Leave to remain will ordinarily be granted for five years, with access to public funds and eligibility to work, after which the person may apply for settlement. No more than around 1% of unaccompanied asylum-seeking children are considered by the UK Border Agency to be in need of humanitarian protection.

If their asylum claim has been turned down, and they have not been granted humanitarian protection, most separated children are granted discretionary leave under the 'Unaccompanied Asylum Seeking Children Concession'³⁰ on the grounds that they cannot be returned to their country of origin because 'adequate reception arrangements' are not available – usually interpreted as meaning that their family cannot be traced. Discretionary leave is granted for three years, or until the child turns 17½, whichever period is the shorter.

It is often not fully appreciated that a child who is granted discretionary leave has not been recognised as a

Initial asylum decisions on unaccompanied children aged 17 and under



refugee, either by the child themselves or the non-legal practitioners working with them. It is very important that children and the people supporting them realise that discretionary leave is a less secure form of leave than refugee status and humanitarian protection, and that the grant of discretionary leave has significant consequences for a child's potential future applications for further leave and for their entitlements. It is especially important to note that those with discretionary leave no longer automatically have home fees status should they wish to go to university, nor will they have access to student loans.³¹

Young people over the age of 18 will not benefit from child-specific processes and policies in the handling of their claim by the UK Border Agency, including the discretionary leave policy for unaccompanied asylum-seeking children. It can occur that a child applies for asylum while they are under 18 but does not receive a decision on their claim until after they have turned 18. For decisions on the claims of unaccompanied children who had reached the age of 18 there was a refusal rate of 83% in 2011.³²

Concerns have been raised in relation to whether children's claims are being justly determined, due to problems with the Home Office's decision-making process.³³ In children's cases in particular there is concern that there exists a general culture of disbelief³⁴ and that not all case owners assess the credibility of a child's account appropriately. There are concerns that there remains a lack of understanding of issues relating to separated children and child-specific forms of persecution.³⁵ A report for the UK Border Agency Advisory Panel on Country Information³⁶ in 2007 revealed poor quality and inconsistent country information when assessed to a children's rights standard. The recommendations of the Advisory Panel were broadly accepted but were never formally implemented. Although further research is required in this area, the low refugee recognition rate for children, and low rate of grants of humanitarian protection, have been attributed to the existence of the 'UASC concession', whereby a child can be granted discretionary leave if their claim for asylum is refused. The result of this, it has been argued, is that insufficient attention is paid to children's claims.³⁷

Appeals

If an asylum or humanitarian protection claim is refused by the UK Border Agency, the child may be able to appeal this decision to the First-Tier Tribunal (Immigration and Asylum Chamber). They will in most cases have an in-country right of appeal if the claim is refused outright and they are not granted any form of leave. Where asylum or humanitarian protection is refused but discretionary leave is granted for a period of over 12 months, the refusal to grant international protection will ordinarily give rise to an in-country right of appeal³⁸ (this is known as an upgrade appeal).

A child should be advised by their immigration lawyer as to whether or not they can exercise a right of appeal against the refusal of refugee status or humanitarian protection. It may well be in the child's interests to exercise this appeal right and have their asylum or humanitarian protection claim considered by the court while they are still a child, benefiting from child-specific considerations, policies and practice directions. It is very important that the legal representative properly considers the child's case when assessing whether they can continue to represent the child at the appeal stage and grant legal aid funding for this.

Applications for extensions of leave

Before their leave expires, a child with discretionary leave must apply for an extension of their leave to remain if they wish to stay in the UK. These applications may be based on both a continuing fear of return and the life that the child or young person has established in the UK. It is very important that this application is submitted in time and that the evidence contained in it is consistent, both internally and with reference to previous applications submitted to the Home Office. It is therefore very important that legal assistance is obtained in submitting this application. If the application is made before the previous grant of leave expires, the young person remains in the UK legally and under the same conditions while the Home Office is considering this application,³⁹ which can take many months or even over a year.

The numbers of young people who receive an extension of discretionary leave is very low – around 290 out of 5,280 decisions over the past five years, according to UK Border Agency figures.⁴⁰ This serves to highlight that a grant of discretionary leave is far from being a ‘durable’ solution. Rather, it is an impermanent status and the likelihood of the young person being removed after they turn 18 is high. A child who originally claimed asylum may well in the extension application maintain that there is a risk on return (and in addition there may be further reasons to fear return supplementing those of the original claim, such as changing country of origin conditions, fear of conscription or *sur place* elements), but the UK Border Agency is unlikely to grant refugee status or humanitarian protection in response to an extension of leave application. In addition, interviews undertaken for this study, and the experience of the Migrant Children’s Project, suggest that UK Border Agency grants of further leave on the basis of Article 8 are rare.

‘Failure to grasp the concept of “seeking asylum” and how to make an application for protection under the Refugee Convention can often jeopardise a child’s application from any early stage’

Support through the process

The outcome of a child’s asylum application is highly significant for their future well-being, and in some cases can literally be a matter of life or death. It is therefore extremely important that children are supported and represented throughout the asylum process, which for many children, and for those working with them, can be extremely complex and confusing. Failure to grasp the concept of ‘seeking asylum’ and how to make an application for protection under the Refugee Convention can often jeopardise a child’s application from any early stage.⁴¹ Much research has also documented the anxiety felt by children and young people during the asylum process and in particular the feelings of being ‘in limbo’ and unable to plan for their future. In one report, the children and young people interviewed felt that whilst waiting for a decision ‘it was not worth pursuing education’ and they ‘did not feel able to engage with life in the United Kingdom’.⁴²

Immigration cases

Many separated children and young people may be living in the UK without a regular immigration status. They may be referred to as ‘undocumented’ or irregular migrants. For the Home Office there are three distinct categories of undocumented immigrants:

1. illegal entrants (those who have entered the UK unlawfully as ‘illegal entrants’ and never acquired any form of regular immigration status);
2. overstayers (those who have come to the UK as visitors, and remained in the country beyond the date at which their leave expired);⁴³ and
3. failed asylum seekers.⁴⁴

Estimating the numbers of separated migrant children in the UK is challenging. In ‘*Being children and undocumented in the UK: A background paper*’ an estimate is given of 155,000 undocumented migrant children (central estimate), 70,000 of whom were not born in the UK and have entered the country either as dependants or independently. There is no data available to indicate the countries of origin of undocumented migrant children but one source suggests that the most prevalent are Jamaica, Nigeria, Pakistan, China and Turkey.⁴⁵ Outside of London, large urban areas like Birmingham and Manchester, which have played an important role in the asylum dispersal programme⁴⁶ and host a large and diverse migrant population, are also likely to host a significant population of undocumented migrants, including children.⁴⁷

Many undocumented children are brought into the UK by a parent or guardian, or through a private fostering arrangement. In some cases relations break down, leaving them abandoned and left to be taken into the care system. These children may be in the UK for many years without realising that it is necessary to regularise their immigration status. This often becomes evident only years later when they wish to work or access further or higher education. In that time, they will often have formed close links with their carers, settled in the education system and developed extensive private lives. It is unlikely to have been their choice to come to the UK and they cannot be expected simply to leave their lives behind and return to their country of origin, of which they may have little or no memory.

Lack of status is a clearly identifiable obstacle to accessing basic social rights and entitlements⁵⁰ but many children and young people face difficulties regularising their status and, again, legal advice is essential if they are to do this.

Those who have been in the UK for many years may have developed strong ties in the UK and would face such difficulties adjusting to life abroad that it would be right and fair that the child or young person is allowed to stay in the country. In this context the UK Border Agency can grant discretionary leave to the child or young person, as to send them back to their country of origin would breach their right to private and/or family life, protected by Article 8 of the European Convention on Human Rights. In other cases an individual might seek to remain in the UK on the basis that removal would lead to a rapid deterioration in their health, where, for example, treatment for their illness is not available in their home country. Often a high threshold must be met for these applications to be successful.⁴⁸ There is at present no formal Home Office procedure for considering and responding to the effective statelessness of migrants, including children, which is likely to be a source of disadvantage for some undocumented migrant children.⁴⁹

‘Lack of status is a clearly identifiable obstacle to accessing basic social rights and entitlements’

Issues around immigration status and access to services may also affect separated children from European Union countries. A child with EU nationality is free to travel to the UK without restriction and if ‘in need’ should receive the same support as any other child in the UK, but misconceptions remain about these children’s rights, and complications may arise when they leave care or turn 18. Separated children from the Roma community, for example, may have differing immigration statuses depending on their country of origin and circumstances: both their immigration status and nationality ‘are important factors in defining their rights, entitlements and responsibilities in the UK’.⁵¹

Local authorities are under a duty to safeguard and promote the welfare of all children in their care,⁵² and that includes ensuring that they obtain a durable immigration status where appropriate.

Local authority support

Support and accommodation should be provided to separated children by children’s services in the local authority in which they are physically present, under the Children Act 1989.⁵³ The immigration status of a separated child does not affect a local authority’s duty to care for them while they are under 18. Those areas where there are international airports or ports have a much higher number of separated children in their care, with the highest numbers in the London Borough of Hillingdon, which contains Heathrow airport, Croydon, due to the presence of Asylum Screening Units, and Kent, because of the port of Dover.⁵⁴ While the numbers of those arriving in the UK and seeking asylum have decreased, it is estimated that approximately 4% of the 65,520 children in state care are unaccompanied asylum-seeking children,⁵⁵ with the highest concentration in London and the south east, where the proportion is around 17%.⁵⁶

All separated children, not just those seeking asylum, should receive a full, individual needs assessment, and the vast majority should be accommodated under section 20 of the Children Act 1989⁵⁷ and provided with leaving care services when they are deemed ready to leave care, which will usually not be until they are 18. This includes EU/EEA/Swiss children who fulfil the other criteria for section 20 assistance,⁵⁸ although Coram Children’s Legal Centre casework has highlighted problems in practice regarding whether or not they are deemed to be in fact ‘separated’, especially if they came to the UK as dependent family members.

No definition of ‘accommodation’ is provided in section 20 of the Children Act, although it is taken that it must be ‘suitable accommodation’ – i.e. it must, so far as is practicable, meet the needs of the child, and take their wishes into account. It is normally the case that children under the age of 16 are placed in foster care⁵⁹ and often older children will be placed in semi-independent accommodation with limited support (although there is no stated policy that prevents local authorities from placing a child aged 16-17 in foster care). Of the unaccompanied asylum-seeking children in care in 2011, around 60% were in foster placements, 15% were in residential accommodation, and just under 25% were living independently.⁶⁰

While there have been some improvements in practice, interviews undertaken for this research highlighted that there is still a lack of consistency in the response from local authorities to separated children and young people.⁶¹ Queries and cases undertaken by the Migrant Children's Project echo research findings that the experiences of refugee and migrant children in the care system vary considerably. While one child may benefit from a highly suitable, caring foster placement, another may be placed in independent accommodation with key workers whom they rarely see, even if they are not equipped with the necessary skills to look after themselves. Often older children will be placed either in supported accommodation, a form of residential care where key workers are present for a number of hours a day,⁶² or in semi-independent accommodation with limited support.

Limitations on placement recourses have also resulted in use being made of hotels and Bed and Breakfast accommodation, a practice for which local authorities have been criticised.⁶³

'There is still a lack of consistency in the response from local authorities to separated children and young people'

Practitioners report an ongoing misunderstanding of migrants' entitlements, such as social workers assuming that any foreign young person will have no recourse to public funds.⁶⁴ Difficulties also arise when a local authority disputes the age of a child or when disputes arise between two local authorities as to which is responsible for providing care.

The Children Act 1989 provides for the right to complain about services provided to children who are 'looked after' or 'in need', irrespective of their designation under the Act (section 17, section 20 or 'care leaver').⁶⁵ Those working with a young migrant may be able to provide assistance to them in following the relevant complaints procedure. A young person who has approached a local authority for assistance but is being 'age disputed' (see pages 14-17) by that authority cannot use these procedures but may instead be able to challenge the decision through judicial review. As well as the local authority complaints procedure, the Local Government Ombudsman may investigate cases arising from complaints involving the local authority.⁶⁶ In many cases, especially those where a

child is in danger of being left homeless, the threat of legal action is often required to secure appropriate support for the child or young person.

Case study

H came to the UK from Nigeria when she was five years old with her mother on a visitor's visa.

Now aged 16, and six months pregnant, she was referred to Coram Children's Legal Centre, having been thrown out of her house four months previously by her mother. She had lost contact with her mother and had no means of contacting her. She was homeless and was staying with a friend, but could not remain there. She was very worried about what would happen to her.

H had been to her local authority, which had not provided her with accommodation. They told her to go away and come back with evidence of her immigration status. Following Coram Children's Legal Centre's intervention, the local authority accommodated H and complied with its duty in undertaking an initial assessment and then core assessment, and then provided her with accommodation and support.

Age assessment

A significant number of young asylum-seekers arrive in the UK claiming to be children but without documentation to prove their ages, or with false documentation. Many have their age questioned by either the UKBA or the local authority to which they have turned for support.

The question of age is of great importance, not only because it goes to the heart of a young person's identity, but also because it affects how they are supported by children's services; their access to education; how their asylum or immigration application is processed; and whether they are dispersed (if provided with asylum support by the UKBA) and accommodated or detained with adults.⁶⁸ Children are seen to be more vulnerable

Age disputed asylum applications (excluding dependants)⁶⁷

2008	2009	2010	2011
1,401	1,129	489	354

than adults, and historically there have been different, more favourable, policies in relation to asylum-seekers who are under 18: child-specific forms of persecution or reasons why it may be unsafe for a child in her or his country of origin need to be taken into account when assessing a child's asylum claim. Moreover, since November 2009, a duty has been placed on the UK Border Agency under section 55 of the Borders, Citizenship and Immigration Act 2009, to safeguard and promote the welfare of children. The Secretary of State should not detain a child under administrative immigration powers, save in exceptional circumstances and even then only overnight. Yet, a significant proportion of age-disputed young people have been detained and then subsequently found to be children. In 2010, the Refugee Council helped secure the release of 26 children wrongly detained as adults and in 2011 helped 22 children in this situation.⁶⁹ The Independent Monitoring Board of Harmondsworth Immigration Removal Centre highlighted concerns that children were detained there in 2011.⁷⁰

Age determination is not an exact science, and even when based on medical evidence, it is impossible to identify a child's exact chronological age, with the margin of error being up to five years either side.⁷¹ In addition, a number of factors make age assessments complex and challenging. For example, within ethnic and national groups there are wide variations in young people's sizes and ages of puberty, and young people may look and act older than they are because of their experiences in their country of origin, or their long and difficult journey to the UK. In some countries, different calendars are used and/or birthdays are not celebrated.

There is currently no statutory procedure or guidance issued to local authorities on how to conduct an age assessment. Instead the current approach has evolved through practice by local authorities and legal challenges

to the process. Around 2003, the London boroughs of Hillingdon and Croydon developed a protocol, *Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers*, and a pro-forma, which is now the standard form for age assessments, with margin notes guiding social workers on the information they ought to be seeking. This approach was judicially approved in the case of *R (B) v Merton*,⁷² in which the judge set down broad guidelines as to how age ought to be assessed. Further criteria have been established in subsequent cases. Whilst a lawful age assessment is often referred to as 'Merton compliant', assessors need to comply with a range of case law, which has highlighted a number of necessary criteria, including the need for a holistic assessment undertaken by experienced and trained social workers; the need for safeguards to ensure fairness; the need to give reasons for a decision and to give the benefit of the doubt. Case law has recently also made clear that the putative child has the right to be accompanied during the assessment by an appropriate adult.⁷³

‘Local authorities have a “vested interest in the outcome of age assessments” which can have an impact on their objectivity, especially in a climate of increasing budget constraints’

In the absence of statutory guidance, there has been much confusion within the UK Border Agency and within local authorities as to what constitutes a lawful assessment, and many social workers are not sufficiently trained to undertake such specialist assessments.⁷⁴ Variations in the experience, capacity and procedures followed by different local authorities result in significant differences in the quality and approach towards assessing age.⁷⁵

In addition to these difficulties, local authorities have a 'vested interest in the outcome of age assessments'⁷⁶ which can have an impact on their objectivity, especially in a climate of increasing budget constraints. If a young person is found to be a child, they become the responsibility of children's services, whereas an adult claiming asylum will be supported directly by the UK Border Agency. In some cases 'there is little incentive for local authorities to identify individuals as children given that their authority will then be required

to take responsibility for that child and for leaving care arrangements after he or she turns 18, often without adequate financial support from central government'.⁷⁷

Problems can also arise when, in immigration tribunals, judges make findings of fact on a young person's age in the context of an asylum or immigration appeal. Sometimes the immigration judge will not make any firm determination on a young person's age but may express a view that the young person is either a child (under 18) or an adult (over 18). An immigration judge's decision will bind the Secretary of State for the Home Department unless a further appeal is taken, but will not bind the local authority. The difference in the approach taken by the High Court and that taken by the immigration tribunal has created situations where a child or young person may have a factual determination in their favour in the immigration tribunal but remain age disputed by the local authority - in short, they have 'two ages'.⁷⁸

Challenging age assessments

Over the past decade there have been more and more legal challenges to local authority decisions on a person's age. Until 2009 the only basis on which such a challenge could be brought was by way of judicial review, based on procedural errors in the assessment process and the rationality of the conclusion. The only remedy that could be obtained from the court was an order quashing the assessment and requiring the local authority to conduct the assessment again.

However, in November 2009 the case of *R (A) v The London Borough of Croydon*,⁷⁹ the Supreme Court decided that, if there remained a dispute about age between the young person and the local authority, the dispute would still be brought by way of a judicial review but it would be down to the court to decide how old the young person was. Reasoning that the better the quality of initial decision-making, the less likely it is that the court will come to any different decision upon the evidence, the Supreme Court did not accept that its judgment would 'inevitably result in an inappropriate judicialisation of the process'. Rather, it was hoped that 'the fact that the final decision rests with the court will assist in reducing the number of challenges'.⁸⁰ However, this judgment does not appear to have reduced disputes over age and it remains an issue subject to frequent litigation. In

2009/2010, the local authority of Croydon spent £827,000 in legal costs on court cases related to age assessments.⁸¹

Research with local authorities found that age disputes were one of the principal reasons why children do not receive the services they need and are placed at risk.⁸² Asylum-seeking children whose ages are disputed often find themselves falling through a gap in support, either because they have been found to be over 18, or because, whilst still held to be a child, they have been assessed to be several years older than claimed. If found to be an adult by the UK Border Agency on arrival, an individual will be routed into the adult system,⁸³ and may not understand their right to have an assessment by a local authority, or have difficulty finding a local authority willing to undertake one. If they are assessed by a local authority but still found to be an adult, they will be reliant on the UKBA for support and may end up dispersed or detained. Alternatively, if a local authority finds a child to be several years older than they have claimed, this can have a significant impact on their access to education and support, and even the length of leave granted, if they are granted discretionary leave.

'Research with local authorities found that age disputes were one of the principal reasons why children do not receive the services they need and are placed at risk.'

As the main remedy for an age assessment that was not carried out in accordance with the law is judicial review, a child will need the help of a community care solicitor experienced in this area. The work of some advocacy projects, such as the Refugee Council, may include obtaining help when immigration officials and the local authority have disputed a child's age; locating community care solicitors; making referrals for medical assessments; and lobbying on the child's behalf. The role of the Appropriate Adult, referred to in *R(FZ) v London Borough of Croydon*,²⁰ is also an important safeguard to ensure that these assessments are conducted fairly. This case refers to the necessity of having an Appropriate Adult present for the putative child, and refers to Appropriate Adults as defined by the Police and Criminal Evidence Act 1984 (PACE) guidance. This guidance states specifically that

Case study

A left Afghanistan after being forcibly recruited to the Taliban. He had no documents and did not know his date of birth. He thinks he was 14 when he left Afghanistan. His journey was arranged by agents and he travelled in cars, lorries and on foot. He was apprehended by the police and was arrested and handcuffed. At his Screening Interview there were problems with the Home Office interpreter and A did not feel that what he said was being interpreted accurately.

In September 2009 A's application for asylum was refused by the UK Border Agency. He was granted neither refugee status nor humanitarian protection, but was given discretionary leave to remain. The age he claimed to be was disputed by the local authority, who said he was an adult, and the UK Border Agency accepted the local authority's assessment of A's age. A was moved and placed in a house with four men much older than him. He felt very isolated and spent a great deal of time on his own in his room. The local authority said they would get him an advocate but this never happened. They cited practical problems, saying that it was not possible to provide an advocate for 'an adult', even though his age was in dispute.

With the assistance of a legal aid immigration solicitor, A appealed against the UK Border Agency's refusal to grant international protection. His asylum appeal was allowed in April 2010. A's age was a relevant factor in the determination of his asylum appeal and the judge considered A to be 'under 17'. The judge assessed the local authority age assessment as well as evidence submitted in support of A's case by his solicitor, including an independent paediatric assessment, and the appeal was allowed.

However, A has still not received his refugee status papers because the local authority still insisted that A was older than he said he was and the immigration judge found him to be. With the help of his solicitor he is continuing to challenge the assessment of his age. Until there is an outcome to this challenge he continues to live in limbo, and the legal complications have affected the support he has received.

as an Appropriate Adult 'you are not simply an observer' (emphasis in original). Their role is to support the putative child in any appropriate practical or emotional way, assisting with communication if appropriate, and taking notes during and after the interview which can be shared with the putative child if needed. Some local authorities have expressed concern around finding individuals to act in this role – in London, it is often filled by professionals from organisations such as the Refugee Council or Voice, and some 'outsourced' Children's Rights Officers. One suggestion has been for local authorities to tender for Appropriate Adult services, similar to the process undertaken in the youth justice system.

Transition at 18

There is often considerable confusion among young refugees and migrants as to what will happen when they reach the age of 18. Practitioners often express concerns regarding the vulnerability of young people in this age group, not just because of their transition from children's services, but also because many of them are waiting for the outcome of an asylum application or an application to extend their leave to remain. They face an uncertain future and are extremely concerned about being removed from the UK. It is difficult to overestimate the confusion and anxiety experienced by young people turning 18 whose immigration status is not permanent,⁸⁴ who find themselves 'living a precarious existence in which friends disappear off the local map and appear a few weeks later in the form of a text message from the other side of the world'.⁸⁵ Mental health problems that may have been under control while there was some security in the

young person's life may re-emerge at this time.⁸⁶ In such circumstances, having previously struggled to come to terms with displacement and loss, some young people now have to deal with the possibility that they will be returned to a country from which they fled.

Exacerbating these problems, both statutory service providers and the separated young people themselves are often unclear as to what housing, subsistence and other support (practical and emotional) they are entitled to in the UK at this time. Once a separated child has been accommodated by a local authority for a 13-week period, after the age of 14, the local authority is responsible for providing them with accommodation and some financial support once they turn 18, until they turn 21 (or 25 if they are still in education).⁸⁷ There are real challenges for local authorities in delivering this service, because the grant provided by the UK Border Agency for care leavers is significantly less than the level of support provided for looked after children. Local authorities receive £150 a week for a care leaver, which has to cover the costs of their accommodation, living expenses and all other requirements.⁸⁸ While those who were granted refugee status, humanitarian protection or discretionary leave (or who have made an in-time application to extend that leave) will be entitled to benefits and continued leaving care support, there may still be a gap between what local authorities receive from central government to cover the costs and the actual costs that are being covered by the local authority.

Practitioners also highlighted the difficulties that young people can encounter when faced with having to claim housing benefit, or job seekers allowance, and the need for support and guidance. For EU nationals leaving care there are some common hurdles to overcome in the way in which they might be categorised – for example, whether they are 'habitually resident' or have the 'right to reside' and law and policy in this area can cause great confusion.⁸⁹

Further problems arise when a young person becomes 'appeal rights exhausted' – that is, when they have had an application refused and have no other legal avenues left to pursue to challenge that refusal. Some individuals in this situation may be able to submit a fresh claim for asylum but many will not and thus have no regular status. The government's policy is to remove people whose applications for asylum have been rejected and who they

consider to have no other basis for remaining in the UK. Yet the government often has great difficulties getting permission from countries of origin and obtaining travel documents necessary to return people and has itself suspended enforced returns of refused asylum seekers of certain nationalities because of human rights concerns a lack of a safe route or on-going legal action. For example, between December 2004 and August 2005, the Home Office accepted that there was no safe route of return to Iraq.⁹⁰ Furthermore, the young people may be too scared to return and have ongoing protection needs. This is often the case when their original asylum claim was dealt with poorly. If not able to return, many go underground or exist in a kind of limbo which can last for years and have a significant impact on their well-being.⁹¹

'Both statutory service providers and the separated young people themselves are often unclear as to what housing, subsistence and other support they are entitled to in the UK at this time'

Practitioners interviewed for this research maintained that local authority practice with regards to the support that they provide to 'end of line' cases is still inconsistent, in part due to confusion as to how to deal with such cases, along with financial constraints. While local authority support can be withheld or withdrawn from certain groups of migrants and refused asylum-seekers – 'ineligible persons' – under the Nationality, Immigration and Asylum Act 2002,⁹² this action cannot be taken if to do so would breach the individual's human rights under the European Convention on Human Rights. Human Rights Assessments (HRAs) are an alien concept for many social workers, and practice is inconsistent. Some refuse to conduct them altogether. An HRA would involve assessing whether the removal of support would breach Article 3 (the prohibition of torture and inhuman or degrading treatment) and/or Article 8 (the right to private and family life). The local authority would need to consider whether withdrawal of support would leave a young person destitute⁹³ and whether there are any barriers to the young person returning to their country of origin, among other things.

In its 2012 report '*I don't feel human*', practitioners from the Children's Society highlighted a sharp increase in the

number of young refugees in London boroughs with whom they work experiencing forced destitution. In 2009–10, 14% of the young refugees that accessed its New Londoners services were destitute. In 2010–11, this figure rose to 17%, and between April and September 2011 the figure doubled to 34%. Some of these young people experienced destitution because their age had been disputed and they were being treated as adults; others were in this situation because their support had been withdrawn by the local authority upon their turning 18 once they had been refused asylum and become appeal rights exhausted.

As outlined above, whilst it is possible for someone eligible for leaving care support to avail themselves of the local authority's complaints procedure, often the withdrawal of support will require legal challenge by way of judicial review.

Case study

K, a Kurdish Iranian, arrived in the UK as a child, but his asylum claim was unsuccessful. He was looked after by the local authority under section 20 of the *Children Act 1989* and when he turned 18 was eligible for leaving care support. However, once 18 he became 'appeal rights exhausted' and was told by the local authority that all support was to be withdrawn and he was to be made homeless.

K had taken steps to return but was refused a visa to return to Iran by the Iranian Consulate because he had no documentation to prove he was Iranian. At the same time he was informed by the UK office of the Kurdish Regional Government in Iraq that they would not be able to take him either (K's mother was Kurdish Iraqi and he believed that she may be living in the KRG) for the same reason.

A Coram Children's Legal Centre advisor informed the local authority that as a 'stateless' young person, K was unable to take steps to return, and as such should continue to be supported under leaving care provisions. They also referred K to an immigration solicitor who was able to advise as to whether he could either make a fresh claim for asylum or a statelessness application.

'We are worried about when we are 18, then the support will stop, and the other service providers wouldn't treat us as they were before, because our social worker asks for our rights, asks for interpreter... But when they are not with us when we are 18, it will be difficult to ask for our rights by our own.' (*young refugee*)⁹⁴

Access to education

It is important for their general well-being that separated children and young people have access to education. The structure and routine of education helps to provide a sense of normality and security. Schools and colleges can help children and young people through the loss, separation and impact of any change they are experiencing, whilst allowing them to continue their personal development. However, many separated young people, particularly 14-19 year olds, find it difficult to secure school and college places. They face considerable barriers to accessing education, including waiting times to access further education colleges; confusion over their entitlements to financial assistance; difficulties in navigating the English education system; and discriminatory or inconsistent admissions policies. Although immigration-related documentation is not required for registration at a school, some schools may be reluctant to accept migrant children (especially undocumented migrants) due to issues over funding arrangements, or the possible impact on the institution reaching government targets.⁹⁵

Local authorities have a duty to provide suitable full-time education for all children of compulsory school age resident in their area, irrespective of their immigration status and appropriate to their age, ability and any special educational needs they may have.⁹⁶ Refugee, asylum-seeking and other migrant children aged 5-16 have the same entitlement to full-time education as other children in the UK.⁹⁷ In addition, local authorities must offer school places in accordance with their published admissions arrangements, and they must ensure that there is no unreasonable delay in securing school admission for a

child. Separated children in public care should be found a full-time education placement in a local mainstream school within 20 school days. The Education Act 2005 makes it a statutory responsibility to prioritise school admissions for 'looked after' children, and the Department for Education 'School Admissions Code' states that 'looked after' children must be given priority when placed on the waiting lists of oversubscribed schools.⁹⁸ This also applies to academies and free schools.⁹⁹ Local authorities have a duty to provide additional support for refugee and migrant children who are 'looked after' under section 20 of the Children Act 1989.¹⁰⁰

'Children and young people face considerable barriers to accessing education, including waiting times to access further education colleges, confusion over their entitlements to financial assistance, difficulties in navigating the English education system, and discriminatory or inconsistent admissions policies.'

Despite these safeguards, refugee and migrant children can still be denied access to appropriate education, as illustrated by the case of *R(KS) v LB of Croydon*, which held that the failure to educate three unaccompanied asylum-seeking minors for almost a year was unlawful. Following judicial review proceedings, Croydon was ordered to provide suitable education to the children pending the identification of a full-time mainstream placement – they had been placed on an English as a Second Language (ESOL) course but this was found not to meet the local authority's obligations under the Education Act 1996 because the local authority was under a duty to provide full-time suitable education, taking into consideration the child's individual needs.

Further and higher education

All separated young people, regardless of their immigration status, can apply to study at a sixth-form college, further education college, or higher education institution. However, they must satisfy the entry requirements of the course (for example, language skills and previous qualifications) and pay for the course fees, either by accessing public funding to which they are entitled, or by paying privately.¹⁰¹

Research has highlighted a number of financial, practical and legal obstacles faced by migrant young people when they attempt to access further and higher education, including complexities and confusion around entitlement. For example, some colleges do not accept young people who are waiting for a decision or have a temporary period of leave (such as discretionary leave) which will end before the course they are applying for finishes, in part because funding mechanisms are based largely on completion rates. The 2012 Refugee Support Network report '*I just want to study*', found that it was common for separated children to have received 'inadequate or inaccurate information through social workers, peers, schools/colleges and even Higher Education Institutions themselves', particularly with regards to student finance, leading them to make ill informed educational choices. The report recommended that tailored advice from sources that understand the education system *and* the complexities of the asylum system be made available and accessible, and that schools and further education colleges work closely with specialist refugee support organisations to build capacity amongst student support workers and careers advisors.¹⁰²

Many of the queries received by the Coram Children's Legal Centre involve clarifying eligibility for home fees and student support for young people wishing to go to university. Whilst children and young people may be assisted by social workers, advocates and others in liaising with educational institutions, or with the student finance complaints process, the Centre has on several occasions offered legal advice and clarified with student finance that a young person with leave to remain is in fact eligible for support.

Case study

H came to the UK from Eritrea and was granted refugee status, with five years leave to remain (since 2005 refugees were granted five years rather than indefinite leave to remain). Although she was eligible for home fees and student support under the *Education (Student Support) Regulations*, H's application for a student loan was turned down. Despite having submitted all her documents and evidence of status, Student Finance had concluded that she was ineligible for support because she only had 'limited leave' and there was no evidence that her 'limited leave was granted due to a failed asylum claim'.

This was a clear misunderstanding on the part of the individual processing her application, and was rectified by a letter from Coram Children's Legal Centre clarifying her status and eligibility. All too often, though, young people are denied access to further and higher education due to confusion around their entitlements, and are unable to address that without further advice.

under false passports, or with student or tourist visas that have been arranged by the trafficker.

Such children are sent from many different countries – most frequently from Eastern Europe (Albania, Ukraine, Moldova and Russia), Africa (generally Nigeria), Asia (China, Vietnam, Thailand, Afghanistan, Pakistan, Bangladesh) and the Caribbean (Jamaica). Their cases may come to the attention of lawyers and the authorities either at the point of entry to the UK or after entry, either if the child accesses services or when the child escapes. Such escapes may occur in late adolescence and after years of abuse and exploitation. Many do not come to the attention of statutory or voluntary service providers until they have been in the country for months or years.¹⁰⁵ In the experience of one barrister 'such children are provided with quite different treatment by local authorities depending on whether they are "port" or post-arrival cases', a distinction which is 'invidious and arguably unlawful'.¹⁰⁶

The gateway to protection and support as a victim of trafficking is identification as a victim. When a children's workforce professional or member of UKBA staff has suspicions that a child may have been trafficked, there is an established process to follow to ensure the child has the appropriate support, and prosecution of the traffickers is pursued.

'The gateway to protection and support as a victim of trafficking is identification as a victim.'

Trafficking

Child victims of trafficking are those who are 'recruited, transported, transferred, harboured or received for the purpose of exploitation'.¹⁰³ This is different from smuggling children into the UK, which is solely about facilitating travel to the country. Children can be trafficked for various reasons, including sexual exploitation, forced labour, domestic servitude, criminal activities, benefit fraud, organ harvesting or illegal adoption. Many, once in the UK, are forced to work in sweatshops, restaurants, factories, agriculture, and in domestic servitude, for criminal gangs or in prostitution.¹⁰⁴ Children trafficked into the UK may enter as separated children, as visitors, as students, fraudulently as dependents of adults, as part of private fostering arrangements, through contracts for domestic staff, or through bogus marriage arrangements. Such young people are often threatened with harm to themselves or their families if they do not do as they are told, or if they tell anybody about what is happening to them. Some are told by traffickers to claim asylum as unaccompanied children. Others may arrive claiming to be adults seeking asylum, or

The National Referral Mechanism

In April 2009 the government established the National Referral Mechanism (NRM) for identifying and protecting victims of trafficking. Referrals to the NRM are made by 'First Responders'. These are public bodies or government-sponsored support providers and include, among others, the police, local authorities, the UK Border Agency, the Poppy Project, and Migrant Helpline. Referring a child into the NRM involves completing a referral form which will then be assessed by the relevant Competent Authority, either in the UK Human Trafficking Centre (to assess cases where the victim is British or where there are no immigration issues) or in the UK Border Agency (to assess cases where trafficking may be linked to other immigration or asylum cases).¹⁰⁷

The Competent Authority will then decide within five working days (which can be extended where necessary) whether or not there are reasonable grounds for believing that the person referred has been trafficked. Where there are 'reasonable grounds' for believing that the person is a victim of trafficking they will be granted a 45-day recovery and reflection period to enable them to access safe accommodation and support. The standard of proof for this is low to ensure that where there is the possibility that a child has been trafficked, it is investigated. During that period, the Competent Authority should carry out any evidence-gathering and enquiries which may be necessary, and before the end of the recovery period the Competent Authority will make a 'conclusive' decision regarding whether or not the person is a victim of trafficking.

If a child is conclusively identified as a victim of trafficking, they will be issued with a 12-month residence permit if the Competent Authority considers that their stay is necessary owing to their personal situation or if the Competent Authority considers that their stay is necessary for the purpose of their co-operation with the investigation of their traffickers. The NRM operates alongside existing European, refugee and human rights law, so those who are trafficked may make other applications to remain in the UK based on European, refugee or human rights law. If a trafficked child has also made an asylum application and they succeed on the grounds of either human rights or humanitarian protection, they should be granted the highest form of leave available.

There are no appeals against negative decisions at either stage (although a person can ask to have their case reviewed) and there is limited legal representation through this process. However, if the trafficked child has not made an asylum claim, and has received a decision that there are no personal factors meriting a residence permit, they will possibly have a right to apply to challenge the decision through a judicial review.

Trafficking and the criminal justice system

As well as community care and immigration law, victims of trafficking are often required to engage with yet another area of law – criminal law. A scenario in which immigration and criminal justice issues overlap is where a trafficked

child is forced to commit a crime by their trafficker, or is otherwise compelled to commit a criminal offence as a direct consequence of having been trafficked. For example, much concern has been raised about the criminalisation of children apprehended in raids on cannabis farms who, in some circumstances, are being prosecuted rather than provided with protection.¹⁰⁸ Many children are not identified as potential victims of trafficking and are subsequently charged with drugs or immigration offences. Often these children will first come to the attention of the police, or a Youth Offending Team.

'Much concern has been raised about the criminalisation of children apprehended in raids on cannabis farms who, in some circumstances, are being prosecuted rather than provided with protection'

Children who have been trafficked are, understandably, often very fearful, for a number of reasons. These include threats having been made towards them or their families, coupled with the existence of large debts supposedly owed to the traffickers. Trafficked children are often subjected to physical, psychological or sexual abuse or neglect and are unlikely to have much knowledge about the legal system in the UK. They may have been coached in a version of events which they are told to relate if they are apprehended by the authorities and may have been systematically lied to by the traffickers about being deported or imprisoned. Because of perceived stigma or shame, or through lack of knowledge of the full picture, or because they are still in the control of their traffickers, some may deny they have been trafficked in the first place.

Crown Prosecution Service guidance, 'Prosecution of Young Defendants charged with offences who might be Trafficked Victims', makes clear that where there is credible evidence that a child is the victim of trafficking, it will generally not be in the public interest to prosecute for criminal offences arising out of that trafficking.¹⁰⁹ Prosecutors should be alert to the possibility that in such circumstances, a young offender may actually be a victim of trafficking and have committed the offences under coercion.

Support for trafficked children

For trafficking victims, the primary response should be one of child protection and safeguarding to ensure that they are safe and have appropriate support to meet their welfare needs. Trafficked children are entitled to support under section 20 of the Children Act 1989 and should be provided with safe accommodation. If there is a risk that they will suffer significant harm if found by the trafficker, child protection procedures under section 47 of the Children Act 1989 should be followed, and they should be taken into care under section 31. However, ‘practitioners across the legal system continue to fail to identify that their clients are potential victims of trafficking’, seeing them instead as criminals charged with drug or immigration offences.¹¹⁰ Children ‘continue to be prosecuted for cannabis cultivation and petty criminality without their defence lawyers investigating how the person became involved in such activities’.¹¹¹ All too often the children are not identified as potential victims of trafficking and the failure to identify, and advise accordingly, can have extremely serious consequences.

“Practitioners across the legal system continue to fail to identify that their clients are potential victims of trafficking”, seeing them instead as criminals charged with drug or immigration offences.’

Often victims of trafficking do not have any official documentation to confirm their age. They may have been held captive since they were very young, or simply not have a clear idea of how old they are. Sometimes children are encouraged by traffickers to lie about their age so that they will be treated as adults, even though they are under 18. In many child trafficking cases there is no dispute that the applicant is a child. However, where an older child is trafficked for sex work, or an adolescent who has been working in domestic servitude comes to the attention of the immigration and social services authorities, there may be a dispute concerning the age of the applicant. Although international law requires that they are given the benefit of the doubt and are treated as children until there is evidence to disprove this, there is still the danger that a victim of trafficking will be denied support.¹¹²

Case study

Y was born in Nigeria and trafficked into England around the age of five for domestic servitude. She still does not know who her birth family is and only knows her date of birth because she saw it written down in the house where she grew up in England. Denied education, not registered with a GP and given limited access to the outside world, she was treated as a servant and suffered systematic abuse which continued for years. When she finally escaped and presented to the London borough of Hillingdon, she was at first accepted as a child, placed in foster care and enrolled at a school.

After about eight months the local authority decided to dispute her age, stating that she did not have documents to prove her date of birth and that a dental assessment had concluded she was older than she had claimed. They concluded at an age assessment that she was three years older than her claimed age of 16 and was therefore an adult. Y was told her foster placement would be terminated and she would no longer be entitled to any support or accommodation from the local authority children’s services department. The indicators of trafficking were not picked up by the local authority and no referral to the National Referral Mechanism was made.

Y was referred to Coram Children’s Legal Centre which challenged the age assessment. The High Court decided that Y had been a child of 16 at the time of the assessment. Now aged 18, Y is now receiving support and hoping to study childcare at college.

After the judgment, Y said: ‘For once in my life I feel like I have an identity. I’m looking forward to my future, now that I’m able to put the past 18 years behind me. I hope this will encourage other young people to stand up for themselves.’

endnotes

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- 21 Chase, E., Knight, A., & Statham, J., (2008) *The Emotional Well-being of Young People Seeking Asylum in the UK*, The British Association for Adoption and Fostering
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- 23 See 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) 2424-2430 p 2425
- 24 This figure does not include those whose age was in dispute but who were routed as adults in the asylum process.
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- 26 *ibid*
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- 29 This increase may in part be as a result of the case of *LQ (Age: immutable characteristic) Afghanistan* [2008] UKAIT 00005 and developments around child-specific claims for international protection, with greater recognition of how children fit within the categories of the Refugee Convention.
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- 37 Bhaba, J., & Finch, N. (2006) *Seeking asylum alone: unaccompanied and separated children and refugee protection in the UK*; Immigration Law Practitioners' Association (2006) *Child first, migrant second: Ensuring that every child matters*, p 28
- 38 Under section 83 of the *Nationality, Immigration and Asylum Act 2002*
- 39 Under section 3C of the *Immigration Act 1971*
- 40 Statistics provided by Helen-Marie Fraher at UKBA by email to Kamena Dorling, Children's Legal Centre, 18th August 2011
- 41 Immigration Law Practitioners' Association (2006) *Child First, migrant second: Ensuring that every child matters*, p 188-189
- 42 UNICEF UK (2010) *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*, p 81
- 43 As visitors they cannot remain in the UK for more than six months (see paragraph 42 of the Immigration Rules) – and leave in this capacity cannot generally be extended
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- 45 Vollmer, B. (2008) *Undocumented Migration: Counting the Uncountable. Data and Trends across Europe. Country Report UK*, at http://clandestino.eliamep.gr/wp-content/uploads/2009/10/clandestino_report_united-kingdom_final_.pdf
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- 48 *N v United Kingdom [GC] Application no 26565/05*. The judgment in this case found that even in cases where the individual is likely to face a slow and painful death due to the lack of availability of medical assistance overseas, other than in exceptional cases, the removal of such a person to their home country would not breach Article 3 of the ECHR.
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- 50 ESRC Centre on Migration, Policy and Society, University of Oxford (2010) *Working Paper No. 78: Being children and undocumented in the UK: A background paper, 2010*
- 51 Roma Support Group (2009) *Improving engagement with the Roma Community Research Report*, p 9
- 52 Section 11, *Children Act 2004*
- 53 Section 17, *Children Act 1989*
- 54 New Philanthropy Capital (2007) *A long way to go: Young refugees and asylum seekers in the UK, A guide for donors and funders*, p 7

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- 56 Sirriyeh, A. *Community Care, Good practice when working with refugee and asylum-seeking children*, April 2011, at www.communitycare.co.uk/Articles/2011/04/15/116694/research-good-practicewhen-working-with-refugee-and-asylum-seeking-children.htm
- 57 Section 20 states that:
(1) 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—
(a) there being no person who has parental responsibility for him;
(b) his being lost or having been abandoned; or
(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.
- 58 The European Economic Area is the EU-27 plus Iceland, Liechtenstein and Norway.
- 59 Statutory guidance from 2010 suggests a starting point that young people would be placed in foster care unless their needs otherwise suggest that they are able to cope with other forms of accommodation, or they wish to be placed in other types of accommodation and their needs are such that they can manage – see Department of Education (2010) *Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation* at www.education.gov.uk
- 60 Department for Education (2011) *Children Looked After by Local Authorities in England (including adoption and care leavers) - year ending 31 March 2011*, at www.education.gov.uk/rsgateway/DB/SFR/s001026/index.shtml
- 61 Coram Children's Legal Centre (2012), *Seeking Support: A Guide to the Rights and Entitlements of Separated Children*
- 62 UNICEF UK (2010) *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*, p 58
- 63 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) 2424-2430 p 2425
- 64 The Children's Society, (2009) *Hidden Children –separated children at risk*, p 46, at www.childrensociety.org.uk/sites/default/files/tcs/research_docs/Hidden_children_full_report.pdf
- 65 section 26 of the *Children Act 1989*
- 66 See, for example, Local Government Ombudsman (2010) *Report on an investigation into complaint no 08 005 858 against Liverpool City Council*: www.lgo.org.uk/news/2010/apr/liverpool-council-mishandled-age-assessment-child-asylum-seeker/ - the case addressed the poor practice which left an unaccompanied 15 year old child seeking asylum from Cameroon without care for 15 months when she was wrongly believed to be over 18, during which time she had been exposed to sexual abuse and had become pregnant.
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- 69 Statistics provided by the Refugee Council statistics, May 2012
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- 71 The Royal College of Paediatrics and Child Health guidelines state that: 'In practice, age determination is extremely difficult to do with certainty, and no single approach to this can be relied upon. Moreover for young people aged 15–18, it is even less possible to be certain about age. There may also be difficulties in determining whether a young person who might be as old as 23 could, in fact, be under the age of 18. Age determination is an inexact science and the margin of error can sometimes be as much as five years either side. Assessments of age measure maturity, not chronological age.' See Royal College of Paediatrics and Child Health (1999), *The Health of Refugee Children: Guidelines for Paediatricians*, paragraph 5.6
- 72 *R (B) v Merton London Borough Council* [2003] EWHC 1689 (Admin)
- 73 For a detailed discussion of the legal requirements for a lawful age assessment, please see www.seekingsupport.co.uk
- 74 Bhaba, J., & N, Finch. Garden Court Chambers (2006) *Seeking asylum alone: unaccompanied and separated children and refugee protection in the UK*, p 2
- 75 Calvo, K. et al. (2007) 'Does Judicial Review Influence the Quality of local authority Services?' (online), ISER Working Paper No. 2007, available at www.iser.essex.ac.uk/publications/working-papers/iser/2007-34
- 76 Bhaba, J. & Finch, N, Garden Court Chambers (2006) *Seeking asylum alone: unaccompanied and separated children and refugee protection in the UK*, p 62
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- 84 New Philanthropy Capital (2007) *A long way to go: Young refugees and asylum seekers in the UK, A guide for donors and funders*, p 42
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- 88 UK Border Agency, *Leaving Care grants to Local authorities*, at www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwith-asylumseekers/local-authority-grants/
- 89 Dorling, K. (2010) 'Guide to local authorities' duty to support EU migrants' *Community Care Inform* at www.ccinform.co.uk
- 90 Still Human Still Here (2010) *At the end of the line*, p 9 at <http://stillhuman-stillhere.wordpress.com/resources/>
- 91 New Philanthropy Capital (2007) *A long way to go: Young refugees and asylum seekers in the UK, A guide for donors and funders*, p 41

- 92 Under Schedule 3, a former unaccompanied asylum seeking child may fall under one of the following:
Third class of ineligible person: failed asylum-seeker
 6(1) Paragraph 1 applies to a person if—
 (a) he was (but is no longer) an asylum-seeker, and
 (b) he fails to cooperate with removal directions issued in respect of him.
 (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).
Fourth class of ineligible person: person unlawfully in United Kingdom
 7 Paragraph 1 applies to a person if—
 (a) he is in the United Kingdom in breach of the immigration laws within the meaning of section 11, and
 (b) he is not an asylum-seeker.
- 93 See *R v Secretary of State for the Home Department ex parte Adam, Limbuela, Tesema* [2005] UKHL 66
- 94 Children's Rights Alliance for England (2010) *What do they know? Investigating the human rights concerns of children and young people living in England*, p 25, at www.getreadyforchange.org.uk
- 95 See Refugee Council (2011) *Something to smile about: promoting and supporting the educational and recreational needs of refugee children*
- 96 As outlined in section 14 of the Education Act 1996
- 97 Department of Education, *Education of looked after children - frequently asked questions*, at www.education.gov.uk/childrenandyoungpeople/families/childrenincare/a0066445/education-of-looked-after-children-frequently-askedquestions#faq6
- 98 Department of Education *Draft School Admissions Code 2011*, para 1.7
- 99 Schools cannot legally refuse to admit a child at the beginning of the academic year unless the school is full, or they have admissions criteria, for example in relation to home address, religion, or exam-based selection. However, they may exercise discretion regarding the admission of a child during the course of the academic year, unless the child has been prevented from starting at the beginning of the academic year due to illness, moving residence or other circumstances beyond the parents' control. See Coram Children's Legal Centre (2012) *Seeking Support: A Guide to the Rights and Entitlements of Separated Children* p 63
- 100 Guidance on the Education of Children and Young People outlines the need to provide a personal education plan with every child's care plan and the responsibility of schools to designate a named person to co-ordinate their educational provision. If 'looked after' children are moved, for example to a new foster placement, education must be in place before the move, unless it occurs in an emergency. 'Looked after' children should not spend more than 20 days out of education.
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- 104 See ECPAT (2004), *Cause for Concern? London social services and child trafficking*, at www.ecpat.org.uk
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- 106 Cronin, K., *Accessing protection for child victims of trafficking under care provisions and family support for victims with children: Training Paper for the ATLeP / AIRE Centre Safety through Justice Conference, 27 May 2011* at www.atlep.org.uk/courses-and-events/general-training-papers/accessing-protection-for-child-victims-of-trafficking-under-care-provisions/
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- 111 Hooper, L., & Thomson, K. 'Victims of Trafficking – Immigration Law', at www.airecentre.org/data/files/Comic_Relief_Materials/Glasgow/7_-_Immigration_Materials.pdf
- 112 *Council of Europe Convention on Action against Trafficking in Human Beings*, 2005

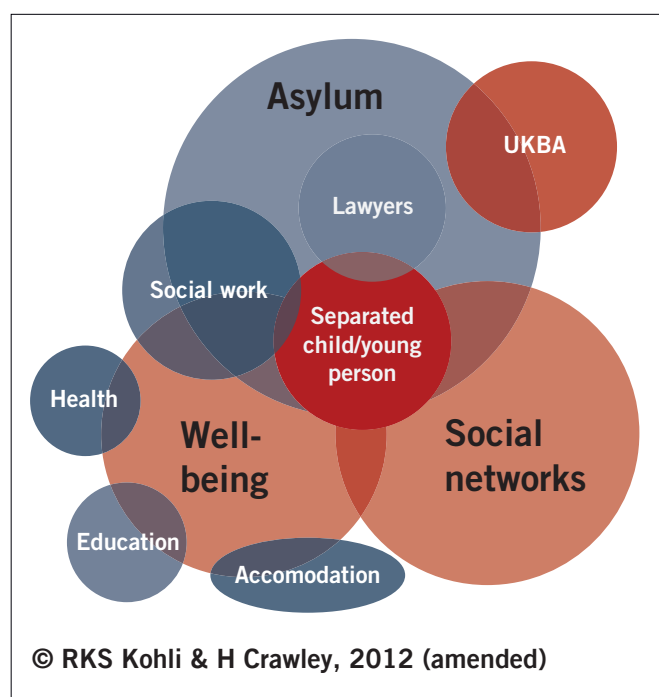
Advice provision

Addressing many of the problems outlined in the previous section may ultimately rely on a child or young person securing good-quality, free legal advice and representation from solicitors and immigration advisors. However, this is not the only means by which a young migrant may come to understand their rights. Indeed, it is rare for a child directly to contact a firm of solicitors without the assistance of a support worker, advocate, mentor or similar. They may turn to any professional or carer for assistance or guidance, and in turn professionals have a key role to play in ensuring the child or young person understands the legal process, their part in that process, and their entitlements. Research has found that children access advice from a variety of sources, and while ‘the internet and other new technologies offer exciting opportunities for improving young people’s access to advice’, the majority of young people access advice ‘through “old-fashioned” means’, either in person or by telephone, from someone they trust. They are most likely to trust someone known to them and are much less likely than other age groups to approach an independent and appropriately qualified or trained source of legal advice, such as a solicitor or an immigration adviser. Amongst professionals, teachers and youth workers tend to be cited by young people as the most effective and approachable.¹¹³

‘There is a need for a single, constant individual who not only understands the relevant law and processes, but can also act as a link between all services and professionals that are involved in a separated child’s life’

Young refugees and migrants come into contact with a range of professionals from different backgrounds and with different areas of expertise. One of the arguments for a system of guardianship for separated children (explored further on page 46) is that there is a need for a single, constant individual who not only understands the relevant law and processes, but can also act as a link between all services and professionals that are involved in a separated

child’s life (see diagram below). Whilst the government has argued that ‘the addition of a further layer would add confusion and complexity’¹¹⁴ it can be argued that young people need a guardian precisely *because* there are so many services and professionals around them. They need an individual who can work across asylum and welfare domains and is independent of other agencies and service providers – someone ‘on their side’ in a formal sense, who can ‘see the wood for the trees’.



In the absence of a guardianship system, it is essential that those professionals have a sufficient level of knowledge and understanding to help the children and young people with whom they work to ensure their rights are upheld, and work together to achieve this. This section examines the roles of some (not all) of the key professionals that work with separated children and young people.

Legal representatives

International standards hold that, from arrival, ‘where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation’.¹¹⁵ A good lawyer can ensure that the voice of the young person is heard, and can assist in resolving legal problems that act as barriers to the achievement of safety, security, stability, happiness, self-development and resilience.

In the UK, the provision of legal advice on immigration, unlike other areas of law, is subject to a particular regulatory framework. Immigration advice and services are regulated under the Immigration and Asylum Act 1999 so that only authorised advisors can lawfully give legal advice and provide services.¹¹⁶ Authorised legal representatives can be any one of the following: solicitors, barristers, other regulated non-lawyers such as caseworkers and immigration advisors in specialist advice centres or other organisations. Solicitors and barristers are regulated by their own professional bodies. Other legal representatives are legally bound to register with (or obtain an exemption from having to register with) the Office of the Immigration Services Commissioner (OISC), which is responsible for ensuring that immigration advisers fulfil the requirements of good practice.

‘Where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation’

A legal representative supporting separated children should, along with having a thorough knowledge of asylum law and policy, have a special understanding of policies and procedures applying to separated children, and skills in communicating with children and young people.

Under the UK Immigration Rules the UKBA is required to ensure that an unaccompanied asylum-seeking child has legal representation.¹¹⁷ It is highly recommended that representation be secured before applying for asylum, not least to help the child understand the complexities of the

system. If the child in the asylum process does not have suitable legal representation, UK Border Agency case owners must notify the Refugee Council Children’s Panel, who will try to find it.

Legal representation is of critical importance for children because the UK Border Agency and other agencies, such as local authorities, make decisions involving complex legal and evidential considerations. Cases are likely to involve court proceedings of an adversarial and contested nature, necessitating the preparation of appropriate evidence (such as witness statements, relevant country evidence, documentary evidence with certified translations, or medical and expert evidence) and further appeals usually revolve around complicated points of law and legal arguments. In order to make an application under Article 8, for example, it is necessary to gather extensive evidence demonstrating the extent to which the child or young person has developed a personal life and connections within the UK. It then must be decided whether the removal of an applicant from the UK would amount to interference with the exercise of an applicant’s Article 8 rights; whether the proposed interference will be in accordance with the law; whether the interference complies with the legitimate aim of a democratic society; and whether such interference would be proportionate to the legitimate public end sought to be achieved by the public authority.¹¹⁸ These Article 8 applications rely on the ability to understand and obtain evidence, and most crucially, present this evidence appropriately – this will often be too legally complex for a litigant in person, and children may experience additional challenges in negotiating cases of such complexity.¹¹⁹ The voice of the child and the role of a representative in ascertaining the child’s views is critical to such an assessment.¹²⁰

The UKBA and Legal Services Commission have recognised the potentially critical role of legal representation in the just and sustainable determination of claims in their implementation of the Early Legal Advice Project in November 2010, which sought to test whether greater provision of legal advice earlier in the asylum process can increase the chance of decisions being right first time.¹²¹ In 2011, 26% of asylum appeals were allowed¹²² and some estimates suggest that with legal representation, success rates at appeal rise to above 50%.¹²³

Children may well require representation in other areas of law as well as immigration and asylum and may have more than one solicitor or legal representative acting for them at any one time. A child could have a community care lawyer challenging an age assessment and the level of local authority support, an immigration lawyer working on their asylum or immigration case, a criminal lawyer if they face prosecution (for example for working in a cannabis farm), or a lawyer bringing a private law action for damages for a period of unlawful detention. In this situation, there can be a danger of a lack of communication, of confusion on the part of the child as to who is doing what, or of issues falling through the gaps in the legal support structure. For example, if an age disputed young person is held in immigration detention and an immigration lawyer is challenging unlawful detention by way of judicial review, they will need to work closely with a community care lawyer challenging a local authority age assessment.

A child could have a community care lawyer challenging an age assessment and the level of local authority support, an immigration lawyer working on their asylum or immigration case, a criminal lawyer if they face prosecution (for example for working in a cannabis farm), or a lawyer bringing a private law action for damages for a period of unlawful detention

On occasion, a child or young person may have more than one lawyer working on a specific matter in succession. The reasons for change of lawyers may include poor practice, age disputes, dispersal, the closure of firms and transfer of files to a different firm, the need for both an immigration and a community care solicitor, or a young person's file being closed when they receive a form of leave to remain. This can be very disruptive as it can take a long time to build a relationship of trust, particularly when a child is suffering from trauma and reluctant to discuss their case.

The child's legal representative has no parental responsibility for him or her and is not able to take decisions on the child's behalf. Their role is limited to advising the child on his or her legal options and then acting on his or her instructions, to the extent that a

child or young person is capable of giving them.¹²⁴ A legal representative may need to ensure the child has a litigation friend for some civil proceedings.¹²⁵ Their role is not to provide emotional or pastoral support to a child or young person, but it is of the utmost importance that they are sensitive to the child or young person's needs and any vulnerabilities, and that they give advice and take instructions in a child-sensitive manner at all times. They must be conscious of the remit of their professional role and the limits of their training, and the child needs to understand the limits of their role and the nature of the relationship between lawyer and client.

Social workers/foster carers/support workers

Children accommodated under section 20 of the Children Act 1989 will often be placed with a foster carer or in a residential home and should have an allocated social worker and/or support worker and, if over 16, a personal adviser. In most cases, social workers are responsible for assessments, pathway plans, looked after reviews and all the statutory requirements. Support workers are responsible for more practical issues such as sorting out registration with a doctor, accompanying the child to appointments and helping them to integrate.¹²⁶ However, roles and responsibilities may differ within and between authorities.

Social services have a statutory duty under the Children (Leaving Care) Act 2000 to appoint a personal adviser to all relevant and eligible children and young people once they reach the age of 16. The personal adviser will usually be a social worker but may someone from another organisation who is subcontracted to take on this role. For separated children and young people who are subject to immigration control, the personal adviser, whose role includes providing advice and support, may have an important part to play in ensuring that the local authority and other agencies are fulfilling their roles and obligations in relation to the child or young person.¹²⁷

In the absence of family, the emotional and practical support provided by these individuals to a young refugee or migrant in care is crucial. One of the most significant factors determining a separated child's ability to access services is the presence of a reliable and consistent adult

in their lives,¹²⁸ and some social workers and foster carers provide an excellent level of support to the children and young people in their care.¹²⁹

Foster carers can play a key role in facilitating a separated child's access to key services such as education and healthcare and in supporting them as they go through the immigration process. While several studies have found that unaccompanied minors have high levels of post-traumatic stress symptoms, they tend to be lower for those living with families or in foster care than for those living in group homes or independently.¹³⁰ In light of the range of experiences and difficulties facing refugee and migrant children, there is a hugely important role for foster carers in providing support for them, both as individual children alone in an unfamiliar country, and in terms of navigating complex legal and administrative systems. For asylum-seeking children, one practitioner described having a foster carer as 'the difference between being granted refugee status and being refused'. One example of provision that is tailored to this group is the specialist fostering service run by Barnardo's in Kent, where foster carers receive training and support to work with unaccompanied children seeking asylum.

The role of a social worker will not only include assessment and decisions regarding appropriate accommodation. Social workers too have an important role to play in helping to arrange good quality legal representation and monitoring the progress of claims, in supporting young people through the process, helping to facilitate communication and advocating on their behalf. While these duties may lie outside the normal remit of a social worker's duties 'they are an essential feature of pathway planning for this group'.¹³¹ They have a duty to ensure that children in their care can access services, and should ensure that these are adequate. As most separated children are over the age of 14, and many are aged 16-17, a key task for social workers is also to prepare those young people for the transition to adulthood in the context of the uncertainty of their immigration status.¹³² In *Flowers that grow from concrete*, Brighter Futures, the self-advocacy group of young asylum seekers and refugees notes that 'a good key worker and social worker provides help and advice on how to deal with immediate needs, including housing and legal support',¹³³ and that, whilst legislation was a major factor in determining post 18 support, a professional's approach 'played an important role in a young person feeling supported'.¹³⁴

However, the 2010 UNICEF report *Levelling the Playing Field* 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. Not only did they have access to a supportive and reliable adult whom they trusted, but they were also better linked into social and leisure activities.¹³⁵ The same report found that '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. Many children experienced regular and disruptive changes to their social or support workers, which impacted on their ability to form trusting relationships.

'There also remains a worrying lack of consistency in the treatment of separated children and young people'

In turn, nearly all social workers were frustrated by their caseloads and the amount of paperwork required, which they felt left them with little time to develop a close and supportive role with individual. 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. Constraints on social worker's time meant that often 'they were doing little more than trouble shooting and sign-posting'.¹³⁶

It became clear while writing this report that here remains a worrying lack of consistency in the treatment of separated children and young people across the UK, and ongoing ignorance of the fact that they are entitled to the same care as 'indigenous' children. In 2006 the Immigration Law Practitioners Association in *Child first, migrant second*, lamented that some social workers 'assume that the provisions of the Children Act 1989 and Children Act 2004 do not apply to children subject to immigration control...[resulting] in a failure to deliver appropriate services and support' and, six years on, this is often still the case. Practitioners continued to see discriminatory treatment and the negative effects of the widespread lack of knowledge about this group.

Of course, while children and young people need support and assistance in navigating the asylum and immigration

process, there is a limit to the legal advice and assistance that social workers, foster carers and others can provide. For a start, age assessment and support cases may involve legal action *against* the local authority. Additionally, in immigration and asylum cases, while a local authority will be under an obligation to ensure that the child or care leaver is legally represented, a social worker cannot provide immigration advice because they are not qualified to do so, no matter how much experience they have of working with children and young people who face what may appear to be similar legal issues. Not only are they not legally qualified, and therefore liable to give inaccurate advice, they are also prohibited from doing so by the regulatory framework governing the provision of immigration advice, which means that it can only lawfully be given by authorised advisors.¹³⁷ In practice, it may sometimes be difficult to distinguish legal from non-legal, generalist advice about the process, but it is very important that children and young people do not receive inaccurate information, or even assumptions, about the process or about their specific claim. It is also important that social workers and other local authority staff understand and respect the role of lawyers (and vice versa). Otherwise there is the risk that the child-lawyer relationship may be undermined.

Advocates

‘There remains a postcode lottery for children attempting to access advocacy, both in terms of availability, independence and accessibility. This is particularly true for the most vulnerable children; very young children, disabled children, asylum seeking children and children where English is not their first language’.¹³⁸

The need to consult with children is outlined in the Children Act 1989,¹³⁹ under which looked-after children, children in need and care leavers have a statutory right to advocacy when making a complaint. Statutory guidance introduced by the Adoption and Children Act 2002¹⁴⁰ extended this to say that ‘children and young people should be able to secure the support of an advocate in putting forward representations for a change to be made

in the service that they receive, or the establishments that they live in, without this having to be framed first as a specific complaint’.¹⁴¹ Statutory guidance from April 2011 in relation to care planning, placement planning and reviews, states that: ‘where a child has difficulty in expressing his/her wishes and feelings about any decisions being made about him/her, consideration must be given to securing the support of an advocate’.¹⁴²

Advocates should provide one-to-one support and advice for children in care, empowering them to resolve any problems they may have with their care by giving information, advice and support, and helping them to express their own views directly or by speaking on their behalf.

While children’s rights to advocacy support and representation have been strengthened with changes to legislation and statutory guidance in the last 15 years, there is still no absolute right to independent advocacy for children in the care of the state, and the accessibility and quality of advocacy provision ‘is still patchy’¹⁴³. Without access to an advocate who can speak on their behalf, young refugees and migrants have expressed concern that they would be unable to access basic services, let alone complain about the quality of those services.¹⁴⁴

Statutory guidance states that entitlement to an independent advocate should not be merely in the event that a child or care leaver wishes to complain, but also when a child or young person needs ‘to make representation about the quality of care and support provided by their responsible authority’.¹⁴⁵ Legislation does not define *how* advocacy should be provided to children, only that it should be provided for those who wish to make complaints and/or other representations.

The Voice and Children’s Commissioner report *Where is my advocate* outlines two main models used by local authorities to provide advocacy for children and young people;

- 1) An ‘in-house’ model where advocacy is provided directly by staff employed by the local authority. The staff are often known as children’s rights officers.
- 2) An ‘external market model’, where advocacy is purchased from an independent advocacy provider.¹⁴⁶

The majority of local authorities commission advocacy from independent advocacy providers – 63% from national independent providers. 25% have in-house children's rights services, spot purchasing agreements or a register of advocates. Most independent advocacy providers are third sector charitable organisations, including specialist rights-based charities, such as NYAS and Voice, and others which are smaller and more locally based. Of the bigger providers, whilst Voice has had a specialist advocate for young refugees and asylum seekers for over seven years, few other organisations provide refugee or migrant-focused advocacy services.¹⁴⁷

In interviews conducted for this research, concerns were raised regarding refugee and migrant children's access to advocacy. Children living in children's homes are much more likely to know what an advocate is and how to get hold of one than children in foster care. Care leavers were also more likely than others to know what an advocate is and how to get one,¹⁴⁸ although one report highlighted that some local authorities do not provide advocacy for care leavers.¹⁴⁹ One advocate lamented that it was difficult to access children placed in foster care or out of borough and that there was insufficient capacity to access all separated children and young people in their region.

The taking of advocacy 'in house' by local authorities has been seen as problematic – especially when advocates are helping young people to challenge decisions and/or submit formal complaints.¹⁵⁰ This can be even more of a concern if a solicitor is required, and the CCLC has encountered cases where conflict of this kind has resulted in local authority staff feeling unable to refer cases to legal representatives. One practitioner feared that it would be harder to impose a time-frame on council services, and there are real issues with councils playing a 'dual role' – advocating on behalf of children when they have one 'hat' on, and then providing the service which the children use. Another expressed concern about referring young people to the advocacy services commissioned by the local authority, because she felt that the direct funding of the advocates meant it was difficult for them to represent young people's views without a conflict of interest arising.

Many advisors and advocates predicted that in the future, due to general funding cuts, whilst they may be able to continue their work, they may not be able to do so with the same depth and level of detail. For example, one-to-one

support might be limited or work with care leavers would have to be curtailed. Instead, it might be that cursory advice would be provided with a significant decrease in the amount of follow-up that can be offered.

Other advice services

In a local authority, a range of advocacy, mentoring and befriending services might often exist, which afford separated migrant children and young people with opportunities to socialise, learn new skills, find out about services, and obtain advice about their current legal and care situation. Separate to statutory services, there exist a number of charity-based projects and initiatives which play a critical role in offering further support to this group. NGOs and charities may seek to fill gaps and meet needs that they identify as not otherwise being addressed, through advice, advocacy and/or sign-posting. For example, the Dost project, based at the Trinity Centre in Newham, east London, sees its role as advocating on behalf of children to enable them to access their full statutory rights and entitlements to education, social services support, housing and healthcare, and liaising with other professionals to bridge the gaps in services.¹⁵¹

'NGOs and charities may seek to fill gaps ... through advice, advocacy and/or sign-posting.'

Practitioners have found that where a child or young person has an informal advocate through an NGO or voluntary organisation who specialises in supporting separated children, 'there is a much better chance that local authority involvement will be effective and will help young people to get services they might not be getting otherwise.'¹⁵² One noted that a huge part of a project worker's role is making sure that other people do their job properly. This 'can make a huge difference', and help address the lack of any one particular person who has overall responsibility for a separated child. Similar to lawyers, who must act on instruction, formal advocates must represent the views of the child, and may be less able to challenge if commissioned directly by the local authority. Many charity-run projects provide an holistic advocate-style form of assistance, but are independent from local government and while taking into consideration the child's wishes and feelings, may also come to their own view as to what is in the best interests of that child.

The Refugee Council provides services for separated children seeking asylum through the Children's Panel of Advisers, as well as providing advice to those involved in their support. Around 20 advisers work across the country to support separated children, working with some 1,000 young people. Many of the panel's advisers speak the languages of the children with whom they work. The Refugee Council describes the role of the panel as:

- to assist the child in accessing quality legal representation
- to guide the child through the complexities of the asylum procedure
- if necessary, to accompany the child to Asylum Interviews, tribunal and other hearings, Magistrates' and Crown Court appointments
- to build up a support network for the child involving a range of statutory and non-statutory service providers
- to support the child during appointments with GPs, hospitals, social services or other service providers

However, due to the limited capacity of the panel, it is not guaranteed that a child will see an adviser. In 2009, Home Office funding for the panel was cut and severely limited the work that most of the team is able to do on age disputes. While all unaccompanied children should be referred to the panel by the UKBA, the details provided are often insufficient for the panel to make contact with the child and therefore other agencies are encouraged to refer children to the panel as well.

Many charities that provide advocacy support will accompany the child to meetings with the Home Office and solicitors, as can their social worker. Other forms of assistance may include providing reference letters to solicitors, following up on immigration cases, dealing with problems with landlords, and offering advice on education and careers, in lieu of the Connexions services that have now closed in many authorities across England. The Children's Society has eight dedicated projects across England which provide specialist advocacy and holistic support to young refugees to ensure they are aware of their rights and are able to access services to meet their needs. This includes assisting young people to find legal representation; supporting them through the immigration process; acting as appropriate adults in age assessments; advocating to children's services if they have problems

with their care; and assisting with education, health and financial support issues. For example, the Young Refugees' and Migrants' Rights Project at New Londoners covers a number of London boroughs providing these services to children aged between 13-19 subject to immigration control. Practitioners will often coordinate communication between different agencies and support solicitors by providing information about the young person's welfare. Many services also run group sessions and weekly youth groups - such as Kumasi in Newcastle - through which they spend a significant amount of time with the young people and build trusting relationships.

Problems recognised by charities working with refugee and migrant children included a reduction in children's services expertise, especially in areas where the local authority does not have (or has closed) a specialist team, or in areas with fewer migrants. They also expressed concerns regarding their own reduced capacity; difficulties with accessing interpreters; and increasingly small numbers of solicitors taking on immigration cases. To address the gaps in legal service provision, many charities have registered their workers with the Office of the Immigration Services Commissioner to level 1 (or are seeking to do so), as well as providing welfare and rights advice.

endnotes

- 113 Youth Access (2010) *The outcomes & impact of youth advice – the evidence: Key research evidence on the difference made to young people's lives by social welfare advice services*,
- 114 See letter to ECPAT UK from the Rt. Hon. Prime Minister, David Cameron MP, 5 July 2011 in ECPAT (2011) *Watch over me: A system of guardianship for child victims of trafficking*
- 115 General Comment No 6, *Treatment of Unaccompanied and Separated Children outside their Country of Origin* (paragraph 36), Committee on the Rights of the Child, 2005. CRC/GC/2005/6 (2005)
- 116 It should be noted that the Legal Services Board is at the time of writing holding a consultation on the regulation of immigration advice and services, from 1 March 2012 to 24 May 2012. See www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20120301_immigration_discussion_doc_1_1_final.pdf
- 117 Immigration Rules para 352ZA.
- 118 Test laid down by Lord Bingham in *Razgar R (Razgar) V SSHD [2004] UKHL 27*
- 119 Refugee Children's Consortium (2011), '*Proposals for the Reform of Legal Aid in England and Wales: Response of the Refugee Children's Consortium February 2011*', at www.refugeechildrenconsortium.org.uk/images/rcc_legal_aid_greenpaper_consultation_response_feb2011.pdf
- 120 *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 para 37
- 121 See www.ukba.homeoffice.gov.uk/aboutus/your-region/midlands-east/controlling-migration/early-legal-advice-project/
- 122 *Home Office Immigration Statistics October - December 2011*, available at www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-brief-q4-2011/asylum
- 123 Devon Law Centre (2010) *Asylum Appellate Project Final Report, March 2010* at www.lawcentres.org.uk/news/detail/almost-80-per-cent-of-asylum-seekers-wrongly-refused-legal-representation-a/
- 124 See ILPA (2012) *Working with children and young people subject to immigration control: guidelines for best practice*
- 125 In the Immigration and Asylum Tribunals a child can be an appellant in her or his own right and can instruct a legal representative directly. But ordinarily children can only begin or defend legal proceedings in the civil courts with the assistance of an adult and therefore will require a litigation friend. A litigation friend acts on behalf of the child, including instructing a solicitor to represent them, throughout the court proceedings and until the child reaches the age of majority. A litigation friend must be competent to conduct proceedings on behalf of the child and have no conflict of interest. A litigation friend may be an NGO child advocate or befriender or other trusted and competent person. Where there is no one eligible or those persons who are eligible are unwilling to act, then the Official Solicitor can be requested to act as litigation friend in proceedings other than child welfare proceedings. The Official Solicitor will then either act in the proceedings, or appoint a firm of solicitors to act on his behalf.
- 126 UNICEF UK (2010) *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*, p 51
- 127 ILPA (2012) *Working with children and young people subject to immigration control: guidelines for best practice*
- 128 UNICEF UK (2010) *Levelling the playing field* p 119
- 129 *ibid* p 119
- 130 Hodes, M., Jagdev, D., Chandra, N., & Cunniff, A., 'Risk and resilience for psychological distress amongst unaccompanied asylum seeking adolescents', *Journal of Child Psychology and Psychiatry* 49:7 (2008), pp 723-732
- 131 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) 2424-2430 p 2428
- 132 Sirriyeh, A., *Community Care, Good practice when working with refugee and asylum-seeking children, April 2011*, at www.communitycare.co.uk/Articles/2011/04/15/116694/research-good-practicewhen-working-with-refugee-and-asylum-seeking-children.htm
- 133 Brighter Futures (2011) *Flowers that grow from concrete: how support services determine a young refugees life opportunities*, p 12
- 134 *ibid*, p 11
- 135 UNICEF UK (2010) *Levelling the playing field*, p 120
- 136 *ibid*, p 54
- 137 Section 84, *Immigration and Asylum Act 1999*
- 138 Voice & Office of the Children's Commissioner (2011) *Where is my advocate? A scoping report on advocacy services for children and young people in England* at www.childrenscommissioner.gov.uk
- 139 Section 26A(1)
- 140 Section 119
- 141 Department for Education and Skills (2004) *Get it Sorted: Providing effective advocacy services for children and young people making a complain under the Children Act 1989*
- 142 H Government (2010) *The Children Act 1989 Guidance and Regulations – Volume 2: Care Planning, Placement and Case Review*, p 11
- 143 Voice & Office of the Children's Commissioner (2011) *Where is my advocate? A scoping report on advocacy services for children and young people in England*
- 144 Children's Rights Alliance for England (2010) *What do they know? Investigating the human rights concerns of children and young people living in England*
- 145 Department for Education (2010) *The Children Act 1989 Guidance and Regulations, Volume 3: Planning Transition to Adulthood for Care leavers*, paras. 2.14 – 2.15
- 146 The 9 national voluntary organisations providing advocacy are: NYAS (28 authorities) Barnardo's (21), Voice (12), Action for Children (10), Children's Society (10), Reconstruct (9), NSPCC (3), Spurgeons (2) CSV (1).
- 147 NSPCC workers in interviews explained that the NSPCC has been running advocacy services for nine years and that for the past five years has been working with a lot of unaccompanied asylum seeking children. At the time of interview (Summer 2011), the NSPCC was remodelling its services, condensing 140 projects to 40 bigger projects
- 148 Ofsted (2010) *Children's care monitor 2010*, p 27
- 149 Voice & Office of the Children's Commissioner (2011) *Where is my advocate? A scoping report on advocacy services for children and young people in England*, p 39
- 150 Boylan, J. And Dalrymple, J. (2009) *Understanding Advocacy for Children and Young People*
- 151 See <http://www.thetrinitycentre.org/direct-services/>
- 152 UNICEF UK (2010) *Levelling the playing field*, p 126

Barriers to accessing advice and representation

Much work has been dedicated to increasing awareness among professionals about the rights of young refugees and migrants and to helping those advocating on their behalf. However, the past few years have seen an erosion in the capacity of those working with this group, including lawyers, social workers, advocates and charity workers. It is a challenging time for everyone involved in providing services to children and young people, and both the voluntary and public sector face considerable pressures and insecurity about the future in the face of extensive spending cuts. Many organisations and agencies have either closed, been reduced dramatically or are still awaiting funding decisions that will affect service provision and staffing. Access to good quality legal representatives has become increasingly problematic and changes made to the provision of legal aid have reduced both the quality and quantity of legal advice and representation available in asylum and immigration cases. This is set to worsen with the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act.

Lack of specialist legal knowledge

Acting for separated children requires specialist knowledge. Legal representatives should have a thorough command of asylum, immigration and nationality law, including, for example, child-specific forms of persecution and the law surrounding Article 8 in respect of the rights of children. In addition, they should have an understanding of child law and the UN Convention on the Rights of the Child and how it applies to the claims of migrant children. Legal representatives must also be aware of all child-specific policies, guidance and practice directions so that they can ensure children's claims are processed in the correct manner by children's case owners and other decision-makers. Interviews must be conducted in the appropriate way and with the appropriate people present; claims must be processed in view of the child's minority (including assessments of credibility); and court proceedings must take account of child-specific needs

(for example, a representative may need to request that an appeal hearing is held in camera). Legal representatives must, in addition, be aware of the particular Legal Services Commission rules that apply to legal aid funding for children's cases.

Legal representatives working with children must also have particular awareness of the needs of children in the way they conduct cases. Legal complexities should be explained to children in a simple way while not losing accuracy, so that they are able to make informed decisions. There must be an awareness of the need to take particular care in taking a child's instructions and an understanding of how to work to build and maintain trust. The importance of body language, and how to interpret this, must be recognised.

'There are very few dedicated children's caseworkers/solicitors working exclusively on children's cases'

It is evident that not all immigration solicitors representing children have this specialist knowledge. There is no mandatory training or qualification for representing separated children, compared to, for example, Child Panel membership for child and family lawyers. Many representatives meet the formal requirements for conducting children's cases (including being accredited to the appropriate level in the Law Society Immigration and Asylum Accreditation Scheme and having a Criminal Records Bureau check), but have little experience or awareness of the child-specific dimensions outlined above. There are very few dedicated children's caseworkers/solicitors working exclusively on children's cases. The only two such recognised positions in England are at Islington Law Centre and Asylum Aid, and these organisations both receive grant funding rather than relying exclusively on legal aid to fund this work. While there are other those who have developed expertise in representing children in their practice, too many representatives working with children do not have the requisite specialist knowledge.

Both the Refugee Children's Rights Project at the Islington Law Centre and Coram Children's Legal Centre, and the Refugee Children's Project at the Immigration Law Practitioners' Association (ILPA) seek to try to address this situation, through the provision of training and guidance.

While young refugees and migrants may be involved in many different types of legal proceedings, 'the asylum and immigration system stands out as having the least formal, specialised provision for young people',¹⁵⁴ and in the absence of a formal mechanism for allocating a legal representative to work with a separated child, there is no guarantee that *all* separated children will receive the quality legal representation that they need.¹⁵⁵ Many may not always have the appropriate training or experience.¹⁵⁶

The Refugee Council has found that the quality of legal representation received by separated children is extremely varied, and there is an insufficient number of representatives with sufficient knowledge of relevant law and policy, and skills in working with children.¹⁵⁷ Young people cannot always recognise poor practice, due to the complexity of the legal system and limitations with language, among other reasons. The same can apply to social workers, who may struggle to recognise poor practice because they have never received training on what legal representation *should* look like.

Common problems include legal advisers' lack of experience in interviewing and communicating with children and interpreters and understanding of forms of child persecution. Good practice for legal practitioners is to explain the process at the outset of their involvement with the child and continue to brief the child throughout the process, explaining the relevant terminology, describing the different documents and what they mean, going through and explaining the range of outcomes, and providing some context in relation to the Refugee Convention and relevant law. However, advisers reported that some representatives explain the process in a way that is laced with jargon and without any appreciation that the child has not actually taken in the information. In addition, too few legal representatives recognise the importance of reminding and re-explaining the process to a child, who may be overwhelmed by these complex issues. Children and young people place a great deal of trust in adults and are often too frightened or unsure of

themselves to tell their legal representative that they do not understand the system.¹⁵⁸ Some may also be frightened of authority figures depending on their experiences in their country of origin or their journey to the UK.

Advisers are aware of children who, despite having been in the UK for two or three years, still feel confused and bewildered by the status determination system and are unclear about their rights and entitlements. In *Levelling the Playing Field*, a health worker described how children and young people would often come to her to ask her to phone their solicitors to clarify the meaning of a letter or to help them understand what was going on. This type of assistance was provided by a number of project workers interviewed for this research.¹⁵⁹ Young people themselves have identified that regular contact from their legal representatives is crucial in reassuring them that their case is progressing. Appropriate client care involves regularly contacting young clients to update them on the progress of the case, even if there are no developments and even if no progress had been expected within the timescale.

'Too many representatives working with children do not have the requisite specialist knowledge'

Representatives should also be mindful of who is present during client interviews and alert to the importance of using good, trusted interpreters with whom the child feels comfortable and who are sensitive to the needs of children and the need to interpret word-for-word, rendering the child's account in an equivalent form in English, rather than translating it into 'adult' English. Interpreters should be appropriately qualified and legal representatives need to understand the importance of interpreters speaking not just the same language but also the right dialect, and of gender issues. The use of good, reputable interpreters was identified as a key issue by advisors interviewed for this study, as was the legal representative being alert to potential problems such as the interpreter's attitude towards the young person and whether they are accurately interpreting or not.¹⁶⁰

Different areas of law

Very few legal representatives have expertise in immigration, child/family law, and community care law. Some immigration caseworkers/solicitors may represent children whose ages have been disputed and will be familiar with the case law in the specific area of age assessments, but often the matter will be taken on by a separate solicitor.¹⁶¹ Few immigration lawyers have a background in family or child law and they may not always have a full knowledge of local authority duties to children and young people. Similarly, few community care or criminal lawyers have a solid grounding in immigration law. Moreover, not all firms have the Legal Services Commission contracts in all relevant areas of law that would allow them to run both the immigration and the welfare cases for a client, and there may be additional complexities for and pressures on a child or young person having two solicitors working on related matters. It may not be at all obvious to a child or young person what the distinction is or who is who. The outcome of an age dispute, for example, may have a significant impact on an immigration decision, and it is vital that solicitors working on the same child's case communicate effectively.

Children may also need representation in other legal matters. Children who have been trafficked all too often find themselves the subject of criminal proceedings, for illegal activities committed under coercion, or document offences. Immigration solicitors therefore have to work with solicitors representing the child in the criminal matter, who reportedly are not always aware of the need to secure immigration representation early on, or of the effect of the criminal proceedings on the child's immigration case and the potential effect of the immigration proceedings on the criminal case. Criminal solicitors may, for example, have sufficient knowledge of processes around the National Referral Mechanism or of the defence based on claiming asylum provided under section 31 of the Immigration and Asylum Act 1999, which relates to charges for certain specified offences.

In recognition that it is rare for one organisation to cover all the requisite areas of law to provide a truly holistic legal service for unaccompanied asylum-seeking children, in 2010 Refugee and Migrant Justice (RMJ) and the Children's Legal Centre began a formal partnership whereby the former provided immigration and asylum representation and the later dealt with the same child's welfare issues. Lawyers from

both organisations worked closely to ensure that the children received the best possible service and that no issues were missed. The pilot scheme was showing positive results from this cooperative working but came to an end when RMJ was forced to go into administration later that year.

Representation at appeal

One particular area where child-specific considerations may not always be correctly taken into account by legal representatives is in their decision on whether they can represent a child or young person at appeal. There are no statistics publicly available that tell us how many children exercise their rights to appeal against UK Border Agency decisions but anecdotal evidence from experts and charities in the field suggests that many children are not advised of their right to appeal, or are wrongly refused legal aid representation at this stage. Some legal representatives have been found to be reluctant to take any case through the appeal process and this may be due to the fact that firms have Key Performance Indicators which will be negatively affected by a loss at appeal, leading to repercussions from the Legal Services Commission.¹⁶² Children are often told that they have no chance of winning an appeal against a refusal of their asylum claim but it is not always explained in detail why, and practitioners reported extreme difficulties with finding a representative when a young person reaches appeal stage. As a result, many have to go to the tribunal and face a judge and Home Office presenting officer without representation, which can be very distressing.

'Many [young people] have to go to the tribunal and face a judge and Home Office presenting officer without representation'

Eligibility for legal aid in immigration and asylum cases is assessed and granted by legal representatives with Legal Services Commission contracts. Before the appeal stage, the test for granting Legal Help is that there must be 'sufficient benefit', which is highly likely to be met in all children's cases. Granting legal aid for the appeal stage (called Controlled Legal Representation) is subject to a merits test. If supported by a local authority, a child is likely to satisfy the means test but funding will only be granted if the prospects of success meet the required

threshold.¹⁶³ However, in the case of children's appeals, specific Legal Services Commission guidance applies and legal representatives should consider the merits differently to how they would in an adult's case. Legal representatives should be mindful that: '[w]here a representative is able clearly to identify the 1951 Refugee Convention reason then Controlled Legal Representation should be granted on the basis that an asylum claim by an UASC will meet the merits test to at least borderline. This is because the applicant's age (having been accepted by the Secretary of State for the Home Department) may be a contributory and weighty factor in determining refugee status and is likely to satisfy the merits test (i.e. the case may have at least a borderline prospect of success).'¹⁶⁴ A *former* unaccompanied asylum-seeking child (i.e. now over 18) who is appealing against a refusal of extension of discretionary leave may be refused representation as an adult where they may have obtained it as a child.

'Children are often told that they have no chance of winning an appeal'

A project at Devon Law Centre submitted appeals to the Independent Funding Adjudicator appointed by the Legal Services Commission, and found that legal representatives are wrongly refusing Controlled Legal Representation in almost four out of every five cases.¹⁶⁵ Based on this research, Refugee Action is now launching a project called 'Access to Justice' which seeks to challenge incorrect refusals of legal aid and support people in finding a good lawyer to represent them. Hammersmith and Fulham Law Centre has also run a project working with unaccompanied asylum-seeking children to challenge incorrect refusals of legal aid funding for appeals, providing representation to those who require it. But there are many children and young people who are wrongly denied legal aid and do not know that they can challenge that decision (or how to do so), despite the lawyer's duty to notify the young person why they have been refused and that they have a right to appeal. Social workers and other professionals recognise this problem but may not know what to do in this situation. The difficulty in obtaining an appointment with another legal aid solicitor who could review the case (see section below on capacity among legal aid providers) compounds that situation.

Lack of capacity among legal aid providers

59% of practitioners surveyed for this study reported problems in referring children to legal representatives. They reported that while it was relatively straightforward to make referrals to welfare solicitors for issues such as age assessments, or challenging children's services about the level of support a young person was receiving, especially in London, making referrals to immigration solicitors was becoming increasingly difficult. Finding good-quality legal representatives with the capacity to take on new cases is problematic, especially in certain parts of the country where there are 'advice deserts', such as the South West. 70% of practitioners highlighted that children were forced to travel long distances to access legal representatives and 71% said that capacity to take on new clients was an issue. Furthermore, many expressed concern at the difficulties not just in finding an immigration solicitor to refer to, but finding one with the necessary experience and expertise for working with children. Often advocates and practitioners relied on building good relationships with a handful of solicitors who could be relied on to make space to take on a case and conduct it appropriately. But clearly this was one of the key concerns for all those working with children and young people going through the immigration system.

'59% of practitioners surveyed for this study reported problems in referring children to legal representatives.'

Existing difficulties have been exacerbated recently as key legal aid immigration providers have closed. Refugee and Migrant Justice, which had around 10,000 clients and represented around one third of all unaccompanied asylum seeking children in the country, closed in June 2010. The Immigration Advisory Service, which had 8000 clients, closed in July 2011. In addition, several law firms, such as Fisher Meredith, have closed their legal aid immigration departments. While other providers have expanded to fill the gap in the sector, the quality of representation has been reported as being variable. One representative spoke of 'factory firms' undertaking mass representation without giving cases adequate attention and care. In February 2011, the Refugee Council estimated that there were fewer than 20 representatives in London

who were able to provide the desired standard of service to children and the figure is proportionately significantly lower in other areas of England.¹⁶⁶

Legal aid funding

Publicly funded legal advice and representation is currently available for asylum and immigration cases, as it is for other areas of the law. In England and Wales the legal aid fund is called the Community Legal Service Fund and is administered by the Legal Services Commission (LSC). Free legal assistance is available throughout the asylum application process and may be available at the appeals stage for people who either have a very low or non-existent income. The LSC will only fund advisers with whom it has a contract to provide specialist immigration advice. The legal adviser does the work, and the LSC pays the legal adviser for that work.¹⁶⁷

Not all law firms have Legal Services Commission contracts to do legal aid work, and not all those firms and organisations with contracts have them in all relevant areas of law to deal with separated children's cases holistically. In recent years many firms have stopped or reduced publicly funded work because of restrictions in funding and the difficulties in remaining financially viable in this funding regime. Significant changes have been introduced, in particular the introduction of fixed fees, so that legal representatives receive a lump sum payment for a case irrespective of how much work they do on it (unless the case is exceptional).¹⁶⁸ While fixed fees do not apply to children's cases (which are funded at hourly rates), they do apply in the cases of young people over 18. This funding regime does not incentivise quality and can impede representatives taking the necessary time to prepare young people's applications properly, take instructions sensitively, and conduct basic client care. The effects of fixed fees on the quality of representation is well documented,¹⁶⁹ and during the research concerns were raised that firms were taking on caseworkers to represent children who were insufficiently trained and experienced, to save on costs.

Current challenges, already considerable, look set to be dramatically compounded by the Legal Aid, Sentencing and Punishment of Offenders Act, which received royal assent on 1st May 2012. Through this Act the government set out to reduce the £2.2 billion legal aid budget by

£350 million, with civil legal aid bearing the brunt of the cuts. Asylum cases are to remain in scope, but most immigration cases will be taken out of scope from April 2013, including children's immigration cases. The government made a concession in relation to trafficking cases, but other than this children and young people with immigration claims will be not eligible for legal aid at any stage of the decision-making or appeals process (i.e. even if the appeal were to reach the Supreme Court). This creates the prospect of children having to represent themselves in legal proceedings on extremely complex points of law against a publicly funded legal team for the Home Office. Whereas in other areas of law people may be able to apply for exceptional funding, the government has made clear that immigration cases will not be eligible.¹⁷⁰

'Current challenges, already considerable, look set to be dramatically compounded by the Legal Aid, Sentencing and Punishment of Offenders Act'

The proposed changes will present huge problems in terms of the provision of legal advice and representation, taking an estimated 54,000 immigration cases per year out of scope, including 2,500 children and 8,500 young people aged 18 to 24.¹⁷¹

The government has suggested that there are alternative sources of advice for those losing legal aid funding, including from the not-for-profit legal advice sector. However, this sector is facing huge shortfalls in funding that threaten the viability of many organisations. Nor can other voluntary sector organisations fill the gap as they cannot provide legal immigration advice under the regulatory framework governing this jurisdiction.

The government has also suggested that assistance with immigration applications could come from social workers, and has expressed its intention to look into social workers becoming exempted by the Office of the Immigration Services Commissioner (OISC)¹⁷² so that they can provide 'low-level advice' and assistance with 'form filling'. But the non-asylum immigration claims and appeals brought by separated children and young people are generally brought outside the immigration rules and usually on the basis of Article 8 of the European Convention on Human Rights. These 'are not 'low-level' or 'routine matters' and the OISC does not permit those regulated only at level

1 to do such work. If a social worker were to operate beyond the level of their exemption they would commit a criminal offence.¹⁷³ Furthermore, even at level 1, the OISC scheme requires supervision and continuing professional development in respect of immigration law and policy. Social workers are simply not trained, or supervised adequately, to provide immigration advice.

‘Social workers are not trained, supported or supervised to provide immigration advice or services.’

Moreover, non-professional advice is likely to be inadequate in terms of meeting children and young people’s needs. Whether the UK government can withdraw representation from children without violating its obligations under the UN Convention on the Rights of the Child is likely to be subject to challenge. Many professionals in the sector, including members of the Refugee Children’s Consortium, have expressed the view that children and young people cannot be expected to represent themselves in immigration cases.¹⁷⁴ The changes to legal aid may thus result in a local authority’s obligations to children in their care expanding to include securing and financing legal advice and representation. Such costs would be at private rates and would be likely, therefore, to be significantly more expensive than legal aid rates. Local authorities have specifically raised these concerns in relation to unaccompanied children and care leavers making applications for further leave on Article 8 grounds, who will be excluded from assistance under legal aid, and what amounts to ‘cost-shifting’ from the Ministry of Justice to local authorities.¹⁷⁵

Legal aid cuts will also affect children and young people in a less direct way by changing the landscape of social welfare law. The scale of cuts to legal aid across different areas of law threatens the survival of many providers, in particular providers in the not-for-profit sector, which are likely to be among the hardest hit when changes to legal aid take effect in April 2013. Many law centres say they may be unable to survive and Citizens Advice Bureaux also face an uncertain future. Transition funding has been put in place for the advice sector but this will by no means make up the shortfall.¹⁷⁶ Specialist advice services risk losing their status as trusted and established sources of support and advice, and may lose expertise acquired over many years.

Case study

D is 17 years old. She is in her last year of A levels.

D’s father died when she was six years old and her mother died in 2005. D is currently living with her 21-year-old sister and her uncle is her legal guardian.

It has been 11 years since D was brought as a child to the UK from Nigeria, where she was born. She has discretionary leave to remain, which was granted three years ago and expires in one month’s time. She knows that she needs to apply for an extension of her leave before her current leave expires.

D has a solicitor who can assist her with her application to remain in the UK, based on many factors including the length of time she has been here, the strength of her connections, and the absence of any connection with her country of origin, Nigeria.

If no changes are made to proposals for legal aid cuts, from next year a young person in D’s situation will not be eligible for legal aid.

‘The Home Office person made me feel scared and the whole time kept on saying I was lying and that I should return home; this made me feel upset and angry as I know that I was telling the truth. My barrister was great though and kept on arguing back about my case.’
(A young person supported by The Children’s Society who attended his immigration appeal hearing)¹⁷⁷

Cuts in the public sector

The 2010 Spending Review settlement announced a 27% cut in local authority budgets over four years, and a 12% cut in the Department for Education's non-schools budgets over the same period. The Review also included a 20% cut in the budget of the UK Border Agency, as part of an overall 23% cut in real terms to the Home Office budget by 2014-15.¹⁷⁸ For 45% of councils, children's services have been largely protected from these changes, but in 39% of cases they are making a substantial contribution to local cuts.¹⁷⁹

Although many local authorities provide excellent care and support, it is inevitable that this will be affected by reductions in funding and reduced capacity.¹⁸⁰ Practitioners have expressed concerns regarding the reduction in, and loss of, expertise in working with refugee and migrant children, across both the voluntary and statutory sector. This is due to a combination of the aforementioned cuts in funding and lower numbers of new arrivals, reducing the financial feasibility of commissioning specialist services.¹⁸¹ Yet, while the reduction in the numbers of separated children seeking asylum has been used to justify changes to local authority budgets, their needs are as serious as ever, and these reductions, combined with the reorganisation of children's services, 'makes it much hard to maintain specialist teams and staff who have the full knowledge, and also to commission specialist services at a scale that is financially viable'.¹⁸² Units are being integrated into mainstream services. As a result, in many authorities, bespoke services will no longer exist and a significant amount of expertise and partnership history will be merged into generalist provision. Skills and knowledge are being lost, threatening to reduce the quality of service.

Even before these changes, the funding arrangements for children seeking asylum, whereby the UK Border Agency reimburses the cost of their care and support, has long caused problems for some local authorities.¹⁸³ For example, in 2010, Croydon council threatened to take legal action against the government after funding was cut to match the falling number of young people arriving in the borough, and was eventually given £2 million additional funding, following crisis talks with the UKBA. The following year, the UK Border Agency announced that again it was to revise its grants to Croydon council following a 26% drop in the number of unaccompanied children looked

after by that authority from 570 in September 2010 to 418 in October 2011.¹⁸⁴ While it was accepted that a drop in numbers results in fewer foster care placements needing to be funded, the Croydon argued that the government had never fully funded these costs in the first place¹⁸⁵. For example, the UK Border Agency has not inflated the grant rates for under 16s and 16 to 17 year olds since 2008/09, posing a challenge for local authorities every year as actual costs increase.

As part of government budget cuts, advocacy and children's rights officer posts are being amalgamated and some changed completely to that of 'participation workers'. One practitioner knew of five local authorities where this had taken place recently and, although this does not seem like a high number, believed that 'it has a much greater impact on young people accessing their rights and advocacy'. Participation workers are not 'rights based', but may be youth work trained. Their role mainly centres around child engagement and involvement but not on providing support with complaints and representation. As a result, this work can become lost or only out-sourced on an individual basis, which relies on the child knowing what to do when they have a problem. Furthermore, some participation workers have no independence from the local authority and their generic job description does not allow for proactive measures: 'they can be "told" that this is not their role and as a result stop fighting on the side of individuals'.

'Charities and NGOs have been "taking the brunt of the cuts and the effects of the economic downturn themselves... whilst at the same time being closest to picking up increased demand for their services"'

Cuts in the voluntary sector

The need for the work of charities and NGOs in supplementing, monitoring and improving government services, especially those around accommodation, health and education, is just as great at a time when services are 'severely depleted as a result of the ongoing spending squeeze in the public and voluntary sectors'.¹⁸⁶ Yet these same charities and NGOs have also been facing their own funding problems, 'taking the brunt of the cuts and

the effects of the economic downturn themselves...whilst at the same time being closest to picking up increased demand for their services'.¹⁸⁷ Many charities have lost a significant amount of income due to spending cuts in council services for children and are now heavily dependent on grants and donations for survival.¹⁸⁸ In its August 2011 report, *Counting the cuts: The impact of spending cuts on the UK voluntary and community sector*, the National Council for Voluntary Organisations estimated that the sector will lose around £911 million per year in public funding by 2015-16, a total loss of £2.8 billion over the period.¹⁸⁹ A survey by Children England at the end of the 2010-2011 financial year found that many organisations anticipated local authority funding cuts of 25% or more in following year alone, 'suggesting that many in the voluntary and community sector are feeling the brunt of the impact',¹⁹⁰ despite voluntary and community sector organisations being at the heart of the government's vision for the 'Big Society'. Research undertaken for this study found that 71% of participants were experiencing cuts to their budgets in 2011/12, and two thirds were awaiting funding decisions from local authorities for 2011/12, many not knowing whether services would still be running in the next financial year and with staff on notice of redundancy.

'Of those charities and NGOs surveyed for this report, over 50% did not have future funding secured, and were unsure as to whether they would be able to secure it.'

Data from the 2010 *National Survey of Charities and Social Enterprises* identified asylum-seekers as one of the client groups of voluntary sector organisations where public sector funding is most important for their success¹⁹¹ and the refugee sector has been hit with some of the largest cuts. Government funding for Refugee Council's frontline support advice service was cut by over 60%, a far greater reduction than was expected and one that had to be implemented within one year, rather than the four years given to government departments for implementation. The speed and the size of the cuts made it 'impossible to adapt services quickly enough to stop people falling through the gaps.'¹⁹² In previous years, the Refugee Council had already sustained 22% cuts to its government funding, resulting in 52 redundancies, and including the removal of its Home Office funding for work with age-disputed children, worth £250,000 a year. It now relies entirely

on voluntary donations to deliver work with separated refugee children whose special needs are not covered by mainstream services.¹⁹³

Though this research did not look at the role of Migrant and Refugee Community Organisations (MRCOs) in providing advice to children and young people, they are clearly an important element in the advice and support networks of refugee and migrants.¹⁹⁴ The Afghan Association Paiwand, for example, provides advocacy and mentoring to Afghan children and young people. In light of a lack of knowledge of the British system, difficulties speaking English and immigration restrictions, MRCOs provide important links between migrants and more mainstream services, but 'the simultaneous reduction of funding from different sources is having a noticeable impact on available advice and support for migrants'.¹⁹⁵ With the closing of the Refugee Integration and Employment Service in September 2011, many RCOs have been left financially vulnerable,¹⁹⁶ and research into the impact of these cuts to refugee services shows that around 70% of organisations have reduced their workforce and half of advice service providers expect to reduce or end services, while 60% said demand for services had increased.¹⁹⁷

Of those charities and NGOs surveyed for this report, over 50% did not have future funding secured, and were unsure as to whether they would be able to secure it. 90% were reliant on government funding, and those organisations with no engagement in public sector contracts were the least financially affected by public sector cuts, and therefore more confident in the face of current challenges. In that sense, one conclusion could be that 'the charity sector is effectively dependent on itself for future sustainability in the form of charitable trusts and foundations and individual giving, rather than viewing public service contracts as offering a reliable or sustainable future for their work'.¹⁹⁸ With funding from other sources declining, many organisations are looking to increase the funding they receive from charitable trusts.¹⁹⁹ However, with 55% of survey respondents already funded in part by charitable trusts and foundations, one clear concern was that cuts would result in increased competition for this type of funding, with increased organisational vulnerability as a result.

Case study

An example of the impact of funding cuts can be seen in Oxford, which witnessed, in 2011, the closure of the Bridging Project, an educational advice and support centre for migrants at Oxford Cherwell Valley College. The project worked with around 60 students from countries as diverse as Eritrea, East Timor, Afghanistan, Iraq, Brazil, Albania, Spain and France, helping them access mainstream education and providing practical assistance and advocacy. As well as addressing educational needs, the project also helped students in the asylum process with issues such as court hearings, accommodation, access to healthcare and referrals to other services – ‘given the insecurity which characterises the lives of many young asylum seekers... the importance of both this practical and relational support cannot be underestimated’.²⁰⁰

Existing Oxford-based service-providers, already overburdened, have struggled to fill the gap left by this closure and have struggled to secure their own continued funding. At the time of the closure, Asylum Welcome, an Oxford charity that provides free, confidential information, help and guidance for refugees, asylum-seekers and immigration detainees in Oxford and Oxfordshire, had also lost a full-time youth advisor position, previously funded by Connexions through the County Council, which provided vital immigration support to young asylum-seekers aged between 13 and 19. In October 2010, Refugee Resource, the main provider of counselling for asylum seekers in Oxford, reported that they had lost two of their counsellors.

Furthermore, those working with young refugees and migrants expressed concern about changes to the provision of advocacy in the area, with advocacy being taken ‘in-house’, rather than being provided by the third sector, resulting in a poorer level of service and accountability. Further concerns were raised about the declining standard of legal representation, and the difficulty of accessing legal assistance – there being only one firm in Oxford taking on this work.

Further marginalisation of vulnerable groups

A stark example of the impact of funding cuts on certain ‘categories’ of refugee and migrant children can be seen in the budgetary decision of Solihull County Council in 2011. Faced with making cuts of £15.3m to the following year’s budget, Solihull proposed that £1.2 million be cut ‘by reducing the level of service currently offered to UASC, particularly UASC Care Leavers’.²⁰¹ The savings would be achieved by reducing staffing in the team, so that there would be higher caseloads and less contact time with each young person, and by moving children out of foster care earlier, even though it was acknowledged that children would be likely to experience less support as a result, as well as disruption to their education and networks. It was also accepted that young people in supported or semi-independent accommodation would receive less financial support and there would be ‘less staff capacity to support young people to access services to meet their health needs, their religious, cultural and identity needs, and to access education and training’.

In the Report to the Cabinet Member for Children and Young People at the start of 2011, Solihull made clear that ‘the result of this service model would effectively be a two-tier service; one for looked after children and care leavers that meets the statutory requirements, and one for UASC that will mean that some of the statutory requirements will not be fully met’. The report went on to note that there existed other local authorities operating ‘a two tier level of service without apparent significant exposure’.²⁰²

This approach and reasoning illustrates the openly discriminatory fashion in which separated children and young people are treated. High-level decisions such as these make it increasingly difficult for practitioners to deliver the appropriate service to migrant children and young people, and Coram Children’s Legal Centre’s casework often highlights conflicts in decision-making between front-line social workers and their managers.

The picture being formed is one where specialist provision for refugee and migrant children becomes all but non-existent. Specialist programmes or teams result in greater expertise, and an ability to react more quickly and appropriately to problems – a level of service that arguably cannot be replicated by those working more generally

with children and young people. While voluntary sector organisations, and indeed volunteers, play an important role in delivering services, they cannot be viewed as a means of filling in gaps caused by public sector funding cuts, and it is unlikely that they will even be able to in light of the increased competition for funding, coupled with reprioritisation within mainstream organisations. It is safe to say that immigration is a sensitive and unpopular issue, one that often garners little sympathy, and over the years we have seen fewer and fewer larger charities carrying out dedicated work with refugee and migrant children – Save the Children, for example, ceased its work in this area in 2009. In addition, reduction in resources has produced what has been described as ‘a new hierarchy of deserving and undeserving beneficiaries’, with migrants seen as less of a priority.²⁰³

However, there is a real danger that, if charities and NGOs do not continue their valuable work in this area, vulnerable groups will be marginalised yet further. Advocacy and leaving care services have been hit harder than many others and practitioners have noted that they are unable to deal with cases in as much depth or provide as much face-to-face time, and that follow-up work can be limited. Difficulties are especially apparent with young

people who have been age-disputed, those at appeal stage, and those at transition age: individuals who are often at risk and in need of support and attention but are all the more likely to go unnoticed. Working with those post-18 was described by one practitioner as ‘not worth the effort’ because it raises expectations and there is a limit to what can be achieved. While many organisations expressed their determination to maintain service capacity despite significant funding and staffing reductions, they acknowledged that cuts would have an impact on the quality of service provided.

‘It is safe to say that immigration is a sensitive and unpopular issue, one that often garners little sympathy, and over the years we have seen fewer and fewer larger charities carrying out dedicated work with refugee and migrant children’

endnotes

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Improving advice provision

This report began with a brief examination of the domestic and international standards outlining that refugee and migrant children in England have the same entitlements as citizen children and that there exists a statutory duty upon agencies to safeguard and promote the welfare of these children. This is no less the case in the wake of funding cuts and political difficulties. Ultimately, it is the responsibility of the government to ensure that young refugees and migrants are supported and protected, and budgetary constraints cannot be used as a means of shirking this responsibility. The introduction of a guardianship system, explored below, is one way in which the government could ensure that it is upholding these legal standards, as would be further measures to ensure that *all* children and young people are able to access free quality legal advice and representation, and thus ensure their access to protection and justice.

At the same time, social workers, legal representatives, advocates and other professionals working with children who are subject to immigration control will need to continue to meet their responsibilities towards them, and find more effective ways of doing so. Below are a few suggestions as to how the support and services that young refugees and migrants need can best be delivered.

Guardianship

One of the measures proposed to address the best interests of migrant children, not least problems of inadequate support and advice provision is a system of guardianship. Many NGOs have long campaigned for separated children to be assigned a guardian. The UN Committee on the Rights of the Child stated at paragraph 21 of its General Comment No. 6 that ‘the appointment of a competent guardian as expeditiously as possible, serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child’ and this was echoed by Article 10(4) of the Council of Europe Convention on Action against Trafficking in Human Beings 2005. The government maintains that it is complying with this requirement because children already have a social worker acting as a ‘corporate

parent’.²⁰⁸ Whilst social services have a statutory duty under the Children Act 1989 to accommodate and support separated children, there is nevertheless no-one with parental responsibility for the child under current provisions. Increasingly, relationships between local authorities and the UK Border Agency, on information sharing, age disputes, and financial reimbursements create conflicts that work against the welfare of the child and good social work practice and serve to undermine the independence needed for there to be effective legal guardianship as required by the UN Committee. Furthermore, ECPAT UK has highlighted that there can be a considerable length of time before a child is allocated a permanent social worker due to budget cuts and the retention of staff, which may be particularly problematic for trafficked children who need to build a relationship of trust.²⁰⁹

‘A guardianship system would provide children with an independent professional from the point of arrival to the UK, protecting the rights and interests of the child and advocating and co-ordinating for them holistically in relation to all services and agencies’

A guardianship system would provide children with an independent professional from the point of arrival in the UK, protecting the rights and interests of the child and advocating and co-ordinating for them holistically in relation to all services and agencies. The guardian would accompany the child as they make their asylum or immigration application and as they receive welfare, education and health services, helping them to get the support they need, have their voice heard, and make their own decisions about their life and future. A three-year pilot for a Scottish Guardianship Service, run by the Aberlour Child Care Trust and the Scottish Refugee Council, is in its second year, and provides guardians who ‘...support separated children to understand and steer a course through the complexities of the welfare and immigration systems. [Guardians] would occupy the spaces between

all other agencies supporting the child...[and] would be a consistent point of professional contact ensuring that the child's best interests are taken into account in all decision-making affecting them.²¹⁰

The expert reporting function of a children's guardian (also referred to as a 'guardian ad litem', is also an essential element of a guardianship scheme, to ensure that decision-makers and judiciary are provided with a formal authoritative report on the best interests and welfare needs of the child. Separated children may have multiple solicitors acting for them, in criminal, immigration and community care law, but will not have anyone who can make an informed decision on their behalf should they lack capacity to give instructions. Whilst there is no statutory provision of guardianship for asylum seeking children in the asylum process and before the immigration and asylum appeal tribunals, the children and family courts in England and Wales have specific duties, in public law cases involving local authority care proceedings brought under s.31 Children Act 1989,²¹¹ to appoint an individually named children's guardian.²¹² The court may also appoint a guardian in private family law cases,²¹³ for example disputes between parents on matters such as residence and contact orders. The guardian's primary function is to ensure that the voice and interests of the child are heard in court proceedings and that their interests are represented independently. The guardian is also required to appoint a solicitor for the child and to attend all court hearings, to prepare reports, obtain where necessary other expert evidence and/or attend court themselves as an expert witness. A similar 'ad litem' role for separated children could make dramatic improvements to the present inconsistent quality of information about children's welfare and development provided to the UKBA and to the courts.

There are many potential benefits to a system of guardianship, and many organisations have supported the idea.²¹⁴ However, the scope of such a scheme still needs to be considered in detail, including: the exact remit and role of the guardian (and their position in relation to legal proceedings); the relationship of the guardian to other professionals (some raise the concern that children do not need yet another professional in their lives, while feedback in Scotland raised concerns regarding the overlap between the role of the guardian and that of the social worker);²¹⁵ which children are considered to need a guardian; and how the guardianship system

would be delivered in practice. There is, of course, also the question of the financial cost and whether a model such as the Scottish Guardianship Service could be scaled up elsewhere in the UK, and thought given to which government departments should lead and be involved in its delivery to ensure that it worked effectively across the diverse range of agencies, procedures and policies.

Training and information

Young refugees and migrants have complex needs which cannot be met by a single agency.²⁰⁴ Both mainstream and specialist services will need to be aware of the particular issues facing children and young people subject to immigration control to understand their experiences and respond appropriately.

The greater the knowledge and awareness among all professionals working with this group – including social workers, key workers, support workers, advocates and other voluntary sector staff and volunteers – the better able they will be to assist them. It is important that practitioners understand the general processes around children's asylum and immigration claims and the framework of rights and entitlements to education, social services support, housing, and healthcare. Up to date information and training in this area can help tackle misconceptions and mistakes that leave children and young people unsupported.

'Both mainstream and specialist services will need to be aware of the particular issues facing children and young people subject to immigration control to understand their experiences and respond appropriately'

As finding high-quality legal representation becomes increasingly difficult and some young people look set to be denied legal aid funding for immigration cases, the informed support of other professionals becomes all the more important. This is in no way to suggest that non-legal professionals should step in to fill the gap left in legal immigration advice provision – nor can unauthorised people lawfully do so under the particular regulatory framework governing immigration legal advice. It is, rather,

to suggest that a general knowledge of the system is needed to support children and young people, and this will help empower professionals to identify the issues on which they require specialist advice; at which point legal representation must be sought and where to find it; and when there are problems with the advice being provided. It will also assist them in identifying where lawyers may not be providing adequate advice for children and young people, and what alternative options there are.

Keeping updated on the complicated and fast-changing areas of law and policy affecting separated children can be onerous for some professionals, especially as many will not be working exclusively with this group of children. Across different sectors, professionals face huge pressures in terms of time and resources. For this reason, specialist agencies are required to provide second tier support. It will also be important to mainstream training into social work programmes and into other professional training programmes. In-work training may be appropriate for some.

Working better together

Given the complex and overlapping administrative and legal systems and processes, delivering an effective continuum of care and protection for migrant children and young people ‘requires close co-operation of a variety of government bodies, specialised agencies and professionals’²⁰⁵ and for professionals to work together to best support them. In spite of cuts, practitioners can still deliver quality services through effective networking and communication, to ensure that information is shared, work is not wasted, nor opportunities missed. This applies just as much to legal representatives working on the different legal matters for the same child or young person. Strong communication and support links between professionals allow for the sharing of expertise, and are essential in ensuring that vulnerable young people, such as those at transition age, are effectively supported.²⁰⁶ This will involve professionals being aware of which organisations provide which services and building on existing contacts and relationships,²⁰⁷ and to develop collaborative working. One of the findings of this research was that in certain areas there exist some excellent services, but not all those working with young refugees and migrants are aware of what is available and there is a danger of unnecessary duplication of work. To go some way to addressing this,

Coram Children’s Legal Centre is putting together a directory of services for this group across England, to be published in Summer 2012.

‘Delivering an effective continuum of care and protection for migrant children and young people “requires close co-operation of a variety of government bodies, specialised agencies and professionals”’

It has been suggested that professionals working with migrant children and young people may, in the context of legal aid funding cuts, be able to assist young people in gathering evidence and documentation in support of their immigration cases. For example, as young people lose legal aid funding for immigration applications, such as applications to extend discretionary leave based on Article 8, it may be possible that professionals supporting them could help to ensure that evidence relating to the young person’s life and connections in the UK are gathered. This could for instance include school or college certificates, supporting letters from friends and others, documentation from public agencies or doctors surgeries. The Children’s Society is already assisting children in this way, by preparing background information to support the claim, and young people themselves can also be empowered to help with research and evidence gathering. It will, however, always be necessary for a legal representative to assess this evidence and take all decisions relating to its submission in view of their client’s instructions.

‘Professionals working with migrant children and young people may, in the context of legal aid funding cuts, be able to assist young people in gathering evidence and documentation in support of their immigration cases’

Professionals working more closely together can also benefit children and young people’s claims. Legal representatives should ensure that the evidence of professionals is used effectively in supporting children’s cases. It is important that professionals know how to provide appropriate reports about their relationships with

child clients, and are provided with guidance from legal representatives as to how these can best be prepared and presented in a professional way. Legal representatives could more actively use the evidence of professionals, for example asking social workers to give evidence on issues such as children's care plans and their welfare. Evidence from counsellors, advocates, mentors and others could also be better utilised in applications and legal proceedings within a child rights framework.

Adapting advice services

Strategies for voluntary sector organisations working in the current funding climate include: challenging and seeking to reverse government funding decisions; seeking more charitable funding; developing new income streams (for example, legal advice providers taking on privately paying clients); specialising services or downsizing; collaborations, partnerships and mergers; and integrating greater volunteer involvement.²¹⁶

To respond to the increasing advice needs of their clients, it may be possible for organisations to adapt and expand services. In particular, some have considered whether staff from voluntary sector organisations could become accredited (at least to the most basic level) and regulated by the Office of the Immigration Services Commissioner,²¹⁷ so that they can provide some immigration advice. While this may have some benefits, such as staff being better informed about the law and processes and keeping up to date on any changes as part of the Continuing Professional Development scheme,²¹⁸ certain issues should be considered. First, there is a question about the level of expertise needed to advise children in this complex area of law.²¹⁹ Newly qualified level 1 advisors are unlikely to be able to provide advice sufficient to most people's needs, so they will in any case need to make referrals to experienced lawyers to take conduct of cases and to take public law challenges where necessary. Children and young people, in particular, will require representation from experienced legal representatives with all the necessary training, knowledge, experience and skills. In other words, organisations can help facilitate, coordinate and oversee, but this should be part of a structure whereby appropriate referrals are still made.

Facilitating access to good legal representation

One way that advice provision to migrant children and young people can be improved is by ensuring that they are able to access good legal representation by lawyers with appropriate expertise. This may involve, for example, providing better guidance and training to professionals working with children in how to locate good legal representatives, how to recognise poor quality provision, and what to do when a child or young person is unhappy with the representation they have received. For those children and young people who under current proposals are set to lose out on legal aid, it will be of great importance that where local authorities are required to pay private fees for them, the local authority seeks out high quality providers and not those charging the lowest rates.

Another area that requires attention is supporting those who have been wrongly denied public funding to pursue their cases. Projects such as Refugee Action's Access to Justice and Hammersmith and Fulham Law Centre's RECAP project provide examples of how this can work. The challenge is that, as outlined elsewhere in this report, there are not enough good legal aid practices to refer children and young people to – a problem that is likely to be even more acute after changes to legal aid funding come in from April 2013, when the legal aid sector will come under great strain. Still fewer of these practices have capacity to take on all referrals to them, even when these are children's cases (which are more attractive from a funding perspective, as they are paid at hourly rates).

Outreach and advice surgeries

Another possible way to think about improving advice provision to young migrants – including those who may not otherwise access advice – is to look to increasing provision through advice surgeries and outreach work. Many organisations already provide advice surgeries, but there is potential for outreach to be greatly expanded. For example, Hackney Migrant Centre (supported by Islington Law Centre) provides clients access to advice on a range of issues (immigration, health care, support) in a supportive and friendly drop-in environment. A new initiative by Citizens UK, the New Citizens Legal Service, provides immigration advice within community immigration workshops, with legal advisors from Westkin.²²⁰ Migrant

Rights Network has highlighted that ‘the lack of advice in some outer London boroughs could be addressed by outreach sessions from the more stable organisations’.²²¹

Providing advice in this way has a number of advantages. Advice surgery provision enables advisors to see more people in need of advice and to increase coverage at a time when so many find it difficult to find a good immigration lawyer. It means that children and young people can get advice in places that are convenient to them, such as schools or colleges, community or youth groups, or children’s centres. This in turn makes it more likely that hard-to-reach groups, who may not otherwise seek legal advice or may be uncertain about whether they have a immigration issue at all, are able to access it. This includes children who may have been living in the UK for a long period with no regular immigration status. Also, it can complement the work voluntary sector and other organisations are already doing, allowing them to offer legal advice alongside their other services, and to mainstream advice provision into these services.

Advice surgeries and outreach work cannot, however, provide a substitute for full representation. One-off advice, with appropriate follow up, can be of great help to people, enabling them to understand their situation and their options. However, they may not have all the necessary paperwork that would allow an advisor to provide the fullest advice and, crucially, they may not be able to pursue their case without a lawyer to take conduct and represent them. There needs to be an interplay between advisor and legal representative, but as so few quality lawyers have capacity to take on new cases, advisors at outreach surgeries may find it difficult to make referrals to good legal aid providers. In addition, it can take time to gain the trust of children and young people, which an advice surgery may not allow for.

Funding legal representation

A further option for legal advice provision is to move away from legal aid funding. Incorporating pro bono work from private law firms could provide one possibility. It is important, however, that those advising children and young people are lawyers with experience of working on children’s cases and expertise in all relevant areas of law. In addition, pro bono lawyers providing assistance for only a few hours per week may be helpful to some people but this is unlikely on its own to meet the needs of those

who need full legal representation to pursue their cases, not least children and young people. Pro bono is most likely to be effective as an additional service where legal representation and client care is being provided, with a pro bono barrister or legal team taking on complex litigation on a discrete issue that arises in a client’s case.

Or pro bono work can be undertaken by a range of individuals. The Manuel Bravo Project in Leeds, for example, is a volunteer-based project that started in order to help asylum seekers who are unable to find adequate legal representation, and involves barristers, solicitors, law students and other individuals volunteering their time.²²²

Some organisations may seek funding to do immigration and asylum casework without relying on the Legal Services Commission or private fees, or may top up their publicly funded work with other sources of funding. The advantages could include being able to commit the necessary time to work on children’s cases and to exemplify best practice and could contribute to the development of specialist centres with dedicated children’s caseworkers with the requisite knowledge and training in all relevant areas, or specialist children’s solicitors placed within a number of different providers. Issues that would have to be considered include the various costs involved (for example, disbursements for interpreters and expert reports, counsel fees, appropriate insurance). In Scotland, the Legal Services Agency is supported by funds from Paul Hamlyn Foundation to provide legal advice, assistance and representation to refugee and migrant children and young people on asylum and immigration law; access to rights and support under the *Children (Scotland) Act 1995*; and the National Referral Mechanism (among other areas). Whether it would be possible to offer this service to more than a small number of children and young people and whether such a model could ever be ‘scaled up’ would be relevant questions here. Furthermore, limited charitable funding cannot and should not fill a gap in financing legal services provision that ought properly to be funded by the state.

Further research

With many professionals around the child or young person, and many different systems with their own terminology, children and young people may not always be clear about the exact demarcations of different professionals’ roles and whether they are statutory or independent. An important

direction for future research, therefore, would be to enquire into how children and young people perceive the professionals around them and the extent to which they can separate out their roles. A related avenue for future research, and one which could not be covered within the limits of this study, would be an assessment of how migrant

children and young people feel about the advice they need, the advice they receive and where they receive it from, and any areas where they feel they are not getting adequate advice and support. Understanding children and young people's perceptions of their advice needs should drive improvements in advice provision.

Conclusion

In writing this report, it was evident that there are a number of dedicated professionals working with separated children and young people who are keen to provide the best service they can. But they are working in a challenging climate, and while together we can explore options to 'fill the gaps' in provision, there is a limit to what can be done to address the full impact of funding cuts, and discriminatory policy and practice, without further changes at a national level.

In October 2002 the UN Committee on the Rights of the Child recommended that the UK Government 'carry out a review of the availability of legal representation and other independent advocacy to unaccompanied minors and other children in the immigration and asylum system.'²²³ A decade later there is still growing evidence that separated children are unable to secure access to the specialist legal advice needed to ensure that they are properly supported. On the contrary, the government has just introduced an act designed to ensure that children with immigration cases simply cannot access legal representation, despite the concerns raised by the Refugee Children's Consortium, JustRights and other coalitions throughout the passage of the Legal Aid, Sentencing and Punishment of Offenders Bill.

Legal aid is a crucial safeguard against abuse of power and incompetence, which allows the poor to stand up to unlawful decisions. Cost-saving measures may well be necessary, but other options exist. For one, the government should address poor decision-making by public bodies, which would be both a means of saving money and decreasing the need for civil legal aid over time. In its response to the government's consultation on 'Proposals for the Reform of Legal Aid in England

and Wales' in February 2011, the Refugee Children's Consortium highlighted the UK Border Agency's notoriety for delays, both poor decision-making and conduct in litigation. For example, in 2010 the Immigration Minister admitted to millions of pounds being paid in compensation to migrants who had been detained unlawfully in removal centres,²²⁴ a vast waste of time and taxpayers' money.

While young refugees and migrants may need assistance in challenging failures to uphold and implement their rights, at the same time efforts must be made to improve practice, and limit the need for challenge and litigation. Local authorities must be provided with sufficient resources from central government to assist them in meeting their legal obligations, and social care professionals must find a balance between their duties towards children and pressures to become agents of immigration control. This too makes financial sense if looking beyond the short term – appropriate support can open up opportunities for integration, as well as social and economic development in later years, and ensure that young people are safe, secure and able to make a positive contribution to society.

While immigration control is still often viewed as effectively 'trumping' family and other areas of law and policy, legal developments are reflecting increased understanding of the weight to be given to the 'best interests' of children and as 'the tension between policies for safeguarding and protecting children and controlling immigration – whilst evident in current policy and practice – is neither inevitable nor inexorable'.²²⁵ Rather, what is needed from central and local government alike is an open commitment to affording young refugees and migrants equal rights and treatment under UK and international law.

endnotes

- 204** ILPA (2012) *Working with children and young people subject to immigration control: guidelines for best practice*
- 205** *ibid*
- 206** Hillingdon Refugee Children's Network, *Conference and Workshops: 'What do Our Refugee Children Need?'*, 4th March 2011
- 207** See www.seekingsupport.co.uk for a comprehensive directory of services providing advice and services to migrant children in England.
- 208** See letter to ECPAT UK from the Rt. Hon. Prime Minister, David Cameron MP, 5 July 2011 in ECPAT UK (2011) *Watch over me: A system of guardianship for child victims of trafficking*
- 209** ECPAT UK (2011) *Watch over me: A system of guardianship for child victims of trafficking*, p18
- 210** Crawley, H., & Kohli, R. (2011) *First Evaluation Report of the work of the Scottish Guardianship Service Pilot*, at www.aberlour.org.uk/scottishguardianshipservice.aspx
- 211** Asylum-seeking children are predominantly looked after under s20 of the Children Act 1989 which does not provide for the appointment of a children's guardian, unlike s.31 of the Act
- 212** Whilst appointed by the court as individually named guardians, they are currently provided by The Children and Families Advisory and Support Service (CAFCASS).
- 213** section 5 of *Children Act 1989*
- 214** Including ECPAT UK, Save the Children and UNHCR
- 215** Crawley, H., & Kohli, R. (2011) *First Evaluation Report of the work of the Scottish Guardianship Service Pilot*
- 216** See National Council for Voluntary Organisations, *Coping with cuts: Practice advice guides* at www.ncvo-vol.org.uk/advice-support/coping-with-cuts-practical-advice-guides
- 217** See <http://ois.homeoffice.gov.uk>
- 218** See http://ois.homeoffice.gov.uk/immigration_advisers/continuing_professional_development/
- 219** Although such voluntary sector organisations will not be working under Legal Services Commission contracts and so are not bound by Legal Services Commission rules, it is indicative of the necessary standard for working with children that the Legal Services Commission requires those working on unaccompanied asylum-seeking children's cases to be senior caseworkers. See paragraph 8.16 of the 2010 *Standard Civil Contract – Specification*, available at www.legalservices.gov.uk/docs/civil_contracting/Section_8_-_Immigration_-_Dec_09.pdf
- 220** For more information see www.citizensuk.org/category/new-citizens-team/
- 221** Migrant Rights Network (2011) *Advice and Support Provision for Migrants in London: a view from the field*
- 222** For more information see www.networkleeds.com/group/group.aspx?id=40837
- 223** *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland* (October 2002), para. 48 (f)
- 224** Answer to Parliamentary Question asked by Lord Hylton on 29th November 2010 – 'To ask her Majesty's Government what amount of damages they have paid to migrants whom they have illegally detained during the current and previous two years' – at <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101129w0001.htm#10112934000374> For full response, see www.refugeechildrenconsortium.org.uk
- 225** ILPA (2006), *Child first, migrant second: ensuring every child matters*, p64.

Appendix

Please find below definitions for some key terms used in this report. For a more comprehensive glossary, please visit:

www.seekingsupport.co.uk/index.php/chapters/glossary

Accompanied Asylum Seeking Child (AASC)

According to the UK Border Agency, an accompanied asylum seeking child is a child who:

- is applying for asylum in their own right; and
- forms part of a family group; or
- is separated from both parents and is being cared for by an adult who by law has responsibility to do so or is in a private fostering arrangement.

Asylum seeker

A person who has applied to the government of a country other than their own for protection or refuge ('asylum') because they are unable or unwilling to seek the protection of their own Government. A child or young person is referred to as an 'asylum seeker' in the UK if he/she has lodged a claim for asylum with the Home Office and is still waiting to see if that claim will be granted, or has an appeal outstanding. Children may apply as a dependant of a family member or in their own right (if they are alone in the UK, or even if they arrive with family).

Age disputed

An age-disputed child is an asylum applicant whose claimed date of birth is not accepted by the Home Office and/or by the Local Authority who have been approached to provide support. This term is usually used to refer to people who claim to be children, but who are treated as adults by the Home Office and/or the local authority. Whether an individual is treated as an adult or as a child has significant implications for the way in which the person's claim for asylum is treated, and the level of support received.

Discretionary leave (DL)

Time limited permission to stay, granted where the Home Office has decided the individual does not qualify for refugee status or humanitarian protection but where there are other strong reasons why the person needs to stay in the UK. This is the most common form of leave given to unaccompanied asylum seeking children when there are no adequate reception arrangements in their country of origin. It is normally given for three years or until the individual reaches 17.5 years of age – whichever is the shorter period. There are certain other specified reasons where DL would be granted to an asylum seeker.

Failed asylum seeker

Someone who has applied for asylum, been refused and has no appeal pending.

Leave to remain

The permission given by the UK Border Agency official to someone to extend an existing permission to stay in the UK. Leave to remain can also be limited as to time and may contain various prohibitions (on working or claiming 'public funds'). Time limited leave to remain may also explicitly allow the recipient to work or claim benefits in the case of minors granted discretionary leave

Legal Services Commission (LSC)

The body set up under the Access to Justice Act 1999 to administer public funding for legal help and representation. The LSC issues contracts to solicitors' firms and advice agencies to conduct legal work, including asylum and immigration work.

Merton Compliant

A term used to describe a local authority age assessment that has been conducted in accordance with the case law on age assessment and is therefore fair and lawful. The term derives from the Merton judgment of 2003 which gives 'guidance as to the requirements of a lawful assessment by a local authority of the age of a young asylum seeker claiming to be under the age of 18 years.'

National Referral Mechanism (NRM)

The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking and ensuring they receive the appropriate care. Authorised agencies, such as the Police, UKBA, Social Services and certain NGOs, who encounter a potential victim of human trafficking, can refer them to the Competent Authority (CA). The initial referrer is known as the 'First Responder'. In the UK, the CAs are UKHTC and the UKBA.

Office of the Immigration Services Commissioner (OISC)

The Office of the Immigration Services Commissioner is an independent, non-departmental public body set up under the Immigration and Asylum Act 1999 that regulates some legal representatives practising in immigration law.

Refugee

A refugee is a person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to or owing to such fear, is unwilling to avail himself of the protection of the country ...' as set out in the Refugee Convention 1951.

Subject to immigration control

Section 13(2) of the Asylum and Immigration Act 1996 defines a person subject to immigration control as 'a person who ... requires leave to remain in the United Kingdom (whether or not such leave has been given)'.

Separated child

A separated child is a child who has been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. The UK Border Agency definition of unaccompanied children (see below) does not include children who arrived in the United Kingdom in the care of a parent or other adult (for example, a relative or family friend) who by law or custom has responsibility for the child, even if the child is no longer living with such an adult due to the subsequent breakdown of such an arrangement. Therefore Home Office Statistics and UK Border Agency grants will not apply to all children defined as separated within this report, which will include children who are living with relatives or friends who are not their legal or customary carers.

Trafficking

Trafficked children are those who are recruited, transported, transferred, harboured or received for the purpose of exploitation. Trafficking is different from smuggling, as it involves the movement of people with the intention to exploit. Smuggling refers to the facilitation of illegal entry for a fee paid to an agent.

UK Border Agency

UK Border Agency (UKBA, previously Border and Immigration Agency). The UK Border Agency is the Government Body responsible for asylum issues, managing immigration control in the UK, including applicants for permission to stay, citizenship and asylum.

Unaccompanied asylum seeking child (UASC)

The definition for immigration purposes of an unaccompanied asylum seeking children is given by the UKBA as 'a person under 18 years of age or who, in the absence of documentary evidence establishing age, appears to be under that age' who 'is applying for asylum in their own right; and is separated from both parents and not being cared for by an adult who by law or custom has responsibility to do so'. Children in this situation are also known as separated children or unaccompanied minors (UAM).