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1. INTRODUCTION

We know that life for any child or young person (CYP) separated from their parents through force, loss or family breakdown can prove very difficult, with sometimes devastating implications for their development, health and future life chances. For the children featured in this report, this is coupled with an attack on their very ‘identity’– being told by an adult or stranger during their childhood or transition into adulthood that they do not belong in the UK because they have no documentation to prove their ‘legal’ right to stay here – the place they have long believed to be their home. They are ‘undocumented’.

Being undocumented can have a significant impact on children and young people’s lives. They may be unable to access vital social and health care services needed to protect them and keep them safe from harm, access or continue their education, or work to reach their full potential and contribute to society.

In 2012 it was estimated that approximately 120,000 ‘undocumented’ children live in the UK and over half of these children were born here¹. For many of these children the UK is their only home.

¹ Nando Sigona and Vanessa Hughes (2012) No way out, no way in: irregular migrant children and families in the UK. Oxford: ESRC Centre on Migration, Policy and Society, University of Oxford.
<https://www.compas.ox.ac.uk/2012/no-way-out-no-way-in/>

What does “undocumented” mean?

A child or young person (CYP) is unable to show any documents to prove that they are British or otherwise allowed to lawfully remain or live in the UK (e.g. if they or their parents were not born here). They may not have, or have ever seen, documents to prove their identity (i.e. a passport or birth certificate). They may not have a Residence Permit, visa or Immigration Status document² that confirms their right to remain in the UK. Alternatively, the documents they do have may not have been endorsed with any form of visa or permission to stay in the UK by the government or these documents may have expired.

Children and young people who are ‘undocumented’ and alone

Little is known about the number and profiles of children and young people in the UK who may be ‘undocumented’ and alone. Whilst the presence of unaccompanied children who are seeking asylum in the UK is well known, in general there is no data or information about other children in the UK who are not British or settled, and who are not in the care of their own family. Freedom of information requests made by MiCLU have uncovered that while local authorities in England and Wales keep statistics of unaccompanied asylum seeking children who have entered their care (often referred to as UASCs), most do not keep separate statistics for children that they have not identified as an ‘asylum seeking child’. Furthermore we have found that some local authorities register cases of undocumented children who enter into their care within their asylum statistics, even when they are not raising asylum claims³.

Who are we, and why did we create PROTECT?

Who are we?

We are a team of children’s rights lawyers who came together to help PROTECT the voices, rights and lives of ‘undocumented’ children and young people (CYP) in the UK who are alone and without any, or inadequate, family support.

In 2012 the government announced large scale cuts to legal aid and stopped access to justice for hundreds of thousands⁴ of people in England & Wales who could not afford a lawyer⁵ – including children and young people who were alone and needed qualified legal advice and representation to address their complex immigration problems⁶.

In our immigration practice, the cases of lone CYP were often the most complicated to navigate, investigate, prepare and advise on. In addition to the capacity and participation issues faced by CYP in complex legal proceedings, as legal advisors we would frequently encounter highly complex and interconnected legal problems faced by this group because of their precarious immigration and citizenship status: for example, their precarious immigration status or lack of documented status placed them at risk of removal from the UK, and unable to access financial support. If left unresolved these problems had the potential to impede, obstruct and even damage their ability to survive and develop fully. Prior to the introduction of LASPO⁵ these legal problems could be individually and collectively tackled. However after LASPO came into force CYP could only access advice and representation in relation to limited aspects of these legal issues. Once the cuts were announced we therefore recognised the importance of mapping the experiences of undocumented CYP and the legal problems they experienced in order to preserve vital information that would contribute to the debate around and challenges to legal aid cuts posed to CYP before the opportunity was lost when they were left unrepresented.

² The UK government has immigration laws to govern its borders. It can decide who enters, leaves or remains in the UK. It issues foreign nationals with documentation to confirm the basis upon which the person has a right to be in the UK.

³ Freedom of information requests made by MiCLU

⁴ Amnesty International (11 October 2016) United Kingdom: Cuts that hurt: the impact of legal aid cuts in England on access to justice. Press release.

⁵ Cuts were announced in 2012 and implemented from 1 April 2013 following the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

Why did we create PROTECT?

There was little, if any, reliable and publicly available data on this group of CYP and the impact that these cuts would have on their lives. In contrast to other migrant groups, undocumented CYP were not readily identifiable to others. There were a number of reasons for this:

- They were closely connected to the UK, and often had periods of long residence here meaning that
 - They rarely self-identified as a 'im/migrant'
 - They were not identified as 'foreign' or 'migrant' by casual observers
- Experienced professionals, including lawyers and social workers struggled to identify their needs as migrant children.
- Being embedded in mainstream British society (rather than isolated in diaspora communities) they had little understanding of their undocumented status and the barriers they faced in accessing legal representation and other public services.

In July 2012 we received funding to help combine our children's rights expertise across immigration, housing, social welfare, education and public law to help build and develop a pioneering legal service to meet the specific legal and protection needs of this vulnerable group. The PROTECT project is the first of its kind in the UK and only one of a handful of wraparound legal services available to any group of CYP.

Our aim: To help undocumented CYP who find themselves navigating life alone to live safer, secure and fuller lives in a country they call home and to disseminate learning to help the work of others responsible for supporting them.

Through a careful evaluation of our children's casework; feedback from our young clients; and an analysis of the patterns of legal issues that consistently emerged through our expert second-tier advice and training services,⁶ the following key areas in the design phase were crucial:

- All services for CYP, including legal, should be firmly grounded in a child rights and child protection framework. CYP should be at the heart of the service which adapts to their needs.
- CYP trust face to face advice. They find it difficult to meet with lots of lawyers. They prefer lawyers in one place; who talk to each other and understand all the issues in their life. Holistic legal services were needed. Immigration, education and housing were key areas identified.
- Services need to be tailored to meet the multiple issues that surface in CYP lives. The project must help CYP understand their legal problems and support needs and, if the project team cannot help with a specific problem, they need to make appropriate referrals to the appropriate experts and support the CYP to make effective use of these.
- CYP sometimes need to attend lots of meetings with professionals and statutory agencies like the Home Office, social services and the police, which can be difficult and scary on their own.
- CYP easily disengage with services if they feel no-one is listening to them or understanding the difficulties they face. CYP need to know that their lawyers are 'on their side'. Lawyers need to work with CYP at their pace and help them to be confident with understanding their legal problems. This allows CYP to participate as fully as possible and give informed instructions and make informed decisions.

⁶ For lawyers; statutory agencies; health practitioners; teachers; foster carers and NGOs.

The PROTECT Project

Between 2012 and 2016 we acted for 52 children and young people (CYP) referred to our project for urgent legal representation. The project helped CYP:

- Understand their status as an undocumented young person
- Tackle their immigration 'problem' or understand it better
- Access housing and social care provision they required as CYP in need
- Access education so that they could better their life chances
- Address fractured family relationships including via qualified mediation services
- Tackle obstacles they faced whilst trying to live ordinary lives with their friends, communities and networks in UK society

Project remit and scope⁸

Whilst the vulnerability of unaccompanied children who are seeking asylum is generally recognised, there was little understanding or knowledge about the issues faced by unaccompanied children whose right to remain in the UK was based on periods of long residence or close connections to the UK. This was important, because from April 2013 there would no longer be funding for legal advice and representation in relation to immigration matters that were not related to an asylum application or request for international protection. The definition of 'immigration only' cases to be used post April 2013 included cases involving 'respect for private and

family life'⁹. Our existing casework meant that we were aware that this was likely to impact heavily upon lone CYP with periods of long residence or significant family life in the UK and place significant obstacles in the way of their obtaining lawful permission to remain in the UK. Applications to remain in the UK on the basis of private and family life here form the majority of immigration non-asylum applications by CYP.

The project was therefore limited to referrals of CYP identified by referral agencies as young people with 'immigration' problems rather than those identified as having asylum or international protection claims¹⁰.

All the cases taken on by the project were cases in which immigration problems were identified. However, in some cases identification of the immigration problem was made by the person or agency referring the case to us, whilst in others CYP were referred to our advisers for other legal advice, and later identified by our specialist lawyers as also having an immigration problem.

We also prioritised referrals from organisations or professional bodies with some experience of working with this group of CYP. This had the twofold benefit of providing a filtering system by allowing us to reach some of the more vulnerable CYP, whilst also allowing us to map the extent to which these organisations were able to correctly identify, and support, cases through to appropriate referral. We wanted to better understand some of the barriers they were facing as non-specialist (and largely non-legal) professionals supporting this group of CYP.

Due to funding restrictions legal representation in housing and education matters was only available for CYP living in the London area. CYP who required advice in relation to immigration matters

⁸ Legal representation in immigration, education, housing and social welfare law was underpinned through funding from the Legal Aid Agency up until 1st April 2013. Our legal advocacy and mediation service was substantially increased thanks to the additional funding from our funders for areas not funded through the legal aid regime.

⁹ Article 8 of the ECHR provides a qualified right to respect for private and family life stating:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

¹⁰ We wanted to reach the most vulnerable CYP, and also to take a last opportunity to understand and map their legal needs whilst publically funded legal advice was still available in immigration matters pre-LASPO 2013. At the time of creation, the Government also suggested bringing in a 'residence test' to limit the eligibility of legal aid to those with 'lawful' residence in the UK, which would mean that many of our CYP cohort would be excluded from any legal advice and support.

¹¹ Only 1 case was taken outside of the London / South east region (by prior agreement with the Legal Aid Agency) following an urgent referral by the Office of the Children's Commissioner for England.



(including asylum as necessary) could access our service provided that they lived in London and the South East¹¹. Some of our young clients were moved outside of region by their Local Authority as 'out of borough' placements but remained eligible for representation in line with Legal Aid Agency (LAA) guidance. Prior to the legal aid cuts in April 2013 introduced through LASPO, our Centre¹² held contracts in immigration, asylum, housing, social welfare, education, debt and employment law¹³.

A small handful of CYP also required specialist legal representation in areas of law our Centre did not cover and referrals to qualified and contracted representatives were necessary, if not already represented.

What applications did we intend to make for CYP with private and family life connections to the UK?

Whilst there are a plethora of different types of applications for permission to remain in the UK that can be made, we identified that there were likely to be four main immigration (non-asylum) routes to resolving the lack of documented status for the CYP taken on by our project:

- Applications for British Citizenship¹⁴
- Applications for permission to remain as the parent of a British Child¹⁵
- Applications for permission to remain as a child under 18 who had spent more than 7 years living in the UK and whom it was not reasonable to expect to leave the UK¹⁶
- Applications for permission to remain as a young person aged 18 – 24 who had spent half of their life living continuously in the UK¹⁷

We were, of course, aware that other applications might be necessary or appropriate, and that some of the cases of our cohort might engage human rights arguments outside the Immigration Rules. As specialists in this area we were also alert to the potential for international protection claims (including those on the basis of trafficking and modern slavery) to be raised amongst our cohort as will be discussed in detail later in this report.

Why do this report?

One of the major motivating factors for preparing this report was to counter the perception that undocumented CYP in the UK are voluntary migrants who have come to the UK for educational or economic betterment. Such assumptions are based on a misunderstanding of the circumstances and needs of these CYP and lead to a failure to safeguard them and protect their best interests as children. The removal of legal aid for immigration matters has made these assumptions particularly dangerous, and the implications for CYP are stark. It is therefore important that a better-informed and more detailed picture of the real situation of undocumented CYP is available so that the risks to these children can be taken into account, and action taken to ensure their safety and wellbeing.

This report is the UK's first attempt to scope the legal, protection and welfare needs of this vulnerable group of CYP. We hope the unique body of evidence in this report will shed some light on their often complex and fractured lives, their particular vulnerabilities and the barriers they face in accessing the vital support and representation they need to address their legal and social welfare problems. It is important to note that this report should not be treated as a comprehensive guide on relevant laws, rights and entitlements applicable to undocumented CYP.

¹² MiCLU is based at Islington Law Centre.

¹³ Unfortunately, following cuts to legal aid in April 2013 introduced through LASPO the project was unable to take on any further referrals for legal representation in 'immigration' cases as this area of law was taken out of the scope of legal aid. The majority of data collated for this report therefore relate to cases started by us on or before the cuts to legal aid on 1st April 2013. Funding for individual representation was not available from alternative sources. However, many of these cases were ongoing up to and beyond the date of this report due to their complexity, or delay in the system.

¹⁴ In accordance with the British Nationality Act 1981

¹⁵ In accordance with Appendix FM to the Immigration Rules, section E-LTRPT

¹⁶ Under paragraph 276ADE(1) of the Immigration Rules

¹⁷ Ibid



The overarching aim of this report is to:

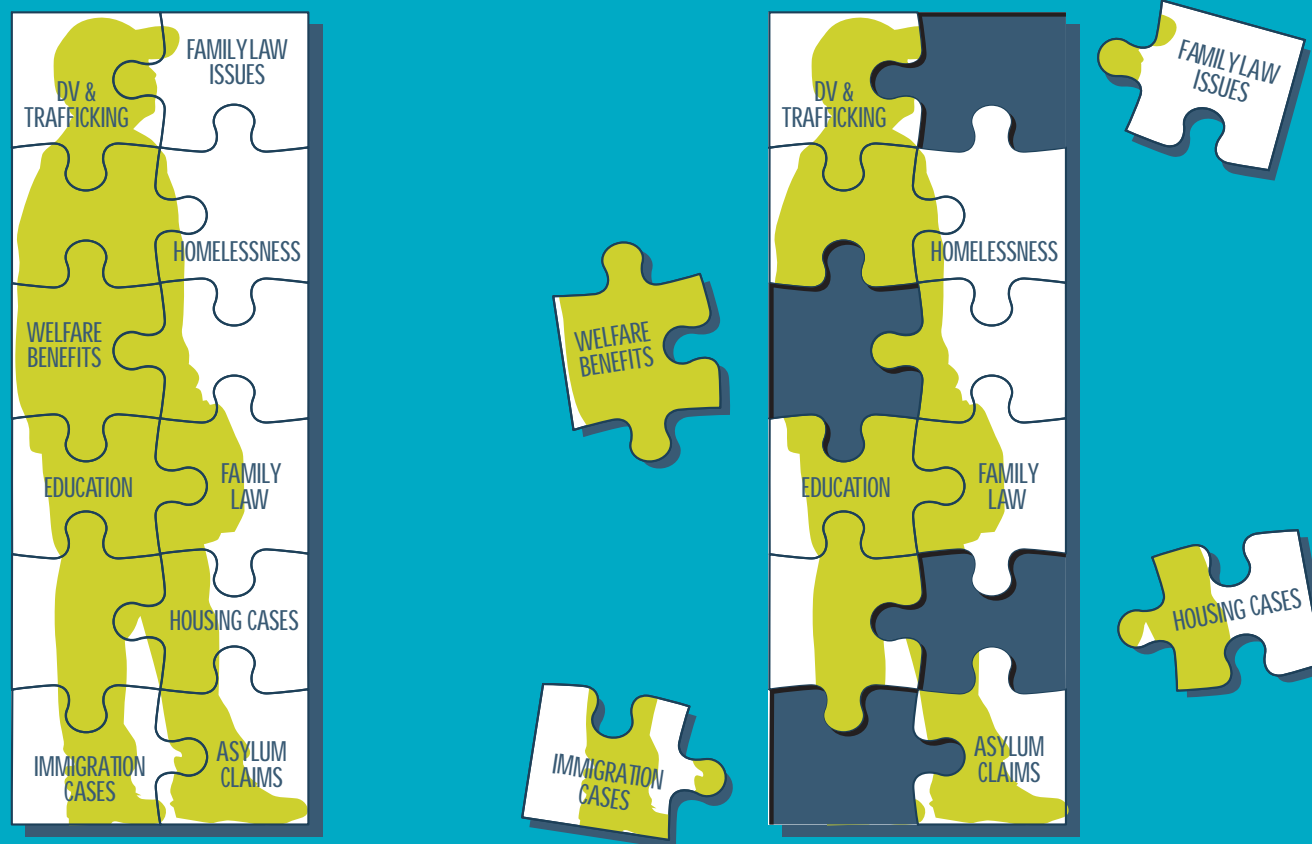
- Provide a voice for this marginalised and underserved group of CYP so that they can be better identified, protected and supported.
- Better inform the public on the existence and profiles of vulnerable CYP living in Britain and the problems that they face as a result of their lone status.
- Provide improved understanding of the multifaceted legal, protection and welfare needs of this group of CYP so that legal and non-legal professionals can improve their own service delivery.
- Explore the dangers posed by the legal aid cuts, which has stripped away access to the free legal representation CYP need to live protected and safer lives.
- Help decision-makers and policy makers understand and address services, policies and laws that meet the best interests of this group of CYP; safeguard and promote their welfare and wellbeing; protect them from harm; improve their futures and life chances with humanity and dignity and ensure that they are treated fairly and without discrimination.
- To remind all those working with migrant children, and undocumented CYP in particular, that they are children first and foremost and require their needs as children to be met first.

Methodology

The findings in this report draw on a casework analysis of 52 CYP supported and represented by the PROTECT project between July 2012 and October 2016. All but one CYP were from London and the South East of England. Quantitative and qualitative data was collated through six stages;

1. Needs Assessment on referral – through instructions received from the referral agency; the young person; observations from our lawyers on the presentation of the young person on referral and an assessment of their legal needs following referral.
2. Completion of casework audit forms completed by the PROTECT team in individual cases, including instructions received from the young person, and professionals supporting them, during assessments and through the course of representation.
3. Multi-disciplinary meetings of the PROTECT team throughout the course of individual CYP cases.
4. Assessment of Project casework files and legal, mediation, advocacy and multi-disciplinary meeting minutes.
5. Where CYP were previously represented, project staff considered the files of previous representatives and reviewed the advice given and applications made. Project staff also asked CYP for their feedback on their experience with their previous representative.
6. Semi-structured interviews with a number of CYP who accessed legal support services through the project, exploring their views and experiences of support accessed and the impact this has had on their lives.

PROJECT REMIT AND SCOPE – LEGAL AID



Information and data was collected through the initial needs assessments and ongoing multi-disciplinary assessments. Through these assessments, we gathered data and examined: the protection and legal needs of CYP as well as their entitlement

to legal remedies; and the emotional, social, educational and practical needs of the CYP. The data also captures the views and experiences of the CYP, which were sought throughout the assessment and representation process.

2. KEY FINDINGS

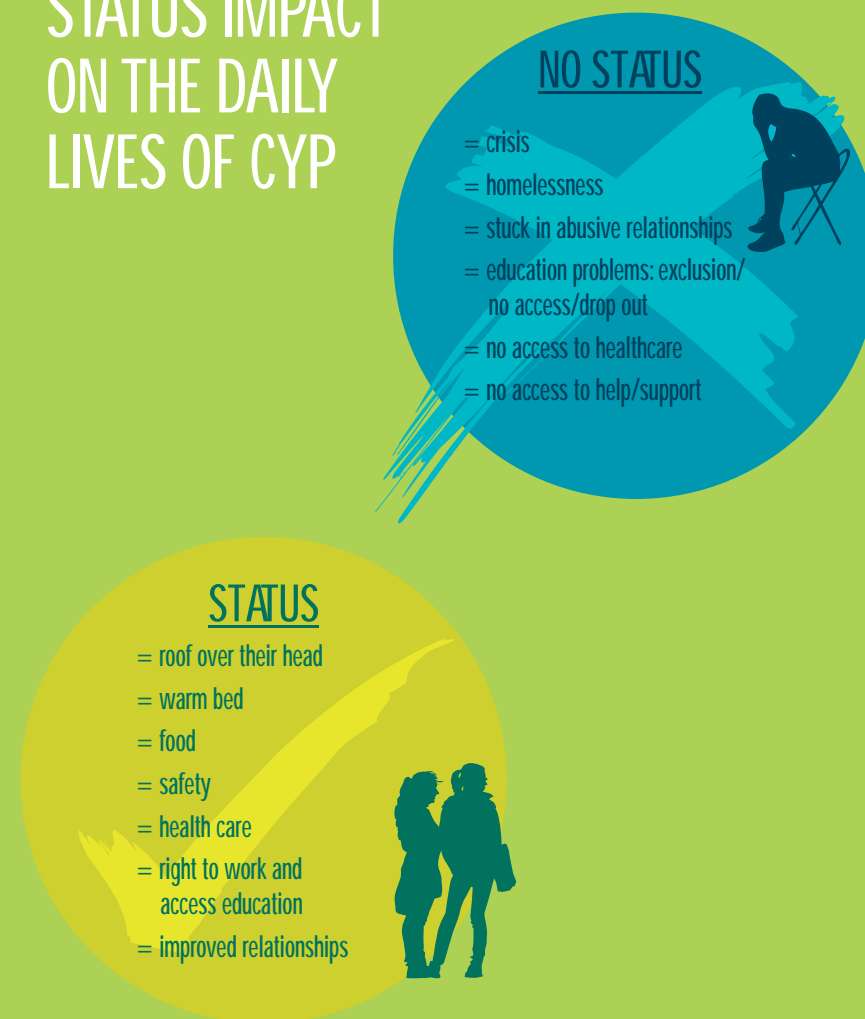
Drawing on an analysis of 52 cases of CYP supported and represented by our specialist legal service (The PROTECT Project), we found that undocumented CYP who are navigating their lives alone face disproportionate barriers to living safe, protected and full lives. Their histories and backgrounds are fractured and chaotic. They are often blighted by abuse, exploitation and neglect. Many are excluded from mainstream services as a result of their 'undocumented' status, forcing some to live in precarious and dangerous environments. Many suffer mental and physical health problems exacerbated by their undocumented status. They are unable to identify their legal needs, unaware of their rights and entitlements, and the accumulation of unaddressed problems leads to an increase in their vulnerability and multiplies their legal problems – damaging their childhood, their relationships and their very identity.

COMPLEXITY

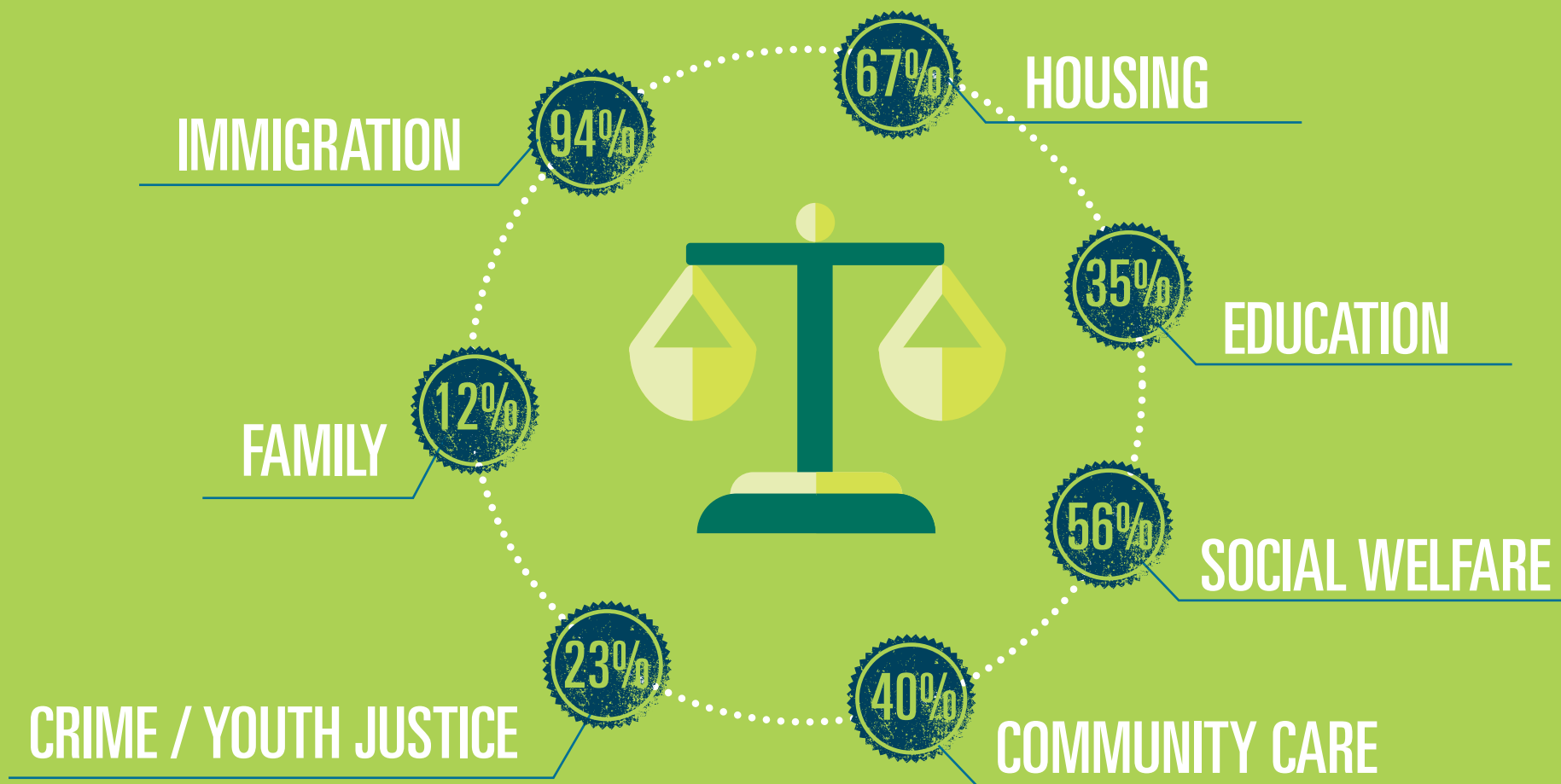


SUMMARY

STATUS IMPACT ON THE DAILY LIVES OF CYP



LEGAL ISSUES EXPERIENCED BY OUR COHORT



Summary of findings

- Access to justice for this group of CYP is extremely restricted following cuts to legal aid provision. Without qualified specialist representation CYP lives can be placed in danger, their wellbeing jeopardised and it can prove difficult for statutory and non-statutory agencies to protect them against the risk of injustice.
- Many CYP do not fully realise the constraints of their status in their lives until they become older teenagers and young adults.
- CYP are highly vulnerable, having experienced prejudice and harm early on in their lives, and as a consequence struggle to engage with their legal problems, unable to access the protection and support they need, exacerbated by their undocumented and separated status.
- Often their legal and protection needs are unmet due to their complicated and fractured lives and their inability to define their 'identity' and what is happening to them as something which may attract legal redress.
- There is an overreliance on CYP to self-identify complex legal and immigration status problems by professionals and non-legal practitioners when making an assessment of their needs. CYP require specialist legal support to help investigate and diagnose their legal issues.
- Neither CYP nor non-legal professionals are able to identify the existence of trafficking and international protection claims (including asylum claims) without specialist legal advice, and this prevents CYP who would be eligible from accessing legal aid.
- Legal issues can be interlocked and interdependent. CYP were unable to access relevant services to protect and promote their welfare and wellbeing due to their undocumented status. This was, at least in part, also due to support agencies being unable to fit CYP's unclear immigration status within their own frame of reference nor to identify legal needs which led to an inability to provide adequate services due to a misunderstanding of their rights as CYP in need.
- Many CYP faced multiple vulnerability factors and legal needs which, when combined, increased their vulnerability and created further legal problems whilst also worsening welfare and social problems such as support provision and relationship issues.
- The current immigration process fails to acknowledge the needs of this group of children as immigration applicants in their own right 'in the immigration system' (in comparison to formal acceptance and recognition in the 'asylum system'), or to address the implications of family breakdown upon CYP who may have been dependents on those family, or adult, applications
- Routes to regularisation of immigration status that are available to CYP, and to which they have an entitlement, are overly complicated, bureaucratic, expensive, and not child-friendly
- The length and conditions of leave to remain granted by the immigration authorities in recognition of CYP's long residence and life in the UK do not safeguard the wellbeing and future development of CYP whose futures lives clearly lie in the UK

- The length and conditions of leave to remain granted by the immigration authorities to young parents of British children do not make the best interests of those British children a primary consideration when considering the length of leave and the processes and fees required to make repeated applications for extension of leave to remain.

The legal and welfare needs of this group of CYP cannot be assessed in isolation. Often unresolved legal problems lead to social exclusion and susceptibility to future harm. A clear issue identified in the course of our project evaluation was the extent to which CYP who are perceived as 'migrant' or 'illegal' are treated as somehow not being children. Undocumented and migrant CYP are held to different standards, and different expectations are made of them in terms of the sort of information or documentation they should hold, the extent to which they have or had control over their movement across borders, and their ability to identify and resolve their problems. By holding undocumented CYP to standards which are not applied to children viewed as 'native' or indigenous, there is a clear 'othering' of undocumented CYP who are considered lesser or different to British children.

3. THE LIVES OF 52 LONE UNDOCUMENTED CYP

The CYP come from many walks of life. There is a huge variation in their life experiences and circumstances. There is no one factor that has led to them becoming undocumented. Many have complex migration and family histories. Some know about these histories. Some do not. Many of the CYP we worked with self-identified as being British, and upon casual observation were indistinguishable from their documented British peers. Discovering that they were somehow not who they had thought they were, often at a watershed moment in their lives, had a devastating impact upon them.

As a disparate group of CYP, who may have little knowledge of their backgrounds and histories due to their young age, it can prove difficult to understand their needs, rights and entitlements. Investigating and understanding their backgrounds and histories is an important first step for all professionals working with this group.

Who am I?

In contrast to unaccompanied asylum seeking children – male and females are roughly equally represented in experiencing this issue¹.

Just under 70% of our clients were of secondary school age at the point of referral.

A quarter were aged between 18 and 24, but all were either care leavers or had direct experience of local authority child protection interventions during their childhood.

A small number of very young children were also referred to us, all on an emergency basis due to their immediate protection and welfare needs

Some of the undocumented young people referred to us with an 'immigration' problem had formerly been registered as 'asylum-seekers' following arrival to the UK. In most cases both the young person and the referrer knew very little about the CYP's previous immigration history. In the main, these were young male care leavers who had spent a considerable part of their childhood and adolescence in the UK, and had strong connections to their British foster families and community. Full details of their asylum history and movement into undocumented status were only fully uncovered following our project intervention.

¹ Home Office (2016) Asylum statistics, 2015, Table AS_08.

GENDER

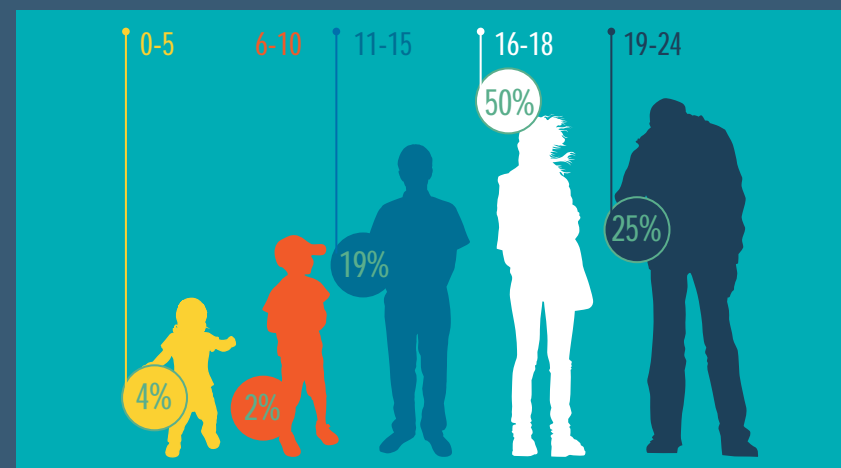
52 SEPARATED & UNDOCUMENTED CHILDREN AND YOUNG PEOPLE



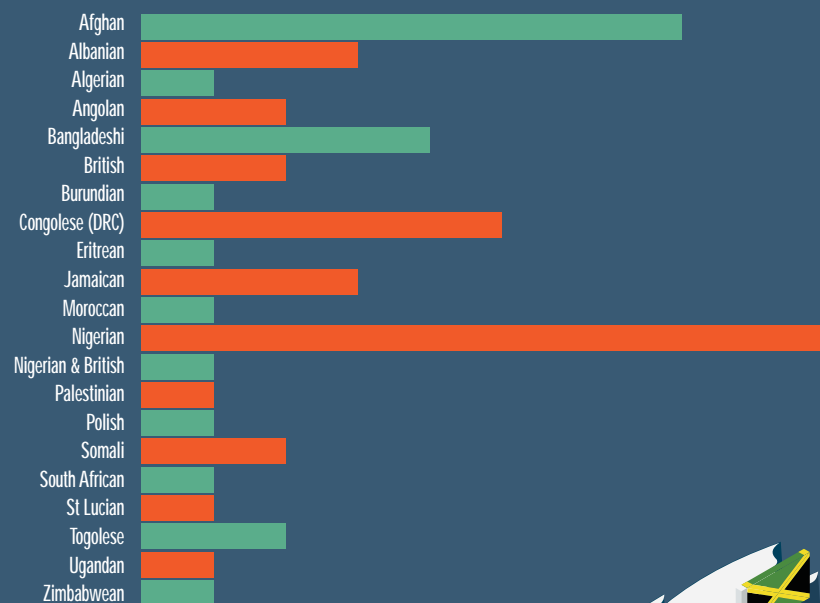
52%
MALE

48%
FEMALE

AGE



21 DIFFERENT NATIONALITIES



A group that were strongly represented were CYP from former British colonies. A strong British identity, a family connection to the UK, and the ability to speak fluent English were often factors that caused CYP from these countries to be 'hidden in plain sight'. Neither they nor anyone else had even considered that they may not have the right to live in the UK.

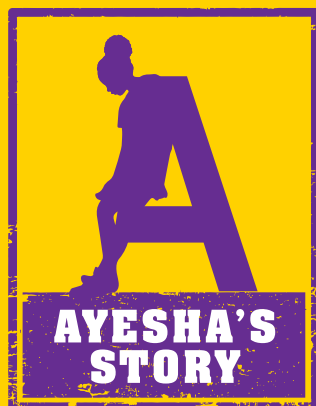
Over half of the CYP had British family members, underlining how closely they felt embedded into UK society and culture and why so many believed they were British. Some had British siblings and parents, although they were not British themselves.

The remaining CYP who did not have close British family nevertheless had close links to the UK, the majority having

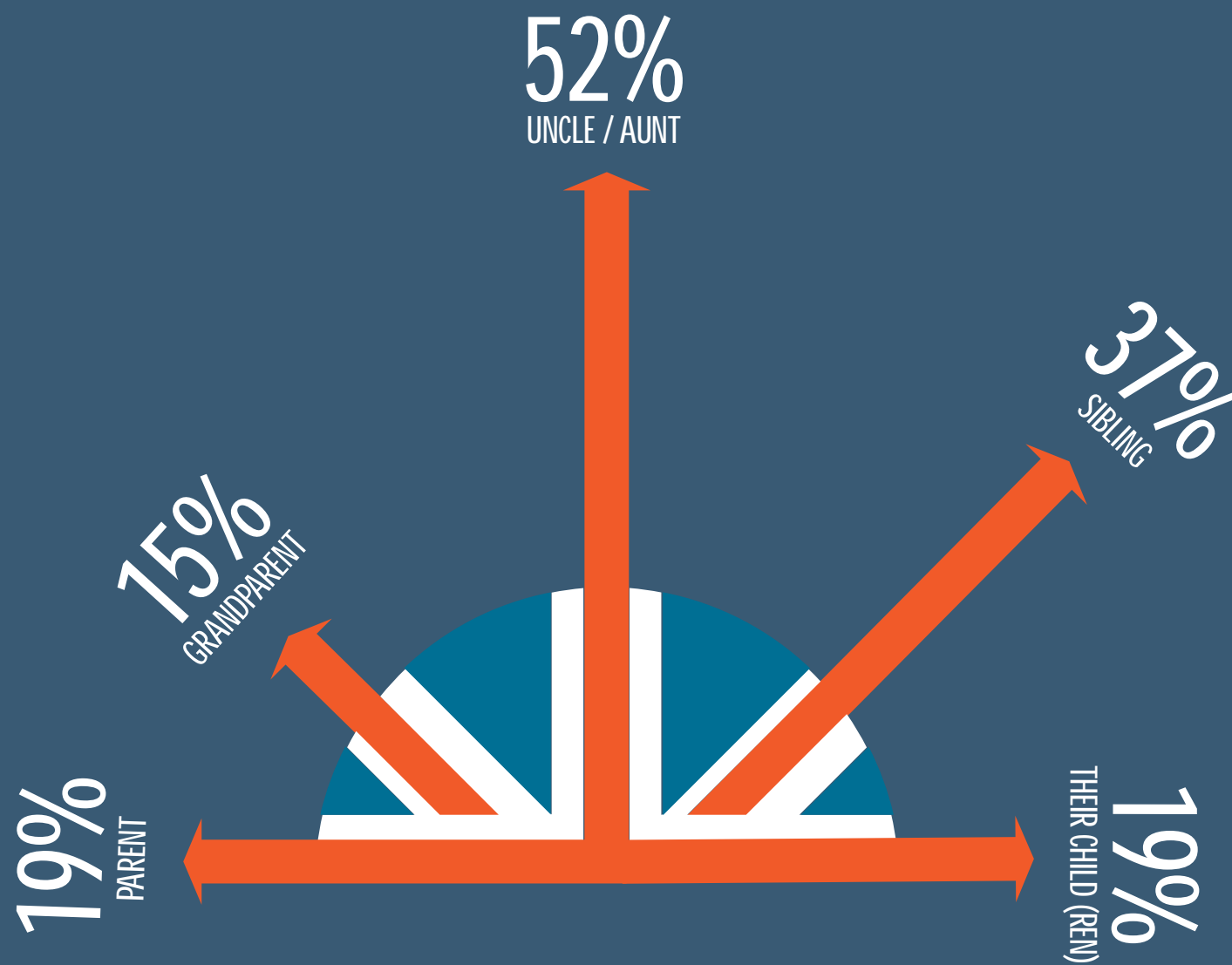
quasi-familial relationships with British god-parents, step-parents and foster-carers with several having British partners during their transition into adulthood and out of care, and almost all having close British friends.

10% of the cohort had been born in the UK.

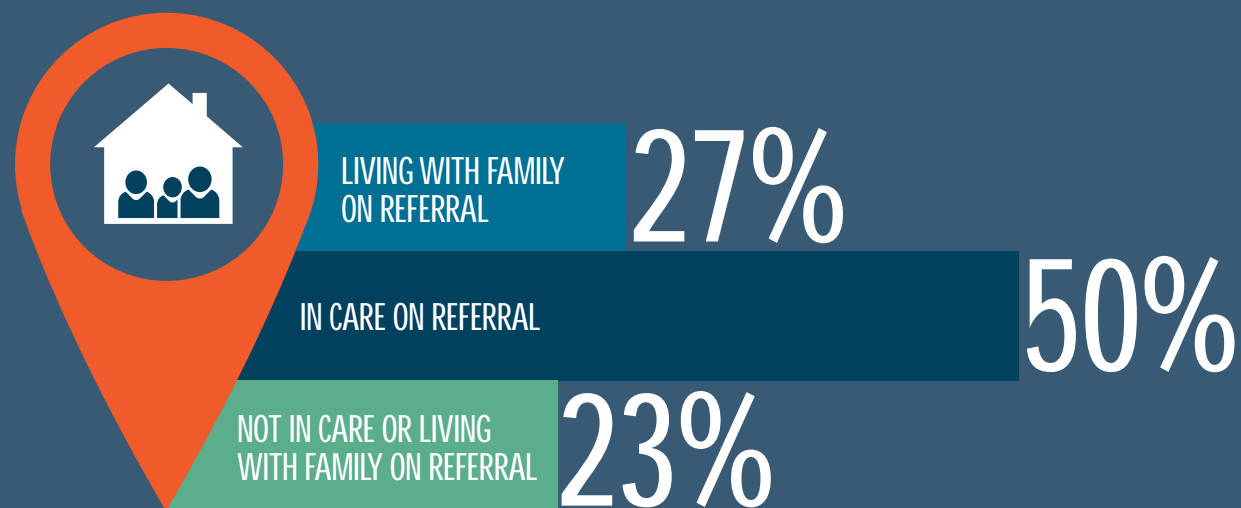
Most were British but were either unsure about this or did not have documentation to prove it, and as such were undocumented and unable to access the same rights and entitlements as their British peers without legal intervention. Lack of understanding of citizenship laws also meant that some CYP assumed they were already British but had not been told that they needed to formalise their entitlement to citizenship.



Ayesha is a Nigerian national who arrived in the UK with her mother aged about eight. Ayesha attended primary and secondary school in the UK, and was registered with a GP. Ayesha identifies herself as a real Londoner. London is the only place she has clear memories of living. Most of her childhood memories relate to her time in school in the UK, and playing and socialising in the neighbourhood she lived in. Anyone who met her would be unable to distinguish her from documented British young people in terms of accent, appearance and outlook. Until she discovered she had no basis of stay in the UK Ayesha self-identified as British. For her, the UK is home. Ayesha had limited information about her family in Nigeria. She recalled living with her grandfather, and believed that she had siblings in Nigeria, but she had not grown up with them and did not know them. The only information she had about her family came from her mother. Once she came to the UK her only family relationship was that with her mother. However the family started to settle and connect with their British community after arrival. Ayesha is now a mother to two (documented) British children. She works and raises her children without any financial support from their fathers, although the children do see their fathers regularly and Ayesha tries very hard to support contact with them. One of Ayesha's children has a congenital illness which makes her particularly vulnerable, and she requires frequent hospital care.



WHERE WERE THEY?



27% HOMELESS ON REFERRAL*



*THIS INCLUDES ALL THE 'NOT IN CARE OR WITH FAMILY' CYP, AND 2 OF THE CYP WHO WERE LIVING WITH FAMILY

Where was I sleeping on referral?

The lives of CYP at the time of referral were varied, unique and often chaotic. They were everywhere and nowhere at the same time. They were in local authority care, they were living with British family or community members – largely in precarious circumstances – they were sleeping on night buses or on our streets. All in all, it was very difficult to find one description that fitted the circumstances of each individual CYP. Many experienced multiple moves and placements prior to their identification and referral to our project. Although we tried to monitor moves in care placements, it proved incredibly difficult for CYP to explain where they had lived, and moved, during their childhood.

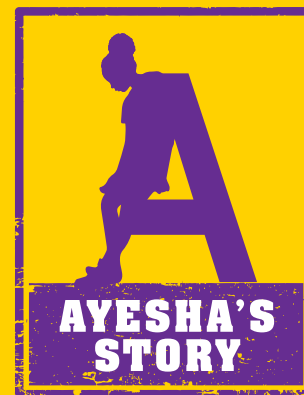
50% were in care on referral; including 3 sets of siblings who went into local authority care, initially separated but later housed together (following the intervention of our project).

27% were living with family on referral; including our youngest client, who was 5 years old on referral. He was living with his mother at point of referral following a period of foster care but there were grave concerns about her ability to parent him due to her mental health, and as such he was formally under the supervision of the Local Authority.

23% were neither in care nor living with family on referral

27% were homeless on referral

2 CYP were nominally living with British family members, but were in fact homeless on referral. They were some of the most vulnerable. One child with severe physical and mental disabilities was regularly refused entry into his home by his British family and forced to sleep on night buses. The other was forced to live with a British family member who had sexually abused her and had to leave that accommodation after she contacted the police for help.



Ayesha initially lived with her mother as a small child. She then spent some of her teenage years living with British friends and other British community members. Ayesha approached the local authority for help aged 16 but was turned away because she was told that she did not have immigration status and was therefore not eligible for their

services. This was the first time Ayesha learnt of her lack of a 'legal' right to live in the UK.

Why am I here?

47 of the 52 CYP were not born in the UK, and entered the country during their childhood in a number of ways, and in the company of a variety of people. Entering with, or coming to join family was unfortunately no guarantee of safety or of retaining or obtaining documented status. As this report will show, CYP are frequently hostages to the decisions of others; left to deal with the consequences of actions over which they had no control. These consequences include breach of immigration laws which may haunt the CYP for years to come, despite their lack of culpability for or awareness of the breach.

The majority of CYP were not involved in making the decision to come to the UK, nor were they included in the making of arrangements to travel. Some were trafficked to the UK for the purposes of exploitation or modern day slavery, some entered under the control of people smugglers, whereas others were brought here by family.

Although half of the cohort entered the UK with a family member, only 40% of those entered with a parent. As such, less than a fifth of the CYP were with their parents on arrival.

40% of our cohort entered the UK unaccompanied or with a stranger. Our experience in working with migrant and refugee CYP indicates that those who entered the UK unaccompanied or clandestinely are significantly more likely to have experienced exploitation and abuse during their journey to the UK and many are likely to have legitimate claims for international protection. Two of our cohort were trafficked into the UK by strangers, and were victims of exploitation before and after entry to the UK: one exploited sexually, and the other as a domestic slave. Another has no idea about his entry to the UK because he was trafficked when he was so young that he was unable to remember any detail at all.

Separation from or loss of a parent is a significant life event for a child, and the implications for the CYP will be felt for years to come. They are likely to impact upon the child's development and ability to attach and form relationships, their resilience, and their mental wellbeing².

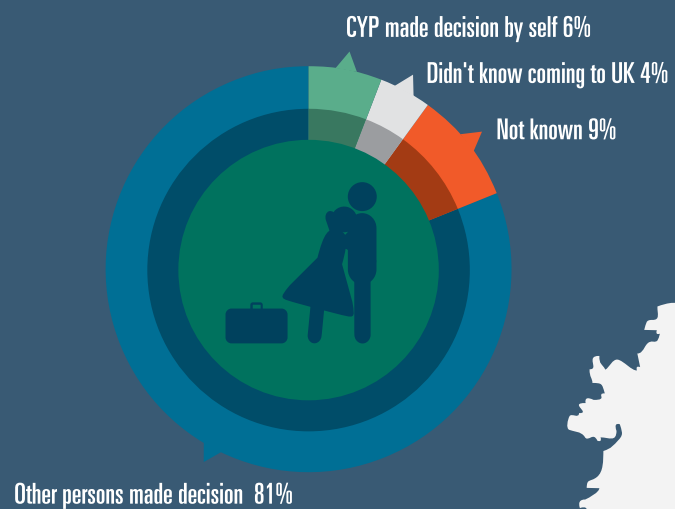
Over a third of the CYP in our cohort had entered the UK lawfully, and therefore had, at some time, been documented. However, this did not offer protection against becoming undocumented in the future. As explained, CYP had little idea about the arrangements made for them to travel to the UK.

As in the case of an average holidaying British child who would be unlikely to explain their basis of stay in a foreign country or visa arrangements made or not made by adults making decisions on their behalf – the majority of CYP had little concept of immigration control or the need to obtain visas or regularise their status following arrival. CYP are therefore, to an extent, disadvantaged in that their young age has sheltered them from being aware of or engaging with the formalities of UK immigration control. What separates this group of CYP from others who enter and leave the UK is life events over which they have had little or no control.

Almost a third knew nothing at all of the arrangements made for their entry to the UK, largely as a result of how young they were at the time of arrival. Separation from the adults with whom they entered meant that the circumstances upon entry remain vague, unclear or unknown. Some CYP within this group had been trafficked, or were suspected of having been trafficked. One child included in the group marked 'other persons made the decision' in the 'Decision to Travel' graphic was a European national who had been dependent upon parents exercising the right of free movement to the UK. Questions of visas and immigration status had never occurred to her.

² Hek, R (2005) The Experiences and Needs of Refugee and Asylum Seeking Children in the UK: A Literature Review, p.29. DfES research report RR635.
Stanley, K (2001) Cold Comfort: Young Separated Refugees in England. Save the Children.

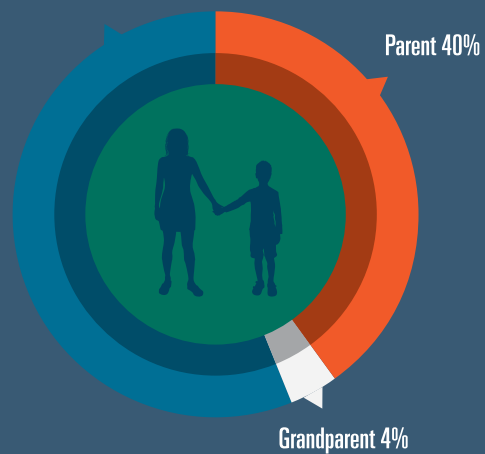
DECISION TO TRAVEL



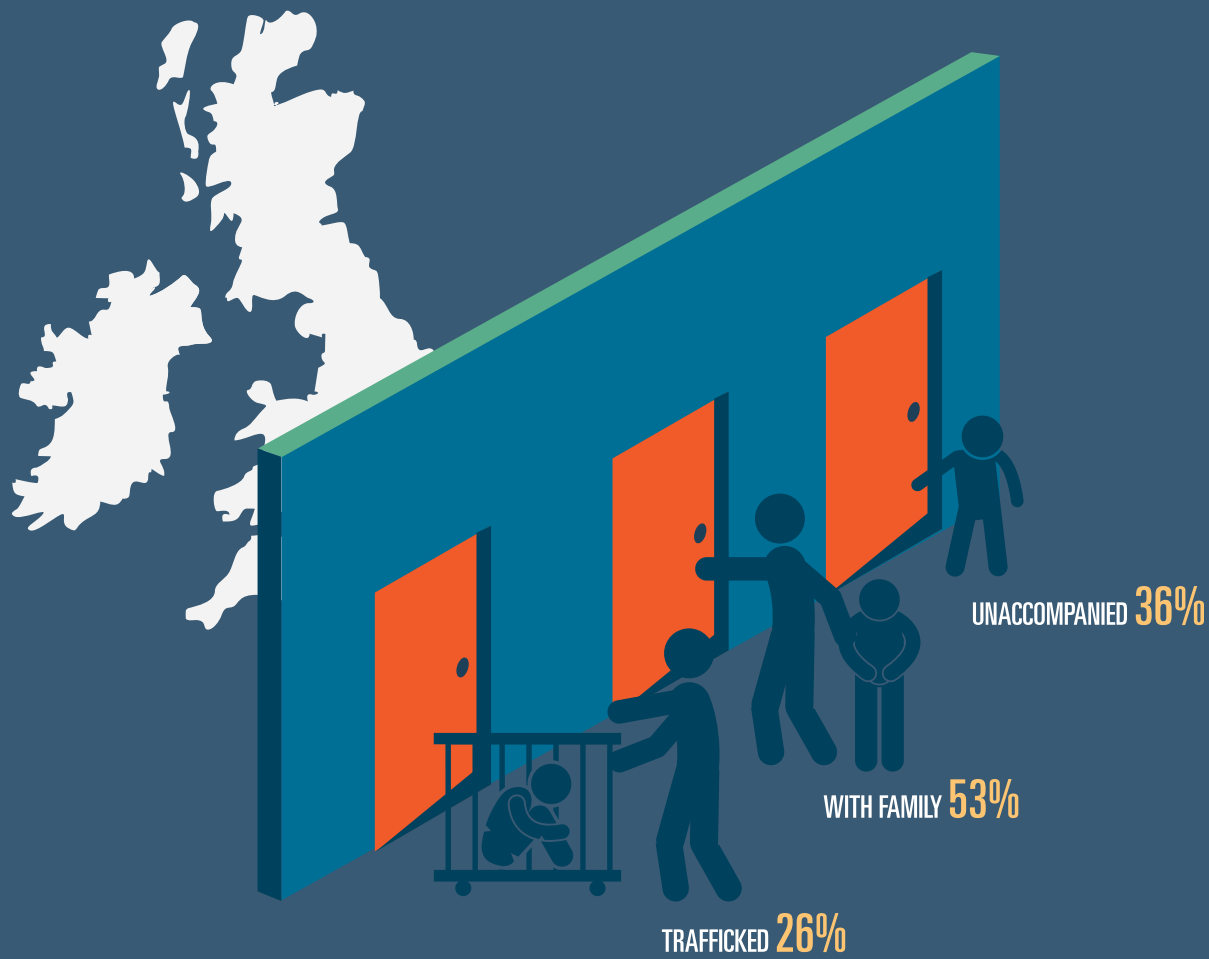
85% DID NOT CHOOSE
TO COME TO THE UK

WHO ENTERED WITH

Other family / believed family 56%

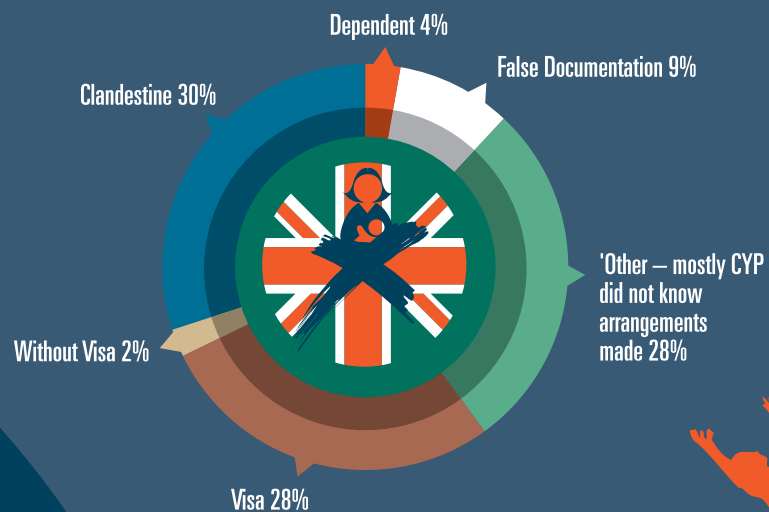


% CYP WHO ARRIVED
WITH FAMILY



DOCUMENTED ON ARRIVAL

30%
ENTERED THE
UK THROUGH
CLANDESTINE MEANS



**% CYP NOT
BORN IN THE UK**

32% ENTERED THE UK
LEGALLY BUT BECAME
UNDOCUMENTED LATER

CASE STUDY

FEMI

Femi was found by police aged 8, alone in a house with a baby who was not related to him. There were no adults present and he was effectively abandoned. Femi has no idea about his identity or nationality, let alone what arrangements were made to bring him to the UK.

During project legal investigations it transpired that 4 CYP entered the UK using false documents and a third entered the UK clandestinely. All were either brought into the UK by traffickers or their illegal entry facilitated by 'people smugglers'. The use of threats and physical violence was commonplace, with smugglers creating an atmosphere of fear and complete obedience amongst those smuggled into the UK.

Who said I had immigration problems? I'm not a migrant!

CYP often cannot, and do not, have the ability to self-identify and diagnose their own immigration status. Their awareness and self-identification are dependent upon their developmental stage, their life experiences, and the adult support that they are able to access. For them, identity and status are bound up in emotion and their environment, rather than in rules and regulations. They want to be like their peers, and assume that they are. They do not have the knowledge or capacity to navigate this journey alone and will often rely on professionals supporting them.

Self-identification by CYP

Self-identification was frequently inaccurate amongst our cohort of CYP. Many CYP simply do not identify as 'im/migrant' or 'foreign'. 90% of the CYP in our cohort who self-identified as 'British' were not in law British citizens.

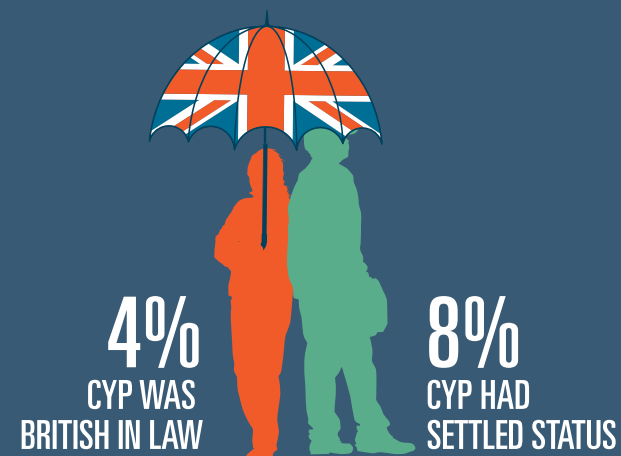
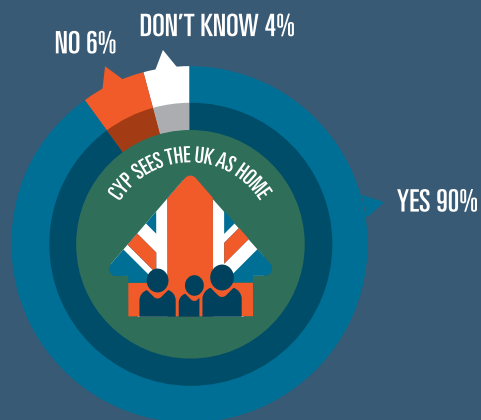
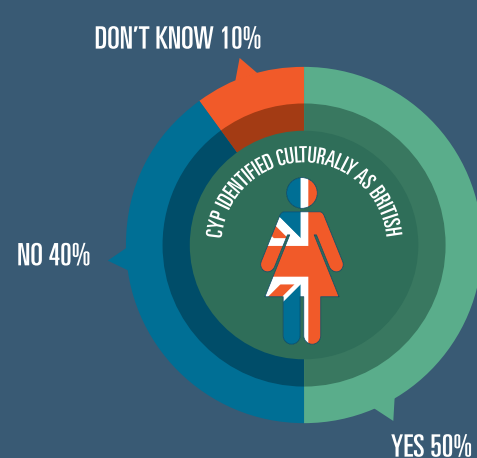
For CYP, questions of immigration status were rarely considered, and for those who had little memory of living elsewhere, were irrelevant. Others did not feel the need to engage with their immigration issues. It was not unusual for CYP in families to be unaware that their family had immigration problems. CYP who remained with their families during the transition into adulthood were often in the dark as to their true immigration history and status until a point of crisis.

This is likely to be similar for many CYP with long residence in the UK, and close connection with British family and friends. There is a strong perception that those born in the UK 'must' be British, although this has not been the case since 1983³. CYP who do not remember living anywhere but the UK cannot conceive that they would be considered to 'belong' elsewhere. CYP are, although identified as 'migrant', unlikely to be able to travel outside the UK due to lack of documentation, and also lack of funds. Ironically, this symptom of undocumented status actually reinforces the CYP's bond with the UK.

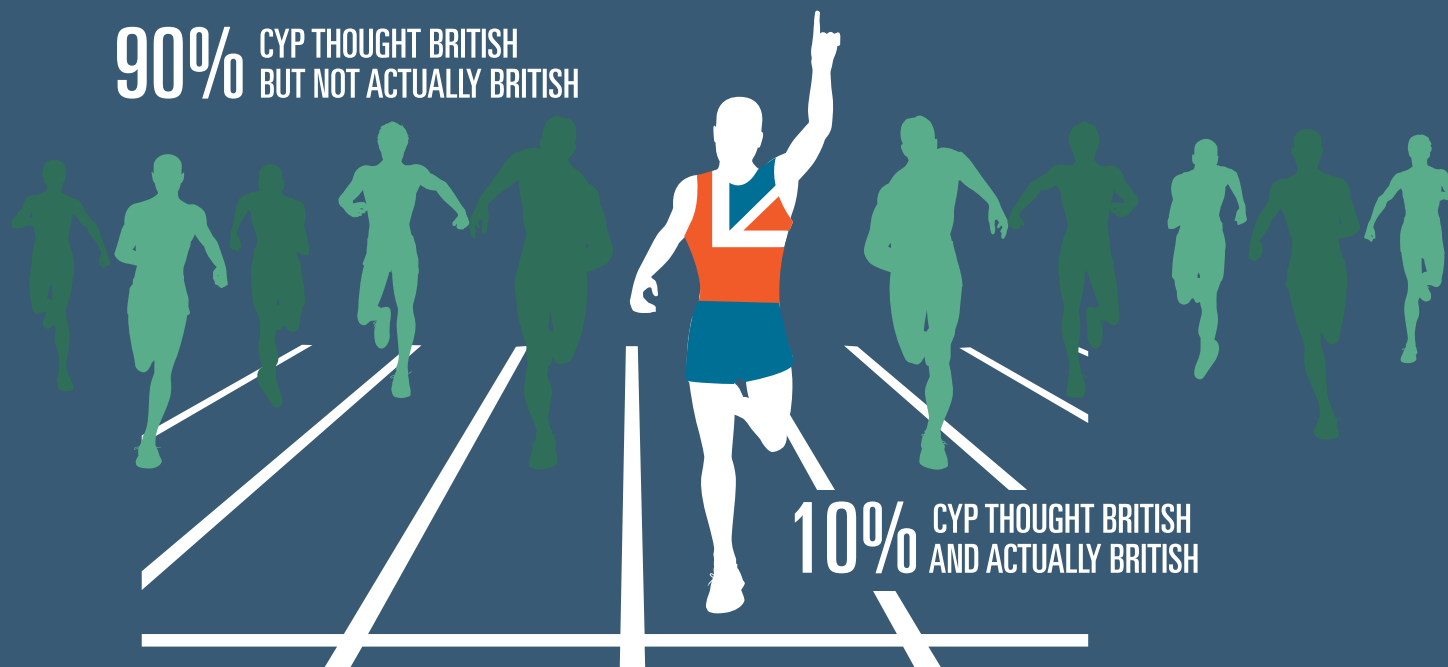
For many, the point at which they discovered that they had serious immigration problems related to their immigration status coincided with a time of crisis or a watershed moment in their lives. For instance, CYP who suffered a family breakdown or were forced into homelessness discovered that they were unable to access social housing, or private rental accommodation if over 18 years due to lack of evidence of their right to remain in the UK. Other CYP discovered their lack of permission to remain in the UK when

³ The British Nationality Act 1981 came into force on 1/1/83 ending the application of jus soli (acquisition of nationality by birth on British soil) in the UK

SELF IDENTIFICATION AS BRITISH



90% CYP THOUGHT BRITISH
BUT NOT ACTUALLY BRITISH



10% CYP THOUGHT BRITISH
AND ACTUALLY BRITISH

*% of cohort of 52

HIDDEN

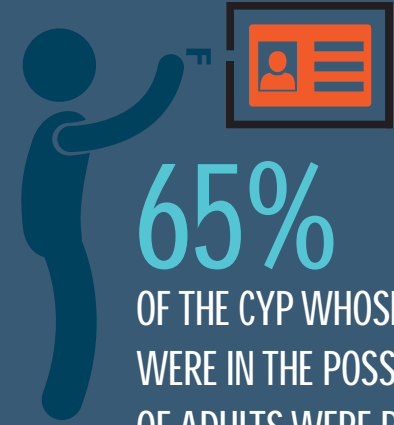
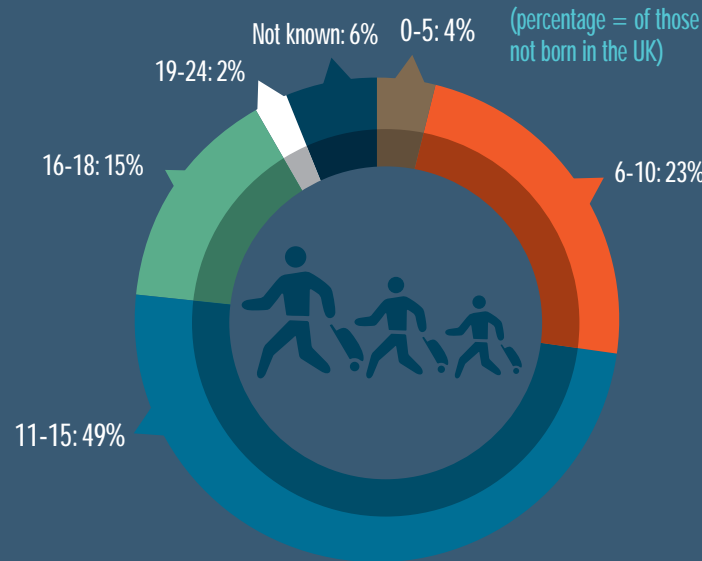


10%
CYP BORN
IN THE UK (5)



MiCLU
Migrant Information and Community Support Unit

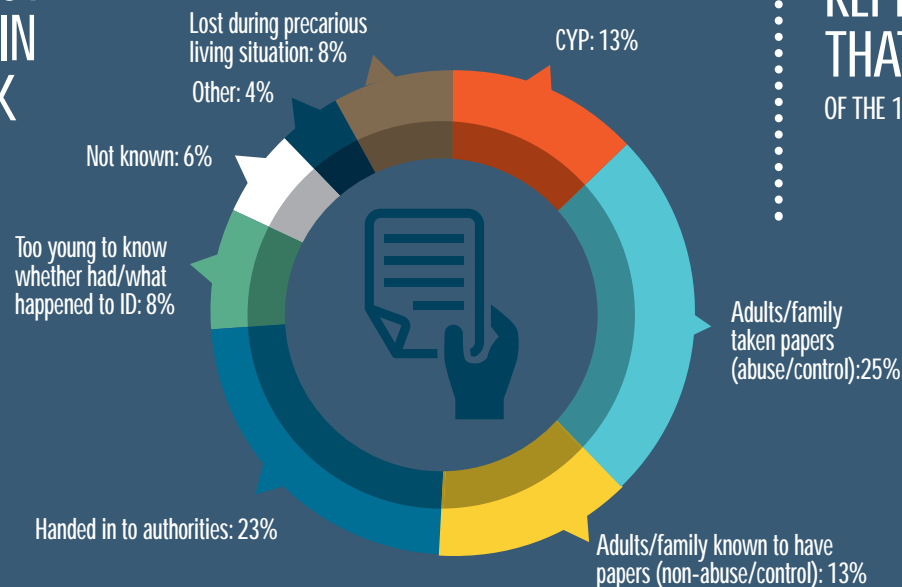
AGE ON ARRIVAL TO UK



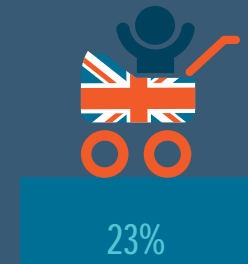
65%
OF THE CYP WHOSE DOCUMENTS
WERE IN THE POSSESSION
OF ADULTS WERE PREVENTED
FROM HAVING ACCESS TO
THEIR PAPERS AS A METHOD
OF ABUSE OR CONTROL

90%
CYP NOT
BORN IN
THE UK

ACCESS TO YOUR OWN IDENTITY DOCUMENTS



25%
OF THE CYP WE
REPRESENTED BELIEVED
THAT THEY WERE BRITISH
OF THE 13 THAT BELIEVED THAT THEY WERE BRITISH:

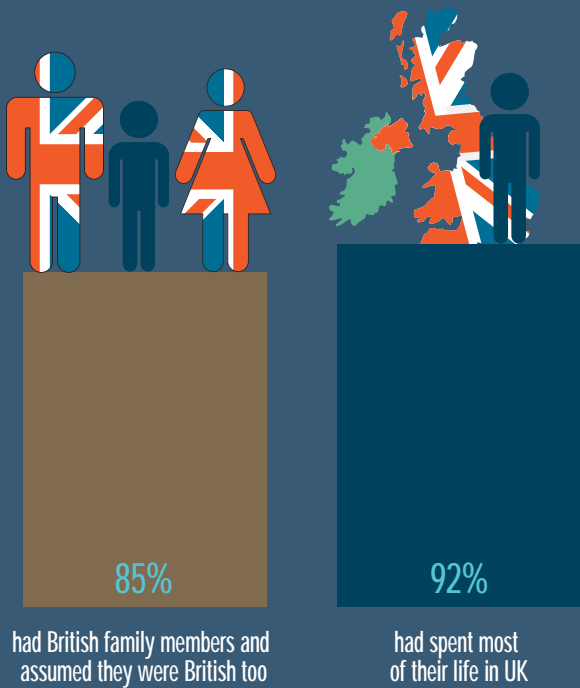
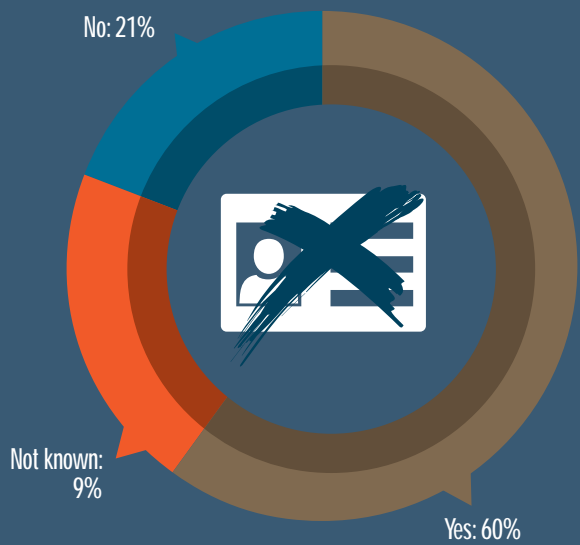


because they were
born in the UK



because family members had
told them they were British

HAD CYP SEEN ID WITH THEIR PHOTO ON IT?



44% OF OUR COHORT WERE IN CARE ON REFERRAL

LA did not identify immigration problem in 30% of cases

There was a delay in the LA identifying the immigration status problem in 61% of cases

The LA was aware of the immigration problem but failed to access legal support in 65% of the cases (some overlap with cases where identification was delayed)



2 clients had other reasons

they applied to university with their peers and their applications for Student Finance were rejected thereby thwarting their ambitions to progress to university.

All but 3 of our cohort were referred to us via referral agencies. Of the two CYP who self-referred to our project, one identified himself as having a housing issue, and was entirely unaware that his immigration status was at issue. The second was aware that her lack of documented status was the root of her difficulties, and sought a referral to address this. However, her overwhelming focus on referral was the fact that she was 20 weeks pregnant and had nowhere to live and no means of feeding or supporting herself. The third CYP was identified by our youth advocate outside local authority offices where she and her young children had been turned away and refused accommodation. The youngest child was British, but other members of her family were not, and the local authority had therefore refused to accommodate them, leaving them street homeless. Our advocate therefore made an immediate referral for joint immigration and housing advice to the project.

Several of the CYP we worked with were trafficked children who had little contact with the outside world. They were kept in exploitative situations as sex workers or domestic slaves. Where they did have some contact with others, this was mediated through their traffickers, and false names were used. As such, those of our cohort who were trafficked had varying levels of understanding of their own identity.

Of the cohort 2 of the 52 CYP did not know their nationality: one being a stateless Palestinian, and the other having been trafficked as a very small child. The second child didn't even know his full name.

Being a victim of abuse or coercion was also found to be a significant factor in whether a CYP had access to their documents or not. Whilst it is normal for adults to take charge of important

formal documents belonging to children in their care, in our cohort – of the CYP whose documents were with adults or family caring for them – 65% of the CYP were prevented from having access to their papers as a method of abuse or control.

Age on arrival to the UK is also an important factor in becoming undocumented. The vast majority of the CYP in our cohort arrived in the UK before they were 15. As such, their level of awareness of immigration issues, and whether they had identity documents was limited, and they were unlikely to have control over such formal documents. Being a child was also relevant, as it was less likely that they would bump up against the ‘hard edges’ of requiring identity documents or being able to prove that their presence in the UK was lawful. We also found that those who were granted permission to remain in the UK for a limited period (rather than permanent stay) when they were teenagers or younger were less able to grasp that their permission to remain was time limited, and that there was no guarantee of further permission to remain being granted when that period of leave to remain ended. As a result of their age and developmental stage their ability to identify or engage with the consequence of not being allowed to remain permanently was very limited⁴. Without support to plan for the future and understand the implications of their time limited permission to stay in the UK, they were simply unable to do so. It is therefore essential that those working with and caring for CYP subject to immigration control have some understanding of immigration control and the laws that apply to them, but more importantly that they understand the need for the CYP to receive specialist immigration advice that meets their specific needs as lone CYP. It is also essential that those caring for CYP attend appointments with the CYP, engage with the advice provided and reinforce this with CYP, and make formal records in their care plans as appropriate so that such vital issues can be followed up at the appropriate time, and so that others working with the CYP are aware of this requirement.

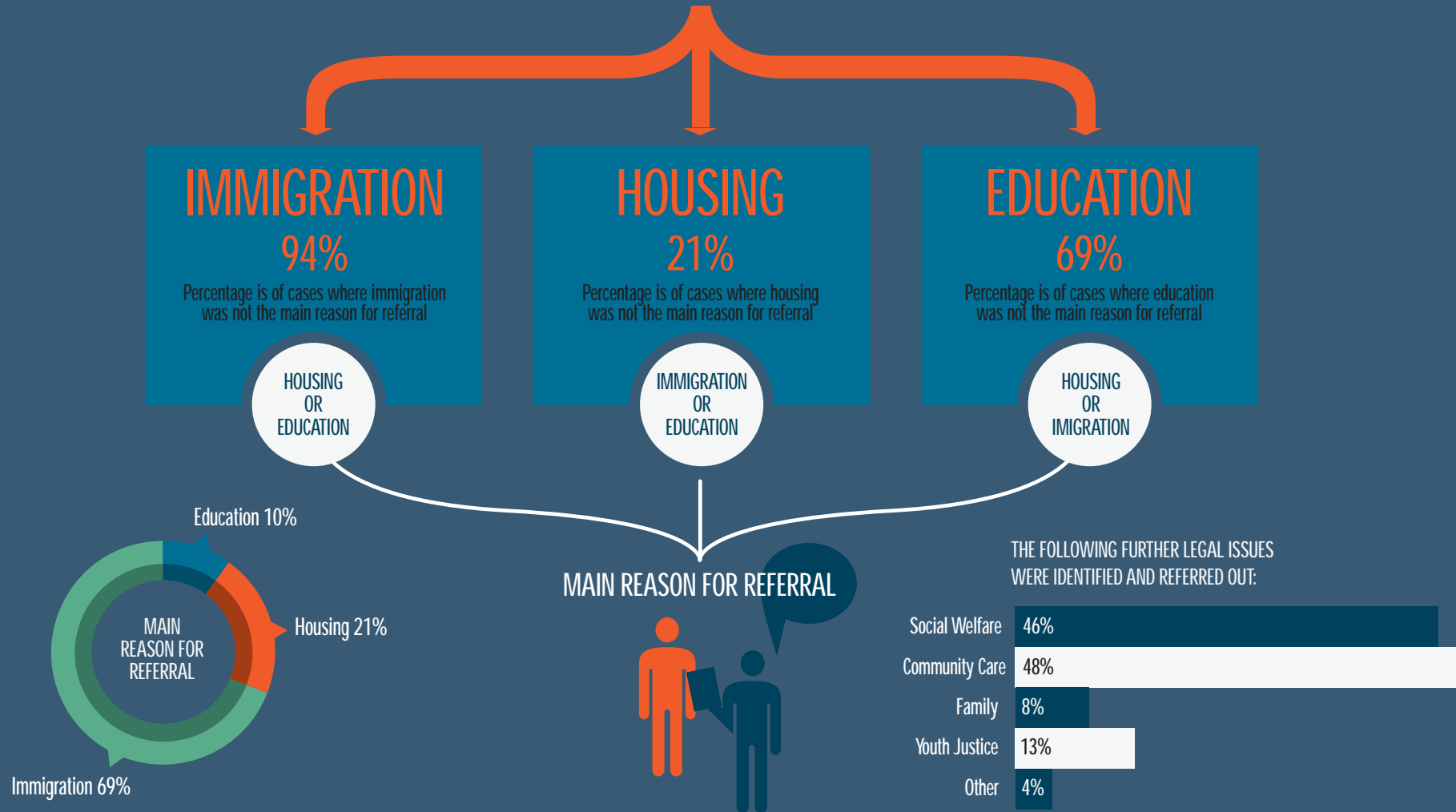
Identification by professionals

Issues relevant to the CYP’s immigration status were not easily or correctly identified by the adults who they came into contact with. Our project deliberately chose to work mainly with CYP who were referred to us by agencies with experience of working with this group. The range of agencies is illustrated in the accompanying graphic. In only a third of the cases referred to us, was the immigration issue correctly identified. Referrers included lawyers (in other legal disciplines) with little experience of complex immigration laws. This is testament to the complexity of the immigration laws in this country, and the difficulty that non-specialists have in understanding them.

As an example of this, one of our clients, Robert, was referred to us in order to make an asylum application. Robert had initially made an application for permission to remain in the UK on the basis of his family life (under Article 8 of the ECHR) with his British aunt and cousins in the UK who had cared for him and assisted him in coping with his very severe mental health problems. That application was made by his previous representatives and was refused by the Home Office who asserted that the application made by Robert did not meet the requirements of Article 8, and in fact disclosed a risk of treatment contrary to Article 3 of the ECHR (the prohibition on torture, inhuman and degrading treatment and therefore falling under the umbrella of an ‘asylum’ claim). Robert was informed that if he wished to raise an application on that basis he would need to apply for asylum. We met with Robert and assisted him in making an application for international protection through the asylum system, although we advised him that his need for medical treatment, and the support provided by his British family were likely to be the strongest elements of his claim. The Home Office refused the asylum application and granted Robert leave to remain in the UK on the basis of Article 8 of the ECHR. With circular logic of this kind

⁴ Matthews, A (2014) What’s going to happen tomorrow? Office of the Children’s Commissioner for England www.childrenscommissioner.gov.uk/sites/default/files/publications/What's%20going%20to%20happen%20tomorrow.pdf

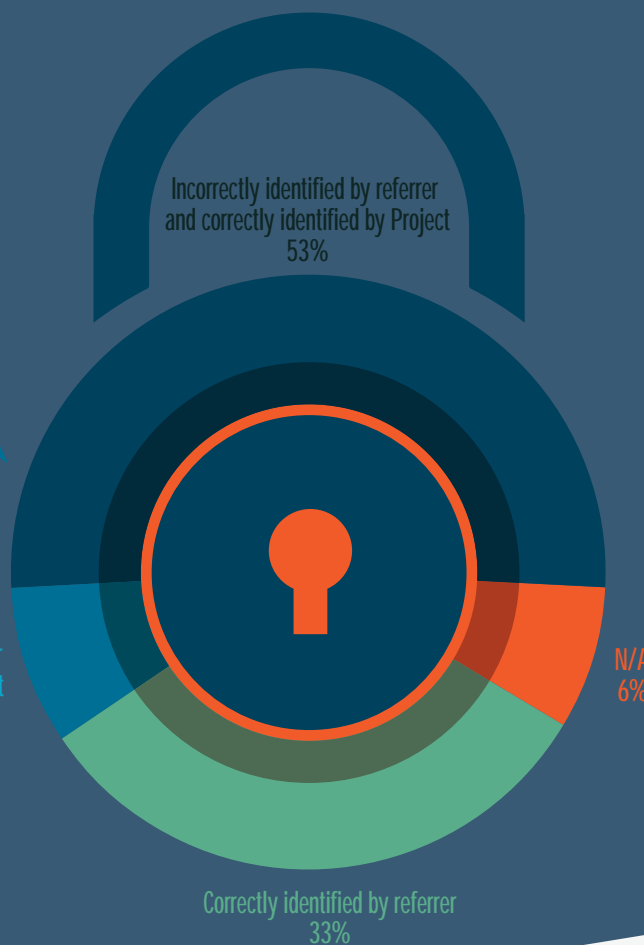
ADDITIONAL LEGAL ISSUES IDENTIFIED BY OUR TEAM



30 OUT OF 52 CYP
DID NOT
HAVE A CORRECT
IDENTIFICATION OF THEIR
IMMIGRATION PROBLEM
ON REFERRAL



Unidentified by referrer
so identified by project
8%



IF THE CORRECT
IDENTIFICATION
IS MADE THE
CHANCES OF SUCCEEDING
IN REGULARISING STAY IS
GREATLY INCREASED



it is easy to see how unaccompanied and separated CYP⁵ and non-specialists struggle to resolve these issues.

Not all of the CYP who were referred to our project were initially referred for immigration advice and representation. Even where legal problems arose it was not always identified that the source of the problem was the CYP's immigration status. In fact some CYP were completely unaware of their 'undocumented' status – and only discovered this fully upon accessing our services. Discovery of this information for the first time proved incredibly difficult for CYP to cope with alone and a CYP-centred approach was vital to help ease emotional and mental distress. Reassurance and guidance from support agencies and carers is vital during these life-changing discoveries but far too often CYP were left to attend legal appointments with us alone.

Other CYP accessed advice and representation because they had been refused a college place, or Student Finance, and were shocked to discover that they had no permission to remain in the UK, or that the permission they had was not permanent and was not sufficient to entitle them to be treated as Home Students for higher education and finance purposes.

Professionals incorrectly identifying the CYP as undocumented

One YP who was forced to flee her family home because of allegations of domestic violence was told by the Local Authority she approached for help that she was not entitled to housing in part because of her immigration status. That YP in fact had documented status, but prejudicial assumptions were made about her because of the limited amount of time she had spent in the UK, and her language barriers. Again, the initial referral was for housing advice, but immigration specialist involvement was required to address the allegation that the YP had no permission to remain in the UK, and

thus no right to assistance with accommodation. CYP in our cohort who were very obviously (perhaps due to limited English skills, or coming from more recently arrived communities) from immigrant backgrounds but were not in fact undocumented experienced difficulties in accessing services due to prejudicial assumptions about their immigration status, or lack of understanding of immigration laws.

A particular issue that affected 3 CYP in our cohort was the inability of statutory agencies to understand CYP had been granted permission to enter the UK permanently. This form of leave to remain is known as 'Indefinite Leave to Enter' (ILE) – for a full explanation of this form of leave to remain please see glossary.

CASE STUDY

ANAB

Anab was referred to our team because she was homeless following a family breakdown and allegations of domestic violence. When she approached the local authority for help she was told that she was not entitled to housing in part because of her immigration status. It was only at this point that she discovered that, due to a family breakdown, her parents had deliberately left her off the family's application for Indefinite Leave to Remain, and her refugee status had lapsed. As such, despite spending 5 years in the UK with documented status, she had become undocumented without being aware of this.

⁵ A child without parental support

In 3 cases in our cohort CYP had entered the UK with ILE, and statutory agencies refused to allow them to access public funds or social housing. Refusals in all cases were on the basis that the CYP had no leave to remain because their ILE had 'expired' as they approached the Local Authority after the 'valid until'⁶ date on their visa. This was despite all 3 CYP travelling within the validity window, and therefore having Indefinite Leave to Enter⁷. Legal intervention was required in order to address this issue, and then further obstacles arose when 2 of the CYP were told that they were not entitled to benefits or social housing as their refugee Sponsor had signed an undertaking saying that would not access these services. This was not true in either case. The effect on the CYP concerned

was that they were refused accommodation and any access to benefits until Project intervention forced the agencies concerned to reconsider, and provide evidence as to their allegations in relation to the validity of the visas and the existence of sponsorship declarations.

Why am I alone?

What were the care arrangements for CYP following arrival to the UK (those not born here) and why did they move into lone and undocumented status?

⁶ There is a detailed explanation of this phrase in the glossary in relation to ILE

⁷ Indefinite Leave is, by very definition, indefinite and cannot therefore expire, and can only be lost via formal revocation, or due to absence from the UK from a continuous 2 year period

MOBILITY



Many of the CYP led lives which were characterised by uncertainty and instability. The arrangements made for their care were not always reliable, and once again they were hostages to the decisions and agendas of others. Mobility was a significant factor both in causing undocumented status (because documents were lost, incomplete, or held by others) and in perpetuating it (because CYP never remained in one place long enough to have the time and space to identify their issues or to seek assistance with them).

Our findings show that due to the complex histories and vulnerabilities of the CYP, information on their family and immigration histories can be difficult to uncover without legal intervention and investigation. These complexities necessitate that those with care responsibilities for CYP access specialist legal advice for CYP as soon as an immigration problem has been uncovered.

The data on pages 44 and 45 has been collated following our legal intervention, investigations and data analysis to provide an overview of their profiles and journey into 'undocumented' status at this stage. Further details will be unpacked in later sections.

The majority came with or joined family, with the next largest grouping being those that went straight into the care of the local authority in whose area they lived. The CYP's experiences revealed examples of good and bad practice, which can be symptomatic of the confusion of professionals when interacting with CYP.

Children with families

Although a significant proportion of our cohort entered the UK with family members (though 40% of these were not with parents), they did not all remain with their family. There were a number of reasons why CYP became separated from their immediate or extended family following arrival. Many of these are important factors in

establishing just how vulnerable separated CYP are, and the added obstacles they face in regularising their stay in the UK.

It is clear from the range of reasons for separation from their family, that it was not just the fact of separation itself that disadvantaged the CYP we worked with, but also the fact that the reasons for or methods of separation themselves added a further layer of damage and vulnerability to these CYP. These include the death of a parent, forced separation by the immigration authorities because of immigration detention or forced removal of the family member from the UK, abandonment by their family, and abuse, exploitation and/or neglect.

Private fostering

In the UK private fostering arrangements are supposed to be registered with and overseen by local councils but they frequently are not.⁹ While these private arrangements can be positive for many children, there are situations where inadequate supervision is in place and children are hidden, abused and exploited.¹⁰ Lest we forget, Victoria Climbié¹¹ was a child subject to immigration control (likely undocumented due to false information used to facilitate her arrival to the UK) who was murdered by extended family members whilst in a 'private fostering' arrangement.

In relation to our cohort, almost a third were in a private fostering arrangements, many with British family members, at some point prior to their referral or on referral to our project. Of these private fostering arrangements, 80% broke down.

In general, the experience of being in a private fostering arrangement extended the period for which a CYP remained undocumented, as it delayed interaction with formal care services in which it was more likely that the CYP would be identified as being

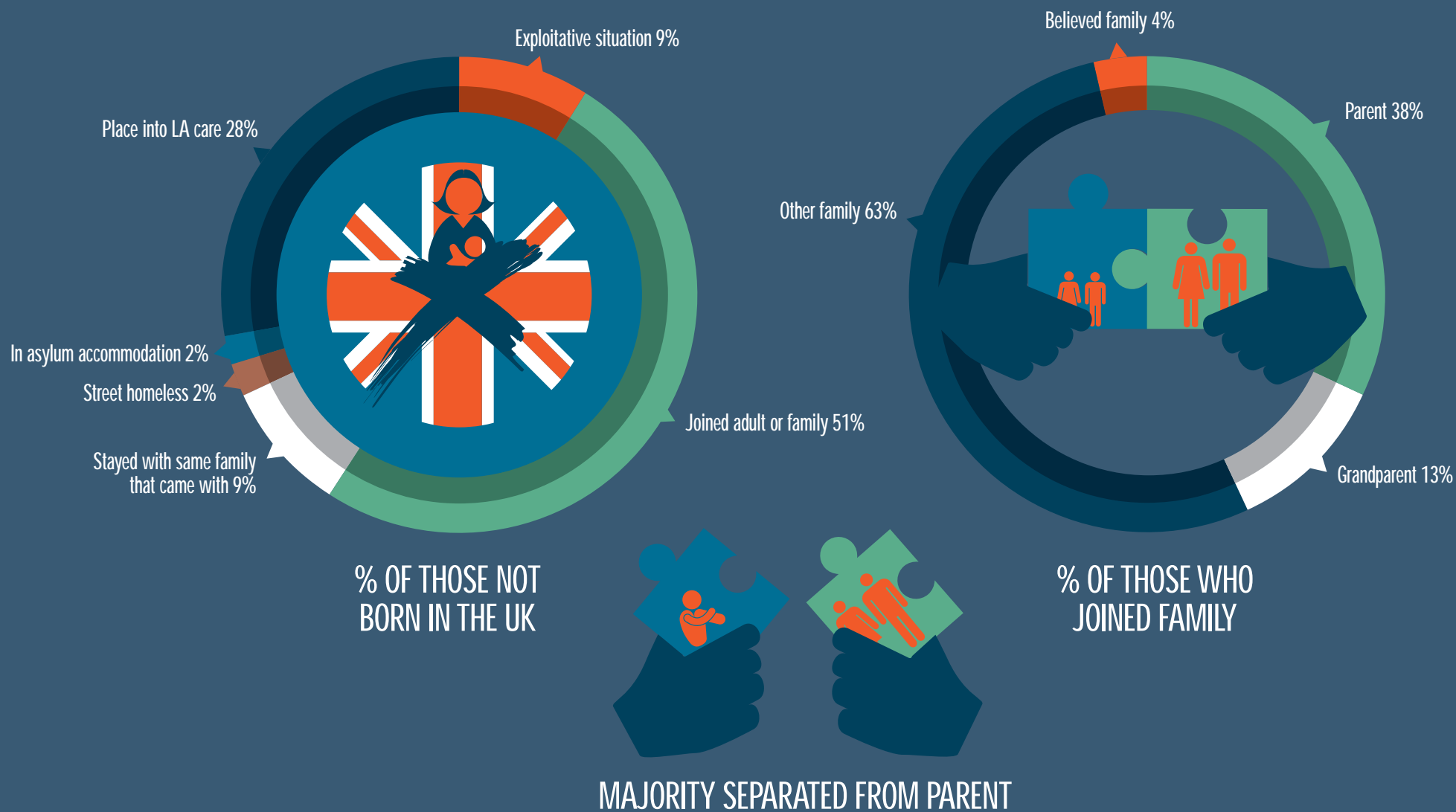
⁸ It is important to note that, of those who were accompanied by or joining family, the majority were with family other than their parents and had therefore experienced separation from parents prior to arrival to the UK. Data was not recorded as to the point at which the CYP was separated from their parent.

⁹ Shaw, C and others (2010) Research into private fostering. Research Report DCSF-RR229. London: DCSF.

¹⁰ Laming, H (2003) The Victoria Climbié inquiry: report of an inquiry by Lord Laming. Norwich: TSO.

¹¹ The tragic and horrific death of Victoria Climbié led to a government inquiry. The findings of the Inquiry (the Laming Report) *ibid* was damning, not only about individual practice failings, poor or non-existent inter-agency working but also the lack of focus on the child, Victoria, in social care practice. The inquiry and following reports paved the way for the UK government to enact the Children Act 2004

CYP'S SITUATION IMMEDIATELY AFTER ARRIVAL

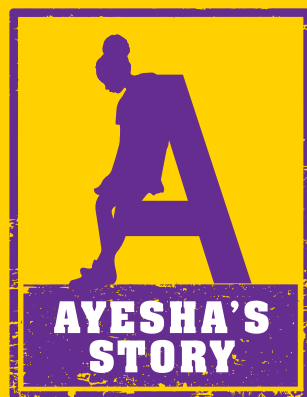


undocumented, even if an accurate assessment of their immigration situation was not made.

The CYP in our cohort who were in a private fostering arrangement, were all victims of abuse. For some of the CYP the abuse took place within the private fostering setting: sexual abuse, rape, being used for benefit fraud or domestic servitude. For others, a private fostering arrangement represented an escape from abuse, a safe haven, or a brief respite from being undocumented and unprotected. All, however, spoke of being aware that they were not a 'proper' family member, and of the financial burden they placed upon those who were caring for them, as private fostering arrangements do not attract local authority funding, even when properly supervised. The result was that the vast majority of the private fostering

arrangements broke down, returning CYP to homelessness, destitution, and risk.

In a number of private fostering cases, the private foster carer or the CYP themselves approached the local authority with a view to obtaining support to prevent the breakdown of the arrangement. In each case the Local Authority demonstrated a lack of will to engage with the issues, citing the CYP's immigration status as relevant to this, and in one case advising the CYP (aged 15) that they had no duty to assist her, and that she had a responsibility to identify a suitable alternative private fostering arrangement for herself. This was unlawful as there is no difference in the obligation owed to assist a child in need who is in a private fostering arrangement, than that owed to any other child in need (migrant or otherwise).

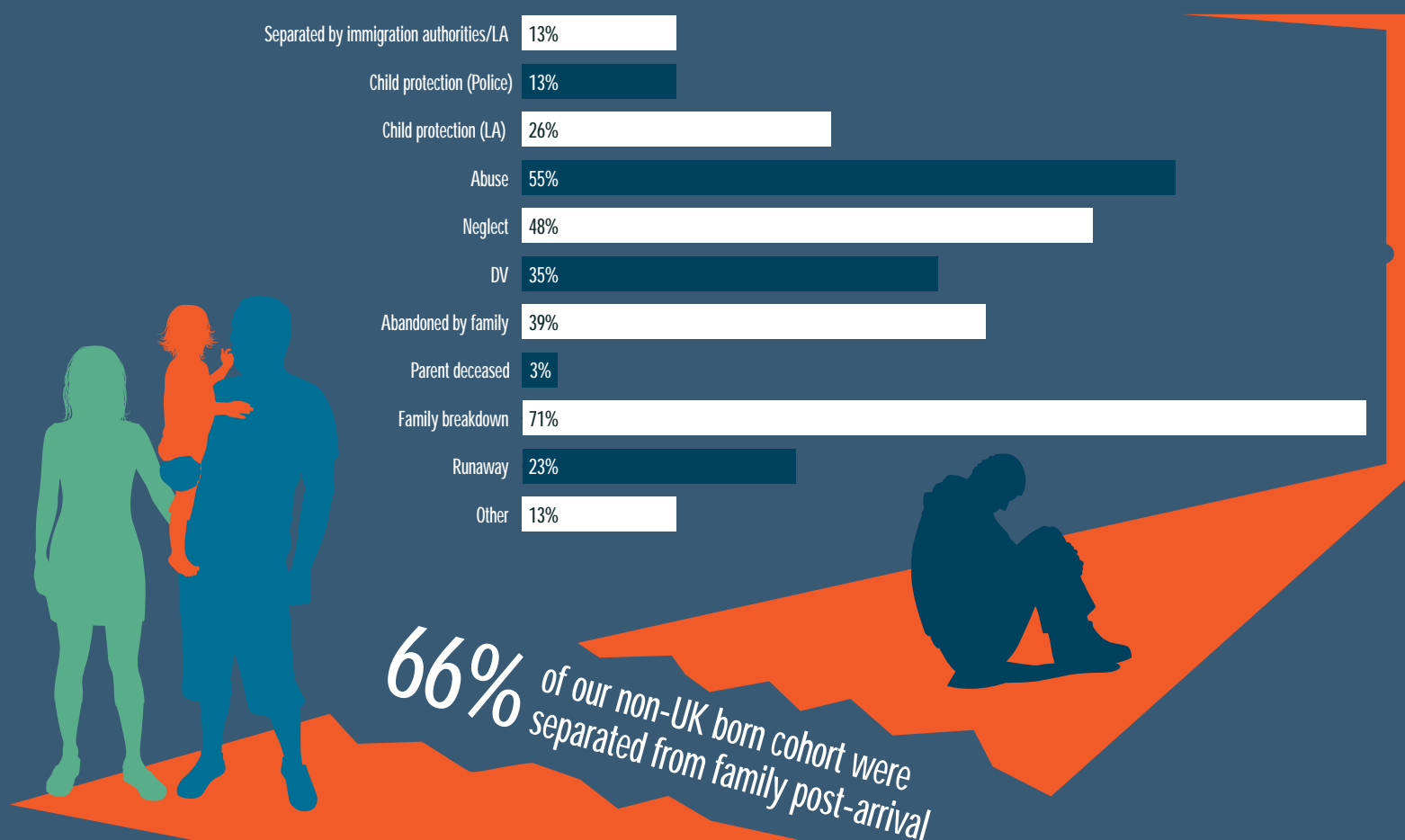


How did Ayesha get separated from her mother?

Ayesha and her mother had a difficult relationship. They struggled as Ayesha identified as a British child, and behaved in a similar way to her British peers, and expected to be granted the same level of freedom that they experienced. Ayesha's mother, who had been raised in Nigeria, had a different view and felt that Ayesha was disrespectful and out of control. When Ayesha was about 15 her mother announced that she would be returning to Nigeria for a short holiday and asked the mother of one of Ayesha's friends who was a British national if Ayesha could stay with them for a couple of weeks. Ayesha's mother never returned from her holiday, abandoning her daughter in the UK. After this Ayesha remained with her friend's family in what was effectively a private fostering arrangement.

Ayesha was deeply affected by the abandonment by her mother, and her behaviour deteriorated. At the same time, relationships with her friend's family were becoming strained and Ayesha felt keenly aware that she was unwelcome and a financial burden. Eventually Ayesha's problems spiraled, she was expelled from school, fell out with her friend's mother, and she and her friend Jane ran away from 'home'.

CYP WERE SEPARATED FROM THEIR FAMILY AFTER ARRIVING THE UK FOR THE FOLLOWING REASONS:

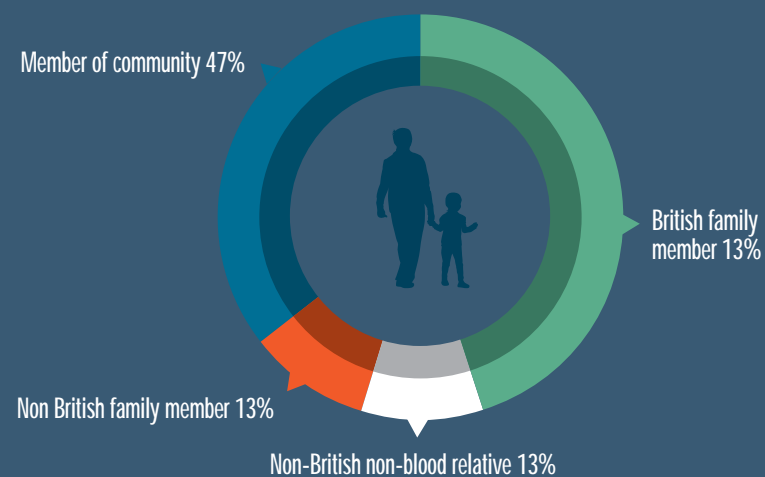




29%
OF OUR COHORT
WERE IN A PRIVATE
FOSTERING
ARRANGEMENT
AT SOME POINT.

OF THOSE
80%
OF THE PRIVATE
FOSTERING
ARRANGEMENTS
BROKE DOWN.

OF THE CYP IN PRIVATE
FOSTERING ARRANGEMENTS,
THOSE WHO CARED FOR THEM WERE:



Interaction with the care system

Over 80% of our cohort were accommodated by a Local Authority at some point in their lives. However, interaction with the care system was complex and multifaceted, and our cohort faced a number of difficulties in accessing and maintaining services.

Well over half of these had experienced 3 or more moves before being accommodated by a Local Authority. It is likely that even after being accommodated by a Local Authority CYP probably experienced further moves, although this was not monitored as part of the data for this report.¹²

The experience of our cohort is that the earlier a CYP was accommodated by a Local Authority in their lives, the fewer moves they experienced. 13% of our data set were accommodated by a Local Authority under s.17 of the Children Act (e.g. child in need) and all of these CYP experienced 3 or more moves, as part of this provision of support, indicating that they were particularly mobile, and as a result particularly vulnerable.

Our experience working with these CYP was that they had mostly been homeless or in an abusive situation for an extended period of time before accessing support. Those who were homeless had often been 'sofa-surfing', that is, sleeping on the sofas of friends, or sharing their friend's beds on an ad hoc basis. Anecdotally, based on the accounts of our cohort, this was seen as 'acceptable' for a certain period, and particularly between the ages of 15 and 19 when CYP living with parents are old enough to be given a level of independence, and to have friends stay over, but are not considered old enough to be expected to support themselves or 'pay their way' or that of their friends. CYP in our cohort who sofa-surfed for extended periods of time found that it was usually with British friends with relatively chaotic home lives themselves with whom it was possible to stay for longer periods of time. As such, CYP were less likely to obtain support in accessing assistance and legal advice, as these friends also had limited adult supervision and intervention in their own lives.

CYP turned away by Local Authorities when they had asked for assistance were particularly likely to be in this position. They found

CASE STUDY

TOBY

Toby entered the UK with his aunt aged 9 from Nigeria. His aunt was British and lived with her British family. Toby returned home from school one day aged 15 to find that his family had gone. He did not know where they were. He spent several weeks returning to the family home from school without knowing where they were. He was then thrown out by the landlord who informed him that his family had not paid the rent so he could no longer live there. Toby lived with his British friends from school and their families. Moving from one home to the another. He later moved in with his girlfriend and when that relationship broke down he went to live with another older friend. He was later told to leave and was living homeless in parks and on the streets. Toby was referred to us a few weeks after his 18th birthday. He was not eligible for support from the local authority because he had no immigration status and as he was over 18 he was not a child in need.

¹² In the year to 31 March 2016, of the 70,440 looked after children in England, 68% had one placement during the year, 21% had two placements, and 10% had three or more placements. The number of 'placement moves' is the main measure used to indicate stability for looked after children. DfE (2016) Children looked after in England (including adoption) year ending 31 March 2016.

INTERACTION WITH CARE

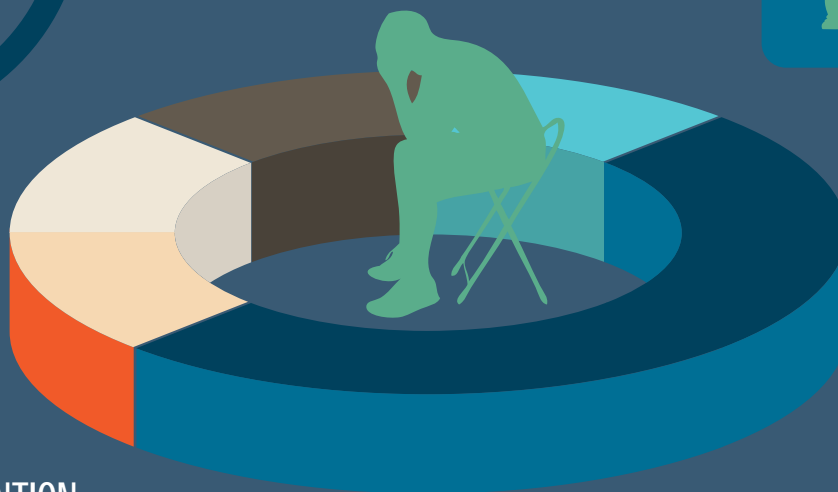


12%
PRESENTED
TO LA BUT
DENIED SUPPORT

10%

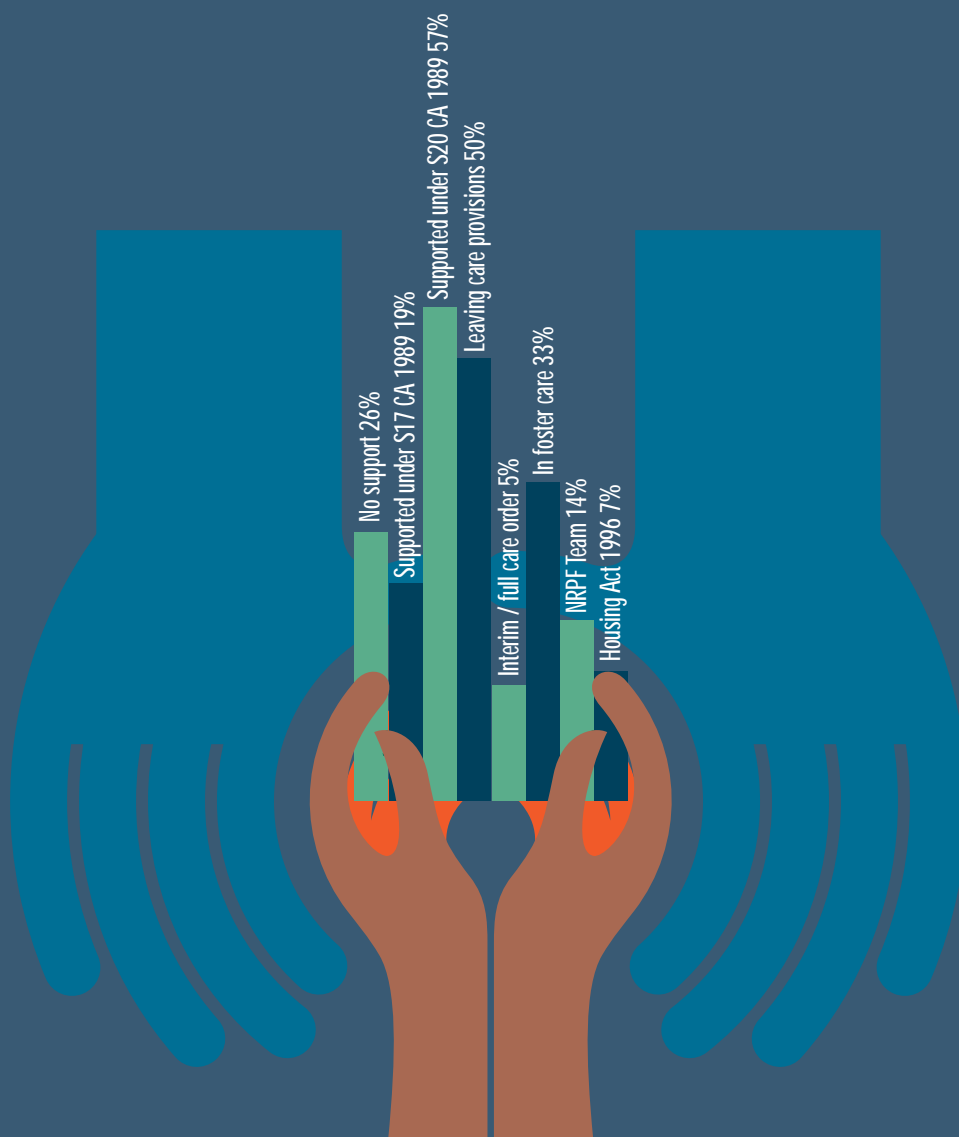


6%
PLACED INTO
CARE FOLLOWING
PROJECT INTERVENTION



44%
IN CARE
ON REFERRAL

TYPES OF SUPPORT RECEIVED BY THOSE WHO HAD CONTACT WITH THE CARE SYSTEM



themselves in a vicious circle. They had no documents, and no entitlement to financial support or accommodation so they sofa-surfed, rotating amongst supportive friends until they wore out their welcome. However, because they were not formally living anywhere they lacked the 'paper trail' of their existence (i.e. no address to receive correspondence or register for services such as a GP) which they needed in order to have a chance of making a successful application to regularise their immigration status. Similarly any documentation they did have was at a higher risk of being lost as they packed and unpacked their belongings every night or two, moving on little to no notice, and never being sure when the next move would take place.

For many CYP, a major factor in terms of obtaining a route to documented status, is to be able to provide formal and independent documentation to the Home Office of their presence, and residency, in the UK. CYP in general do not engage with officialdom to a great extent, as such engagement is the preserve of the adults in their lives be it their family members or the local authority in the case of CYP in care.

CYP who are separated from their parents or carers, and who are not in Local Authority care, are most likely to be living in informal arrangements. They find it very difficult to provide independent or formal evidence of their presence in the UK beyond school or college records (if they attend either) or medical records (if registered with a GP). Documents setting out their tenancy of a property, payment of utility bills, payment of utility bills, or payment of taxes are markedly missing due to their precarious arrangements. The prospects of obtaining formal letters from those who have hosted them for two days here and there are minimal, and even if they are obtained, are

unlikely to confirm the entirety of a CYP's period of full residency in the UK. Furthermore evidence of this nature may be viewed harshly by some decision-makers as insufficiently independent compared to other sources of documentary evidence.

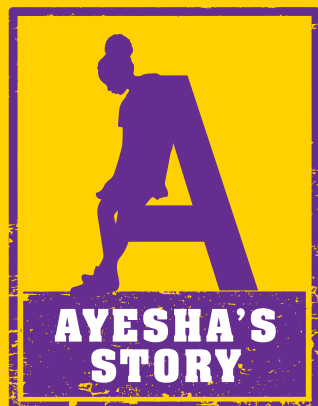
Summary

The lives of the CYP we worked with were complex and beset with obstacles. CYP and professionals alike struggled to understand and identify the issues involved.

Difficulties in Identification

- There is no reliable data on how many undocumented CYP there are, in part because of the difficulties in identifying them.

- Failure to identify immigration problems accurately, and to address them appropriately, place CYP at risk of harm and increases the likelihood of the CYP becoming undocumented.
- In most cases, as the CYP did not self-identify their issue, they were reliant on adults to do this for them or to advise them correctly.
- Identification is difficult and complex. Even professionals with awareness of immigration issues are not equipped to identify immigration issues accurately.
- The prospects of identifying immigration legal issues without specialist legal intervention are small.
- Perceptions are important – if you 'seem British' you may not be identified as requiring assistance, but if you are not seen as 'British enough' you may be denied services that you are entitled to.



After a couple of days Jane and Ayesha approached their local authority social services department and asked for support. Social services supported Jane to return to her mother's care, but Susan would not have Ayesha back. It was at this point that Ayesha discovered that she was not British, and in fact did not have any permission to remain in the UK. Social services refused to assist her because they said that her immigration status meant that she was not entitled to their services. This was incorrect and unlawful – Ayesha was a child in need regardless of immigration status, but Ayesha had no way of knowing this. Ayesha now felt doubly unwanted – she had been rejected by her mother, by Susan and even the country she considered home did not want her.

Social services told Ayesha that in order to access services she would need to resolve her immigration problems. They didn't suggest how she could do this or give her any help in accessing advice or support around her immigration matters.

Undocumented status isn't documented

- By its very nature, undocumented status is not recorded.
- CYP (whether migrant, undocumented or not) do not have a detailed understanding of what 'immigration status' means in terms of their own identity or mobility.
- Undocumented CYP live their lives in the informal sector and are therefore less likely to be able to document their experiences and whereabouts during their time in the UK.
- Informal care arrangements including private fostering arrangements perpetuate undocumented status.
- Children whose presence in the UK isn't documented face a greater risk of abuse and other 'hidden' crimes.

Children or migrants?

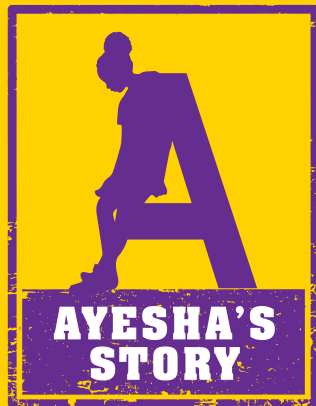
- CYP are children first, and migrants second.
- CYP rely on others to help them understand and identify their immigration status.
- CYP want to focus on growing and developing with their peers, on what makes them the same as their peers, not what makes them different.
- Formal matters (such as immigration status) remain within the realm of the adult, not the child.
- Where the adults with whom undocumented CYP have contact cannot understand the issue, the child has no guide on this difficult journey.
- Undocumented CYP's life experiences are more likely to involve separation from their family unit than other children.

- Contact with Local Authority care is a key feature of the lives of undocumented CYP but is no guarantee of appropriate advice, support or diagnosis of immigration issues.

Hostile Environment

- The creation of a hostile environment for immigration has meant that immigration law and regulations are increasingly shrouded in mystery and fear.
- The increasing pressure on resources means that Local Authorities are increasingly driven to 'gatekeep' services, and to rely on immigration status for doing so.
- The hostile environment for immigration renders families and communities reluctant to seek formal advice or assistance for fear of wide-ranging implications for all members.
- Reluctance to seek formal advice places CYP at risk of extended periods of undocumented status.
- Recent legislative changes¹³ have led to the creation of obligations on private individuals to monitor the immigration status of others (banks; health providers; private landlords) which has increased the 'othering' of migrant communities.
- These legislative changes will make it even harder for undocumented people to provide evidence of their presence in the UK.
- This hostile environment bites not just for CYP but for British and settled children whose heritage is not white British. 12% of our cohort were British or settled on referral, but were still denied access to services on the basis of assumptions made about their right to be in the UK.
- In the care system being visibly 'different' and discriminatory assumptions can be obstacles to correct identification.

¹³ Immigration Act 2014 and Immigration Act 2016



Ayesha made some attempts to sort her immigration status out, but at 15, street homeless and without any adult support this was very difficult for her.

Whilst sofa surfing with a school friend Emma and her family (British community members) Emma's mother Tina suggested Ayesha attend the Home Office in Croydon. Ayesha went there with Emma one day but she was refused

entry. When she explained her plight to the security guard, he went inside and returned with an application form and told her that she would have to complete that form and submit it together with a fee of £800.

Staff did not engage with the fact that she was a child with no adult support, and no means of feeding or accommodating herself. The fact that Ayesha was not an unaccompanied child applying for asylum appeared to render her 'invisible' and the staff she approached had no framework within which to assess and meet her needs, so they simply sent her away as if there was no duty towards a child who didn't seek asylum.

After this Ayesha sought advice from an immigration advisor, who told her that she had a good case for staying

in the UK but would have to pay a fee of £500 to the home Office in order to make an application.

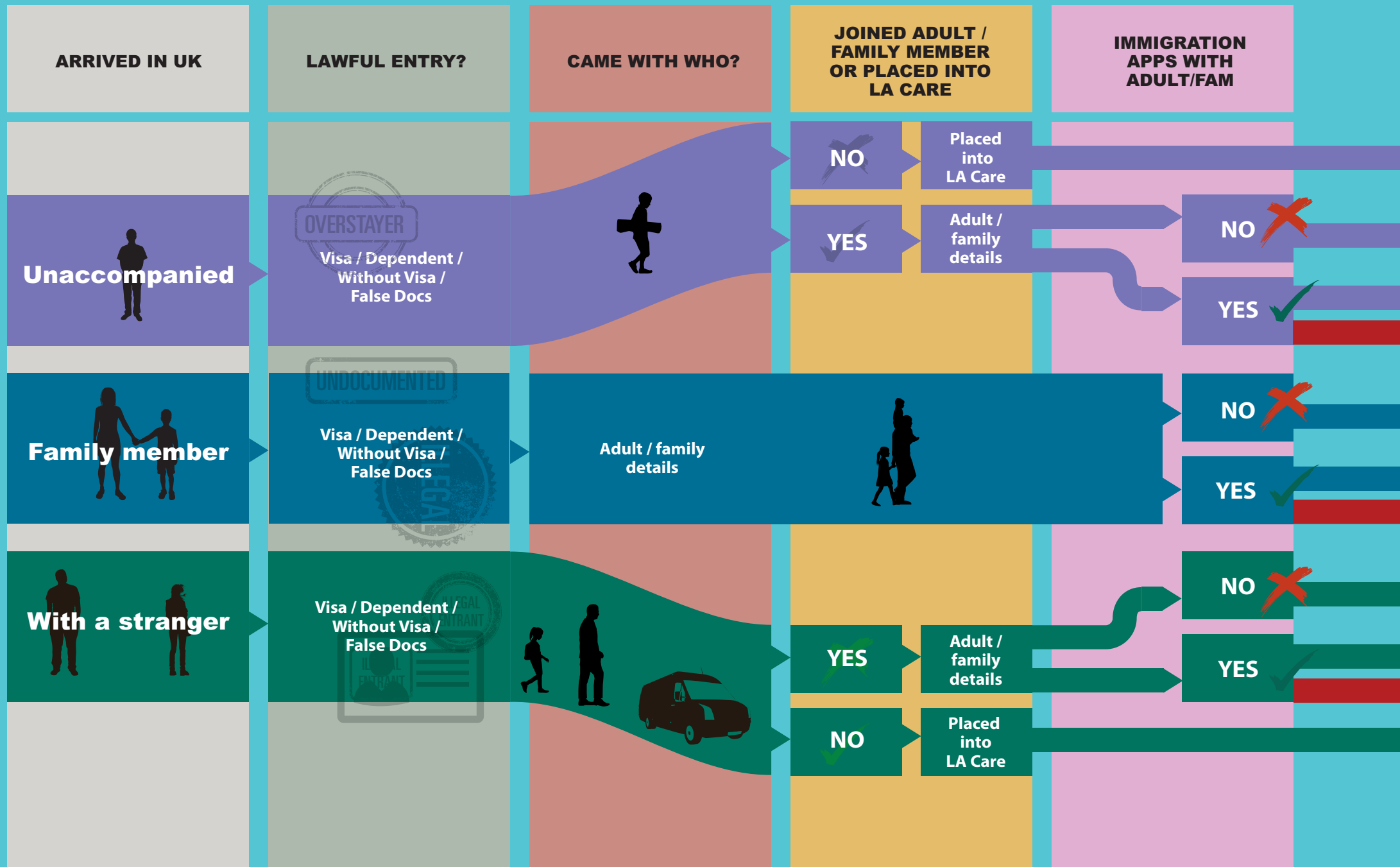
Ayesha didn't have access to any money, and couldn't raise £500 and therefore felt that she had no hope of making an application. At the time when Ayesha wanted to make her application there was no formal system of fee exemption and the legal advisers that Ayesha approached did not suggest that she might be able to apply for the fee to be waived or to be exempt from paying it.

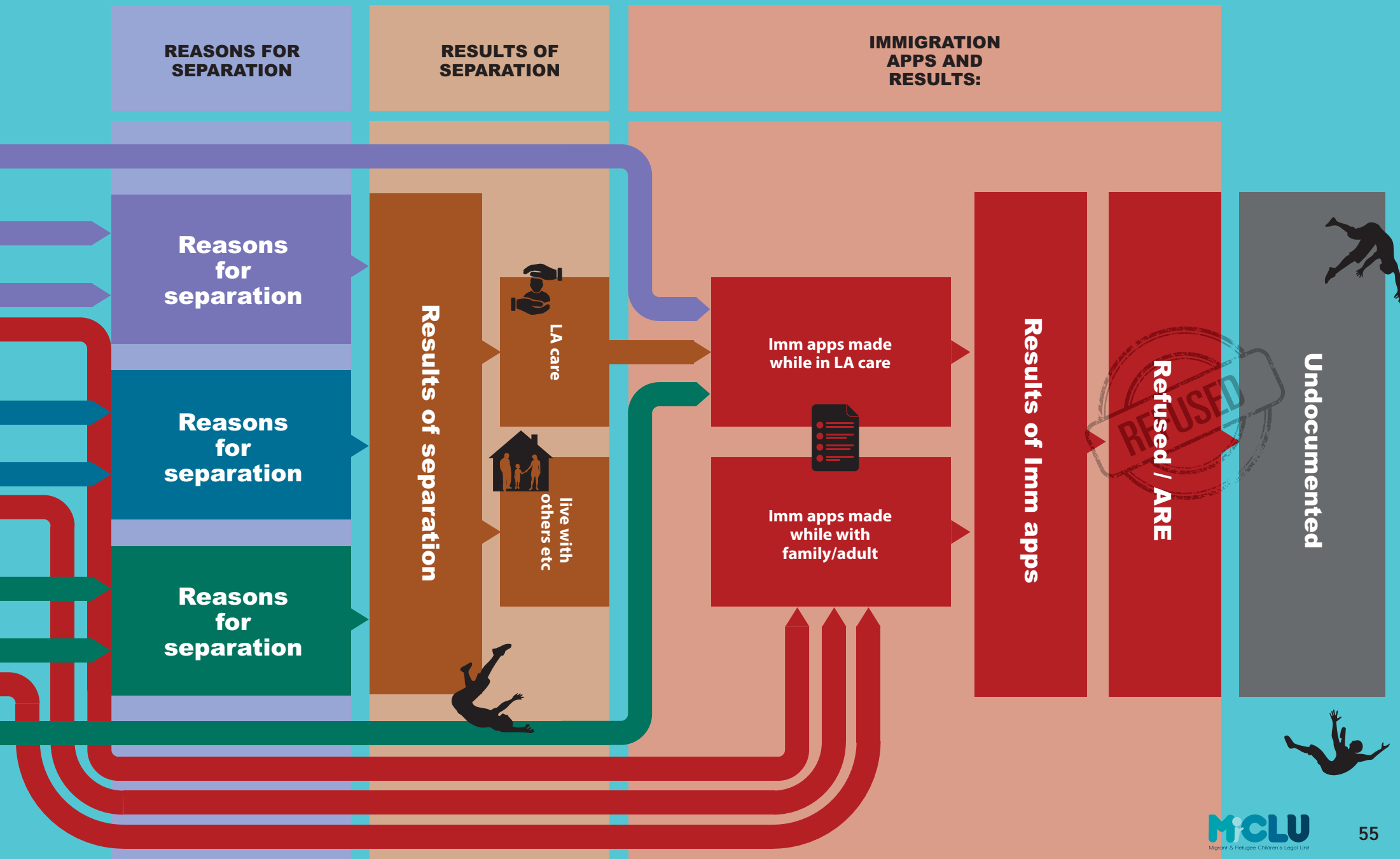
These advisers did not engage with Ayesha's needs other than her immigration matter. They did not make referrals for her to be supported or accommodated and engaged with her as an adult rather than a child who had a need for care and attention. They did not appear to understand that her ability to engage with and pursue immigration applications was undermined by the fact that she was sofa surfing and unable to meet her basic needs for food and shelter.

4. MAPPING CYP JOURNEY INTO LONE AND UNDOCUMENTED STATUS

Each CYP's route into undocumented status was unique. Some arrived with documented status but lost it, whereas others never had it to start with. Some knew that immigration issues affected their lives, whereas others had no idea that there was an issue at all. However, by mapping the journeys of our cohort, we have identified some commonalities and these are illustrated on the next page.

JOURNEY INTO UNDOCUMENTED STATUS





Some CYP have a slow slide into undocumented status. Others fall (or are pushed) off a cliff into a crisis caused by their undocumented status. There are stages along the way which are common to many Undocumented CYP, but some are bypassed, and others repeated on a loop. Some factors mask the effects of undocumented status. Whilst this may seem positive to the UCYP in the short term, where this delays identification or action until the UCYP is over 18, the implications can be devastating. CYP felt they were lost at sea, at the mercy of forces beyond their control.

Separation from family was one of the most significant factors in the journeys of our CYP into undocumented status.

A number of the CYP we worked with had made applications to remain (or had these made for them) prior to separation from their families, but the applications had not been successful or the status granted had lapsed. Separation from family members who were the prime instigators of these applications was sometimes a reason for why a client may not have had status although others in the family did. Many CYP we represented had little to no knowledge about applications that had been made on their behalf or whether any had been made at all. With the CYP separated from their family there were a number of obstacles to finding out the truth about what had happened.

In the UK, when a child is included on an immigration application made by an adult, the Home Office considers that the adult is the main applicant, and children are simply 'add-ons'. A caseworker at the Home Office will consider evidence submitted in relation to an application, but it is likely that most of this will relate to the adult main applicant, such as tax records, payslips and utility bills, as CYP are much less likely to have such documents in their own names. The Home Office will issue a 'Home Office reference number' to the 'main' adult applicant, but separate numbers will not be allocated to their child dependents. Any children on an application will be

subsumed within the adult's Home Office reference number.

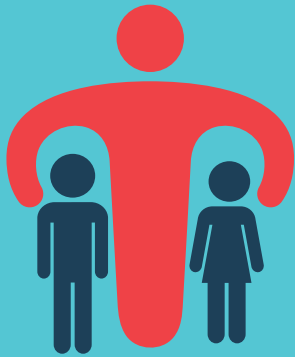
As a result, CYP who have separated from their families, particularly in acrimonious circumstances or due to abandonment or bereavement, may have a very real struggle in obtaining information about what, if any, applications have been made in relation to their immigration situation. In the normal course of events, where a client is unaware of aspects of their immigration history which are likely to have been documented, a Subject Access Request can be made under the Data Protection Act to obtain a copy of the client's Home Office file. However, this is extremely problematic where the person making the Access request is a child, and the file opened at the Home Office is in the name of a parent, and that parent cannot or will not co-operate with the application for the information to be released. There is no specified route to take as a person who is included as a dependent, or mentioned within a file to obtain any documentation that relates to them. As such CYP are excluded from opportunities to provide documentary evidence of their immigration history.

In several of our cases, applications for permission to remain that had been made for CYP were withdrawn by the adults who had made them following disagreements or relationship breakdown. This led to the CYP becoming unlawfully present in the UK, or losing a right to regularise their immigration status that they had thought they were pursuing. In applications involving children, the Home Office did not appear to appreciate that a person other than the applicant themselves should not be permitted to withdraw an application, nor did they give consideration to the implications for the best interests of a child dependent of being removed from an extant application. This should be the case in all applications, but is particularly crucial where withdrawal of the application would have the effect of rendering a child's presence in the UK unlawful, or without obstacle to removal.

SEPARATION FROM FAMILY



66% OF THE COHORT WERE SEPARATED
FROM FAMILY POST ARRIVAL



45% WENT INTO LOCAL
AUTHORITY CARE



71% WENT TO LIVE
WITH OTHERS



35% LEFT TO FEND
FOR THEMSELVES

In 2009 the UK withdrew its reservation to the United Nations Convention on the Rights of the Child (UNCRC). Until the reservation was withdrawn, the UK was not required to treat the best interests of children as a primary consideration in relation to immigration decisions. Following removal of the reservation, the principles in the UNCRC must be applied to all children regardless of immigration status. To give effect to this, the UK government brought into force s.55 of the Borders Citizenship and Immigration Act 2009 which required that in relation to any of the Secretary of State for the Home Department's (SSHD's) functions in relation to immigration, asylum and nationality, the safeguarding and welfare of children must be promoted. This has since been interpreted by the courts as meaning that in relation to immigration laws and decisions, the welfare of children (or the specific child affected by the decision) must be a primary consideration.

Current processes at the Home Office unfortunately do not envisage or deal with the potential for relationships between children and their carers to break down. However, the Home Office duty under s.55 of the Borders Citizenship and Immigration Act 2009 to ensure any decision by the SSHD which affects a child must treat that child's best interests as a primary consideration. A systemic failure to take into account the repercussions of a major change in the child's life like the breakdown of the relationship with their main carer is a significant omission.

Where CYP were separated from their families post arrival, putting to one side the emotional effects of such separation, there were various practical options for the care of the CYP after the separation had occurred. The type of care provided had an impact on the CYP and their options in terms of addressing their immigration status.

In broad terms, the options available were either 'formal' [s.20 Children Act 1989] care or 'informal' care. In some cases the CYP would be taken into formal care by a local authority. In others, they

(or other adults involved with them) would arrange informal care within their community. This was not usually notified to or registered with the Local Authority or other formal agencies. The data indicates that the CYP in our cohort were more likely to be in 'informal' care arrangements following separation from their family rather than entering formal care. The CYP's level and type of vulnerabilities were not necessarily factors in reaching a decision as to whether a formal or informal case was in their best interests, and was more likely to be related to the awareness or interests of adults in their lives. This reflects the experience of our cohort of being 'hidden' from the formal sector and is likely to be representative of the experience of many UCYP.

Reliance on informal sources of care renders UCYP doubly vulnerable. Firstly, they remain 'invisible' and therefore less likely to be able to address their undocumented status. Secondly, they are heavily reliant on the good will of friends and community members for their continued support. Where informal support is withdrawn there is no option for legal redress. This can place UCYP at a social disadvantage, and render them at greater risk of abuse and exploitation. We also cannot overlook the burden that caring for UCYP places on the families and communities that host them. Agreeing to be responsible for the care and financial support of a young person for whom a family cannot access additional sources of practical support is a considerable commitment, and it is likely that many that agree to take this commitment on at first have no idea of the implications, nor the length of time, for which the situation may persist. As a result, these arrangements are precarious and UCYP who are reliant on informal sources of support are therefore inches away from crisis (homelessness and destitution) on a daily basis - a fact of which many of them are painfully aware.

Placing the CYP at the heart of the service

CYP have unique needs, and services which are more commonly designed by and for adults cannot meet all of these. Additionally, the way in which organisations and individual practitioners regard and respond to migrant children can contribute to the length of time that many CYP remained undocumented and unsettled.

Our experience was that a number of agencies and authorities with which our clients engaged were too focused on migrant CYP as migrants first and children second. In those situations, there was insufficient attention paid to the child's needs as a child. However, we were also aware that difficulties arose where agencies or organisations were so focused on meeting the child's need as a child, or were painfully aware of their own lack of expertise around immigration matters that the wider context of the child's life was not fully examined. As a result immigration issues which were relevant to other difficulties the child experienced were not identified.

When introducing the (then) Immigration Bill 2014, Theresa May, then SSHD, announced a raft of measures aimed at creating a 'really hostile environment for migration'¹ The measures announced included linking the right to hold a driving licence, a bank account, and the right to rent property to an ability to provide documentary evidence of lawful permission to remain in the UK. These requirements added to existing provisions in relation to the employment of those who could not prove that they were working lawfully. The 'hostile environment' was designed to impact upon children as much as adults. However, whereas adults may have an element of choice in relation to their migration situation, it is clear from the data in this report that CYP largely do not. The fundamental needs of children remain the same regardless of immigration status. However the hostile environment has affected the ability and willingness of others to meet those needs for migrant

children. One result of the 'hostile environment' is that advisers in other areas of law are wary of assisting those CYP affected by the issue of 'immigration' and assume that a child can't access any mainstream services. In this way CYP are prevented from accessing services to which they are entitled, and which may in fact be helpful to their desire to regularise their presence in the UK. The hostile environment then succeeds in the 'othering' of migrant children and excluding them from basic services by making service providers wary of providing services to migrant children. For example, one family of three siblings in our cohort were informed that they would need to move into new accommodation as their landlord wished to sell the property he was renting to them. This coincided with the siblings needing to apply for further leave to remain. The Local Authority responsible for housing them expressed concern that 'we'll get into trouble if we give them somewhere to live and they're not supposed to be here', failing to understand that the family's leave to remain would be extended by their application for an extension of their permission to remain.

The purpose of our project, and indeed this report, was therefore to test out and evaluate an approach which addresses the complex immigration situations of CYP in a way that allows them to have their needs as children met, and sees them as children first, but acknowledges that they are migrant children with additional needs as a result.

As a result of their vulnerabilities, but also their developmental stage, CYP experienced referrals to other professionals as being stressful and hard to understand. Our experience in working with CYP prior to the inception of the Protect Project showed us that supported referrals were more likely to be effective, whereas simply providing a CYP with a list of other professionals who might be able to advise them on a separate legal issue (as one might an adult) risked a) the CYP not in fact accessing that advice, and b) the CYP disengaging from our service in addition.

¹ Kirkup, J. and Winnett, R. (2012), Theresa May Interview: 'We're going to give illegal migrants a really hostile reception' <http://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html>

5. THE MULTIPLE DISADVANTAGE OF BEING AN UNDOCUMENTED CHILD OR YOUNG PERSON

What were the problems faced by CYP?

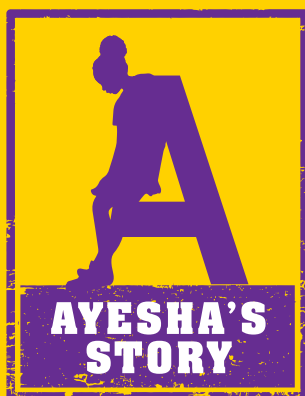
CYP in our cohort faced a multitude of problems. Every aspect of their lives was affected to some extent. Their ability to access safe, stable housing was heavily reliant on immigration status. A number were street homeless on referral or were living in short term shelters¹. Despite food and shelter being fundamental basic rights many CYP were unable to access either with any safety or stability. Some of our cohort had experienced hunger regularly, and many were reliant on others for food. Their undocumented status truly touched every part of their lives.

¹ More recent developments limit a migrant's right to rent. Under the Immigration Act 2014, from 1 Feb 2016, private landlords have been required to check the immigration status of their tenants. If the tenant cannot provide proof that they have the right to be in the UK, the landlord cannot lawfully rent out a property to them and could be subject to a fine of up to £3000 for doing so. However, in the future, the fact that private landlords will not rent properties to those who are unable to provide evidence of their right to remain in the UK is likely to increase the prospects of CYP becoming street homeless. This is therefore highly relevant to CYP who are care leavers and trying to access accommodation post-18.

Our cohort were extremely vulnerable, and displayed a number of factors which would, by any ordinary evaluation, cause them to be considered young people at risk of abuse. As lone CYP most of them did not have an adult carer or confidant to whom they could turn for help and advice. Many suffered from physical or mental health problems, and most suffered emotional distress which was serious enough to affect their wellbeing and impair their functioning to some degree. A significant proportion of our cohort were survivors of abuse. A number were refugee or trafficked children or survivors of human rights violations whose claims had been hidden by their inability to disclose or articulate them, or the inability or unwillingness of others to listen.

Undocumented status placed a considerable strain on relationships with others, with all members of the cohort reporting that one or more relationship had come under strain as a result of their undocumented status. CYP were more heavily reliant on the goodwill of friends and others, and had to make requests for support that went beyond what was accepted as 'normal' by those with documented status. Embarrassment and shame prevented them from explaining that they had no access to funds because of their immigration status, and they felt safer if perceived to be 'lazy' or 'a sponger' than if known to be an undocumented migrant.

Many experienced significant financial problems which related to their inability to work or access social welfare as a result of their



Having been told that she needed to have £500 before she could make any application to regularise her stay in the UK Ayesha was left without any way to sort her immigration status out, without anywhere to turn, and without access to accommodation or any benefits or other income. She was entirely reliant on the kindness of friends and their families. She was only able to survive by sofa-surfing with various friends and on the basis that they gave her money for necessities.

This caused Ayesha a lot of problems. She was embarrassed about her immigration status. Ayesha felt unable to admit that she was here illegally given the hostility to migrants expressed by the media and many of the population. She did not self-identify as 'migrant' and did not want to be identified by others as such. Because she had a London accent, and had lived in the UK for many years, it was hard for her peers and members of her community to understand her situation. Some of them perceived Ayesha as being too lazy to work, not realising that she was prevented by law from doing so. She therefore hid this from friends which made it more difficult for them to understand her situation.

Every day was a struggle for Ayesha. She felt beholden and unwelcome. Friends began to avoid her as they didn't want to have to accommodate or feed her. She was reaching the point where she had exhausted the charity and goodwill of her friends and community, and at times was forced to sleep on the street or in the park

immigration status or perceived status. Many did not have, and were not able to access, bank accounts.² With no lawful basis of stay, they had no lawful permission to work, and were therefore at enhanced risk of exploitation and abuse. Amongst our cohort was one CYP who received damages for unlawful imprisonment but had no bank account into which he could pay it. He therefore had to arrange for several thousand pounds to be paid into a friend's bank account, with the concomitant risk that the CYP would be prevented from accessing this and be unable to assert his right to his funds.

Difficulties in accessing education were experienced widely by our cohort. As provision of education has increasingly been tied to specific funding streams, the need for CYP aged over 16 to demonstrate their entitlement to funding for an educational course has increased in line. CYP who remained in school faced fewer problems in accessing education between the ages of 16 and 18, but were then shocked when they reached the point of proceeding to university and discovered that they had no entitlement to Student Finance nor to be treated as a Home Student due to their immigration status.

Education is, rightly, a significant element in the life of a CYP.³ Therefore obstacles to accessing education loom large in the life of a CYP. Our cohort expressed feelings of great distress at the extent to which they felt 'othered' when it was clear that access to education depended on having the 'right' kind of status. Though some of the CYP we worked with experienced learning difficulties and other challenges, they were not alone in experiencing difficulties with accessing education. High achieving CYP, who had come to view their academic ability as a feature of their identity, were completely devastated when their ability to pursue their academic dreams was placed under threat. One member of our cohort suffered a complete breakdown of his mental health and was hospitalized under section when his lack of immigration status came to light and he was required to leave University in the second year of his degree course.

Immediate protection needs

When our project began, we quickly understood that a number of CYP would present to our project in a situation of crisis or emergency be it related to health, homelessness, child protection or other emergencies. We have described these as 'Immediate Protection Needs' on the basis that without action being taken to resolve or ameliorate these issues there was a significant risk to the CYP's safety and survival, such that action in this regard needed to be taken before any legal work could be commenced. The types of immediate protection needs identified are set out in the following graphic.

One of the CYP we represented had not eaten for 2 days at the point he instructed us as he had been living in the home of his recently deceased private foster carer and had no access to any money at all. Therefore, although he had housing and immigration legal issues the first step was a need to obtain food for him immediately, and support him to access a sustainable source of food.

Homelessness was a key factor in terms of immediate protection needs. More than a quarter of our cohort were homeless on referral. They were in a number of different homeless situations:

- sofa-surfing,
- sleeping on buses,
- effectively street homeless.
- Two CYP were in homeless shelters,
- one was in accommodation which was not appropriate for her age, and prevented her from living with her older sister who was also street homeless.

² Under the Immigration Acts 2014 and 2016, banks and building societies are prohibited from opening current accounts for migrants identified as being in the UK unlawfully.

³ Hek, R (2005) The Experiences and Needs of Refugee and Asylum Seeking Children in the UK: A Literature Review. DFES research report RR635.

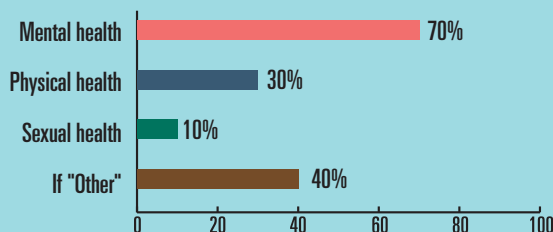
IMMEDIATE PROTECTION NEEDS



40% OF THE CYP HAD WHAT WE TERMED AN 'EMERGENCY' ON REFERRAL

19% HEALTH CARE

WHAT WAS THE HEALTH CARE CRISIS? (% is of those with a healthcare emergency)



Figures add up to more than 100% as CYP had multiple health emergencies on referral.

80% SOUGHT PREVIOUS HELP WITH THE HEALTH ISSUES PRIOR TO INTERACTING WITH THE PROJECT

75% OF THOSE WERE DENIED HELP

60% A VICTIM OF CRIME

6% CYP WAS LIVING WITH FAMILY ON REFERRAL AND THIS WAS AN UNSTABLE FAMILY HOME (RISK OF ABUSE)

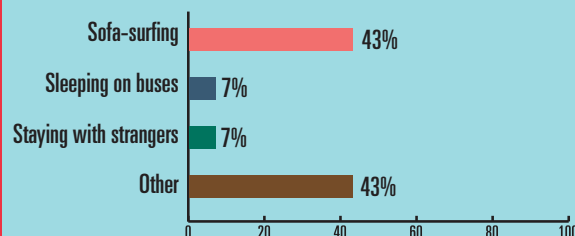
23% CHILD PROTECTION CONCERNS

67% SOUGHT PREVIOUS HELP WITH THE CP ISSUES PRIOR TO INTERACTING WITH THE PROJECT AND ALL OF THEM WERE TURNED AWAY

100% DENIED SUPPORT

27% HOMELESS

HOMELESSNESS SITUATION BREAKDOWN
(Percentage is of those that were homeless on referral):



10% LIVING IN AN EXPLOITATIVE SITUATION / ABUSIVE FAMILY

OF THOSE INCLUDED IN THE ABOVE 10%, **60%** SOUGHT PREVIOUS HELP

OF THOSE INCLUDED IN THE ABOVE 10%, **60%** WERE LIVING WITH FAMILY

OF THOSE INCLUDED IN THE ABOVE 10%, **40%** WERE LIVING WITH STRANGERS

100% DENIED SUPPORT

14% PREGNANCY / SMALL BABY

CYP MOTHER WITH SMALL / NEWBORN CHILDREN AT TIME OF REFERRAL **8%**

CYP PREGNANT AT TIME OF REFERRAL? **6%**

CASE STUDY

Kahla

Kahla was referred to us by the women's prison in which she was being held. Kahla was a child who had been trafficked into the UK for the purposes of sexual exploitation. She had arrived in the UK at the age of 14 under the control of her traffickers who used false documents to facilitate her entry in the name of a much older woman.

Kahla escaped from her traffickers and sought asylum. Shortly after she claimed asylum her fingerprints were matched with those that were given when her traffickers arranged her entry to the UK and Kahla was told that she was believed to be an adult and an immigration offender. Kahla was immediately arrested, charged with false documents offences, and placed on remand in an adult women's prison.

Staff and inmates alike were shocked to find a child imprisoned in their midst and the prison referred her for immigration advice urgently. The most pressing issue on referral was the fact that Kahla was being held in an adult prison and being considered culpable for the acts of her traffickers. Emergency action was therefore taken in relation to these issues, with immigration concerns pursued once Kahla was removed from the prison.

Urgent project intervention was therefore necessary to resolve these issues as far as possible, or at least to ensure that the CYP was safe and had food and shelter so that our immigration team could then begin to assess and advise on immigration issues.

The emergency protection needs of our cohort were symptomatic of vulnerable CYP in crisis. The provision of a holistic service helped to meet the needs of all the CYP, both short and long term, and this was essential to the design of the project. The ability to react to and address emergency needs also allowed our young cohort to begin to trust us with the difficult experiences that they had kept hidden from others. In many ways, our ability to respond to immediate crises demonstrated to some CYP that we could be relied upon to resolve other matters. For some, it was much more difficult due to previous experiences with adults and professionals.

CASE STUDY

Amin

Amin had been referred to us for advice in relation to housing. On arrival it was clear that Amin was very distressed. Amin was an extremely vulnerable young person who had physical and mental health problems as well as learning difficulties. His current housing situation was unstable, exploitative and unsafe. Amin was unable to explain what he wanted or needed. As he tried, he broke down in the office with extreme pains to the groin requiring urgent medical attention and was taken to accident and emergency by ambulance. No one at 'home' had attended to these issues. When Amin's health had stabilised he returned to our offices and provided further instructions but his health was our priority.

Vulnerability Factors

To grow up as an undocumented CYP is to grow up under a shadow of secrecy and concealment. Many of the CYP in our cohort were not privy to important information about their own status and right to remain in the UK. Others were aware that something was amiss, but were conscious only that there was something 'wrong' with them or their family, and that efforts must be made to conceal this from those considered authority figures. Lack of understanding, part-disclosure or total concealment left CYP confused about their situation and unable to share difficulties openly. Living a life characterised by shame and secrecy places CYP at risk of those who wish to exploit this. Being dimly aware that your status is somehow 'wrong' or 'unequal' or 'unlawful' also creates imbalances in your relationships with others.

Through our casework we learnt that there was often a failure on the part of professionals, particularly local authority staff, to appreciate the multiplicity of vulnerability factors faced by CYP. We recorded issues in the lives of CYP that placed them at a disadvantage, placed them at emotional or physical risk or otherwise made them vulnerable.

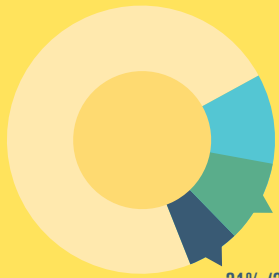
Certain factors are widely accepted as being indicators of vulnerability, such as having spent time in local authority care, being a care leaver, or being NEET (Not in Employment, Education or Training). However, our findings indicate that factors that are harder to capture are equally indicative of vulnerability. In particular, we found that those who ought to have been in Local Authority care, but had been erroneously turned away because of their immigration status, were particularly vulnerable. Again, whilst children are considered ostensibly vulnerable and in need of protection, young people aged between 18 and 24 were also at risk of harm, and were significantly less likely to be able to access any form of mainstream services.

CASE STUDY

Eric

Eric was born in UK and lived here until he was around 10. Eric's mother assumed he was British because he was born in the UK, but never obtained a British passport for him. When he was just over 10 she took him to Nigeria for a holiday using his Nigerian passport and carrying his British birth certificate. On attempting to board a plane to return to the UK he was refused permission to get on the plane because he had no visa and no right of re-entry to the UK. Eric's mother got on the flight without him leaving Eric stuck in Nigeria by himself for 2 years. Eric did not formally disclose emotional abuse or neglect, but there were clear indicators of this. Eric eventually made it back to the UK. On approaching our project he was supported to make an application for registration as a British citizen which was successful. The impact upon him of his time alone in Nigeria is harder to resolve, but the Local Authority were not involved with Eric and his family and his mother was not willing to engage with the possibility that it had caused him harm.

VULNERABILITY FACTORS

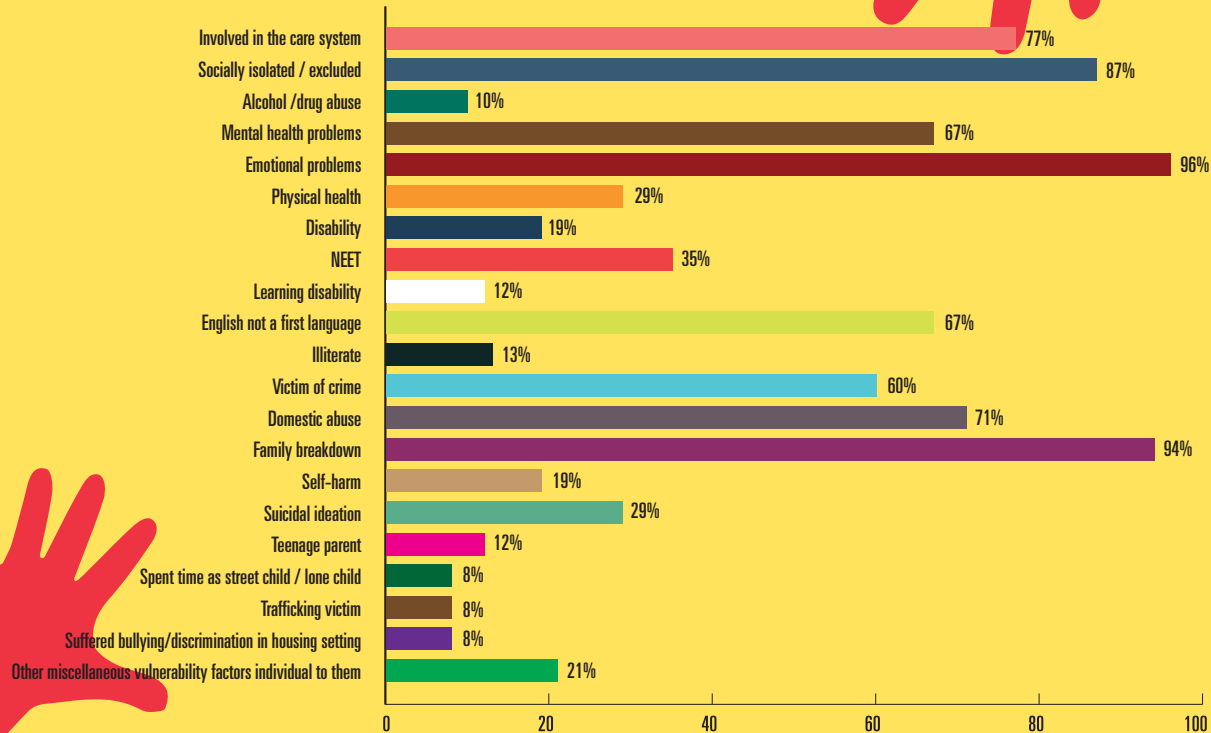


27% CYP HOMELESS ON REFERRAL (14)

36% (5) HAD PROTECTION CLAIMS

21% (3) WERE TRAFFICKED

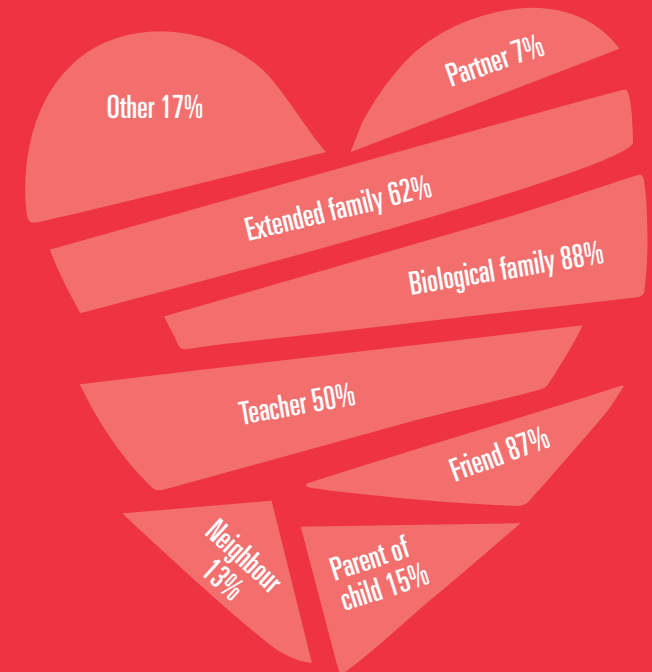
LIST OF FURTHER VULNERABILITY FACTORS



100%

(52) SUFFERED SOME KIND OF RELATIONSHIP DAMAGE AS A RESULT OF UNDOCUMENTED STATUS

TYPES OF RELATIONSHIPS AFFECTED:



CASE STUDY

Larissa

Larissa was from a conflict-ridden African country. As a child she came to the UK to join her older sister as there was no one to care for her in her home country, and there was a significant risk of rape and murder for unaccompanied girls. During the time that she lived with her sister, her sister was emotionally abusive, and Larissa was very scared of her. Larissa's sister did not support her to attend school or improve her English, and Larissa therefore found it difficult to communicate with her wider community. When Larissa reached 18 her sister told her that she had to leave her house, and that she no longer owed her anything as she was an adult. Larissa sofa-surfed for a while but could not do this on a long term basis. When she approached the local authority Larissa was first informed that the type of leave to remain she had did not entitle her to claim benefits or work. Our project intervened and this aspect was resolved as we proved Larissa had the right to remain permanently. However, as a single adult with no known health problems Larissa was not in priority need for housing. Solely reliant on benefits she was not able to afford private rent, and she was unable to secure employment because she could not speak English. Larissa was extremely vulnerable as a child from a former conflict zone who had suffered emotional abuse and neglect in the UK, but was not eligible for services as she had never formally been in care.

Gregory

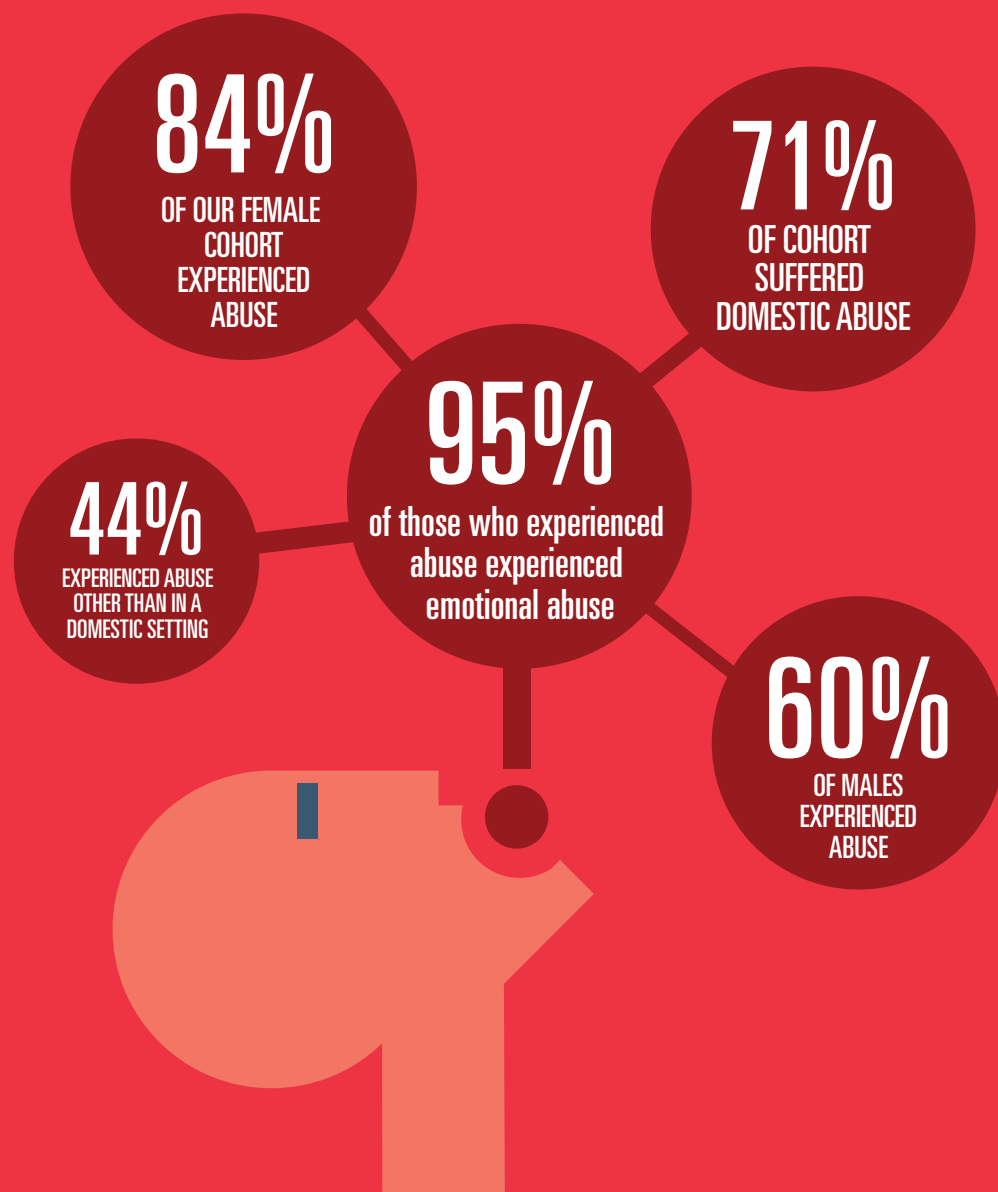
Gregory entered the UK with permission to join his brother who was settled here, as Gregory's parents had died. When Gregory was 16 his girlfriend became pregnant. His brother was furious and beat Gregory and kicked him out of home. Gregory did not approach the local authority as he did not know he could do so. Instead an elder from his church took Gregory in, housed and supported him. The elder died when Gregory was 18, and Gregory found himself at risk of homelessness and destitution. He did not know where to turn.

CASE STUDY

The impact of the different vulnerability factors were cumulative, but it was not simply a case of each factor adding further vulnerability, rather that further vulnerability factors compounded and multiplied the problems experienced by CYP. For example, the link between experience of abuse in childhood, and suffering from mental health problems is well known. Similarly, estimates indicate that Looked After Children (those who have been in local authority care) are four times more likely than their peers to experience mental health problems.⁴ Our findings illustrate that being undocumented also adds a further layer of vulnerability as it renders the CYP invisible, affects their ability to feel rooted or settled, and makes them afraid or unable to seek assistance when needed.

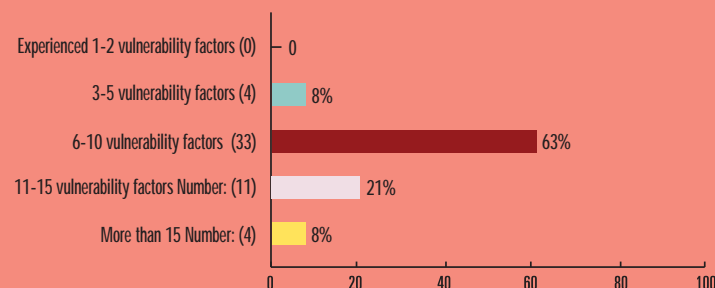
⁴ Bentley, H and others (2016) How safe are our children? London: NSPCC. www.nspcc.org.uk/globalassets/documents/research-reports/how-safe-children-2016-report.pdf

DOMESTIC ABUSE



MULTIPLICITY OF VULNERABILITY

Experienced vulnerability factors – %:



Over 90% of our cohort experienced more than 6 vulnerability factors. When bearing in mind that these figures do not include immigration status or age as a vulnerability factor, the findings are stark.

More than half of the females, and just under half of our male cohort had experienced domestic abuse. The definitions of 'domestic abuse' used in this report are those used by the Home Office in defining Domestic Violence⁵ and those used by the NSPCC in relation to Child Abuse.⁶

In the general population, around 1 in 4 women and 1 in 6 men will experience domestic violence in their lifetime⁷. Being undocumented places CYP in a position of disadvantage in relation to many people that they engage with. Where the balance of power is always tipped against the CYP and, where they are aware that coming to the attention of the authorities in any way may cause them and/or their family adverse consequences,

CASE STUDY

Nurul

Nurul was a victim of severe domestic violence at hands of his father who also subjected him to labour exploitation. Family members in the UK were aware that Nurul's father was not a supportive father, and wanted to give Nurul a break from his experiences, although they didn't appreciate quite how bad things were. They manage to get Nurul a tourist visa to come to the UK for a short holiday. Shortly after Nurul arrived and realised that he was safe his health collapsed and he required specialist child and adolescent mental health services. Private solicitors took money and made a poor immigration application. The family sought advice from a private firm of solicitors who submitted an application on the basis of Article 8 of the ECHR (private and family life) for Nurul. However they failed to provide any evidence in support of the application, despite Nurul's doctors offering this. The application was refused and the Home office told Nurul to apply for asylum. Nurul's doctors referred him to us, and we assisted him to make an asylum claim, but included evidence in relation to his medical needs, and his close relationship with his family in the UK, who he felt had saved his life. Nurul was granted leave to remain on the basis of his close relationship and reliance on his family members and because of his complex medical needs.

⁵ The abuse can encompass, but is not limited to psychological, physical, sexual, financial and/or emotional abuse, or neglect. It can also involve controlling or coercive behaviour.
www.gov.uk/guidance/domestic-violence-and-abuse#domestic-violence-and-abuse-new-definition

⁶ Bentley, H and others (2016) *ibid*

⁷ Office of National Statistics (2016) Intimate personal violence and partner abuse.
www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2015/chapter4intimatepersonalviolenceandpartnerabuse

being undocumented is of itself a risk factor for being abused.

A number of the CYP reported that their undocumented status was used by abusive adults as a method of emotional abuse and as a threat to coerce the CYP into submission or to coerce them into behaviour or actions that they would otherwise not have accepted.

Not all CYP were victims of abuse within the UK. Some had come to the UK to escape abuse, and found sanctuary here, but where support and protection was provided by British family members as opposed to a local authority this was devalued by the the Home Office during the application consideration as it was not considered 'formal' evidence of abuse.

Almost half of the CYP disclosed having experienced other forms of non-domestic abuse, such as exploitation or physical abuse by employers, exploitation or abuse by people smugglers en route to the UK, attacks by racist gangs in local parks. One young person was subjected to emotional abuse by a former support worker. A number of our cohort had experienced persecution or attacks by armed groups in their country of origin which amounted to persecution and violations of fundamental human rights.

The experiences of our cohort show that UCYP are particularly vulnerable to falling through the cracks because of their complex and difficult lives. Circumstances which are in themselves difficult are compounded by the factor of undocumented or unsettled

CASE STUDY

Shamiso

Shamiso was from Zimbabwe. She arrived with her family and was dependent on her father's asylum claim, as were her mother and sisters. Whilst her father's claim was pending, Shamiso's parents separated and she remained with her dad as this was what was decided by her parents. Her mother and older sister made separate asylum claims from her father once the family had separated.

Shamiso's mum and older sister got refugee status because of the risks to the family on return to Zimbabwe, but Shamiso's life with her father was chaotic and she knew nothing about what he was doing in relation to his asylum claim. However, it is believed that Shamiso's father was granted asylum at some point.

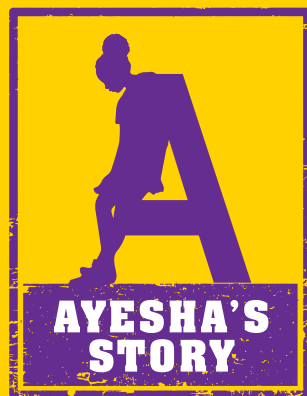
At some point before Shamiso turned 16, Police were called to her father's home and discovered that Shamiso had been seriously neglected. Shamiso was immediately placed with her mum. Shocked at the way her child had been living, Shamiso's mum immediately checked what her father had done in relation to immigration matters. She then discovered that her father hadn't included Shamiso on his application when he applied for ILR, as her mother had been led to understand. Shamiso was therefore undocumented.

Our project assisted Shamiso to apply for ILR and subsequently British citizenship.

status. Until a child is settled or British, they remain at the mercy of the actions of others. The undocumented child lacks the safety net of knowing that they belong, and that the state will step in to provide positive care. They may also have been conditioned by undocumented parents or other family members to fear any manifestation of authority, and will therefore feel less safe, unable to ask for help, and more alone than other children.

All of the CYP described the impact that being undocumented had

on their relationships with others as being negative. Every single CYP said their relationships were strained as a result of their lack of documented and settled status. The relationships most affected were relationships with their biological family, and relationships with friends: in other words, those most central to their development and socialisation. A quarter indicated that their undocumented status had placed strain on their relationships with teachers. These relationships are the fabric of every day of their lives. It was therefore very important to us as part of this report to communicate this and set out the consequences for CYP.



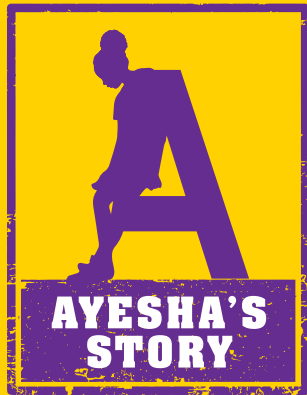
Vulnerability factors

We can see that at this stage Ayesha had multiple vulnerability factors. She was a homeless child, she had no adult care or supervision, she had no access to any form of safe financial support. She was unable to meet her basic needs for food and shelter. Although she gave an impression of

being streetwise and tough, in reality Ayesha was susceptible to exploitation and abuse. Ayesha was emotionally fragile, and experiencing depression and isolation from her peers. Ayesha was desperately trying to maintain the façade of a 'normal' life, to continue to attend college and to socialise with peers. However, this was increasingly difficult and stressful for her, and she was beginning to use alcohol and cannabis to escape from her problems.

Summary of findings

- UCYP experience many issues that render them vulnerable to harm
- Undocumented status places great strain on UCYP's relationships with others, and therefore upon UCYP themselves
- UCYP find that as a result of their undocumented status, their relationships with others are based on secrecy and imbalance
- UCYP are more likely to be victims of domestic and other abuse than the general public
- The impact of these experiences was that many of the UCYP in our cohort experienced mental health problems
- For those with pre-existing health conditions, being undocumented exacerbated these
- Lack of knowledge about one's own immigration status is, in itself, an indicator of vulnerability



How did these problems and factors impact Ayesha's life?

There were times when Ayesha took risks with her safety because she felt she had no other choice. When her friends had all reached the end of their willingness to support her, she would try to avoid asking them for anything, but as an undocumented young

person she was not able to access homeless shelters. She would accept offers of a lift, food, a shower, or a bed from strangers, and was relieved on the few occasions when they did not expect anything in return. Most of the time these strangers were men who coerced her into sex in exchange for food or shelter.

During this period Ayesha had relationships firstly with an older British man, and subsequently with a British teenager closer in age to her. There was an imbalance within both relationships in relation to the age of her partner, or her need to be intimate at an early stage in order to secure overnight accommodation where possible. Ayesha was also disadvantaged by her inability to access medical treatment as a homeless young person, and the fact that she could not afford, or insist on, contraception in these relationships. Ayesha became pregnant on two

separate occasions – once with each partner. She suffered a miscarriage both times. Ayesha attributed the first miscarriage she had to spending time sleeping rough and its effect on her health. The second miscarriage occurred shortly after she was raped by a stranger in a park where she was sleeping because she had nowhere else to go.

Although Ayesha reported the rape she suffered to the police, she felt that she was not taken seriously, and the prosecution was not pursued. Ayesha was not able to understand the reasons why the prosecution was not pursued as they were not fully explained to her. She was very upset, particularly because she saw the perpetrator walking around freely after the rape, whereas she felt imprisoned by the experience and the consequences of it. Her relationship with her boyfriend broke down as she felt unable to cope with physical intimacy in the aftermath of the rape.

How did these problems and factors impact their lives?

The wider consequences for CYP of some of the vulnerability factors identified above (eg. Abuse, homelessness, lack of education) are beyond the scope of this report. In this section we wish to provide an account of the lives and legal cases of the individual members of our cohort. Frequently the consequences were poverty, invisibility and an inability to hold others to account. The decisions that CYP were able to make about their own lives were therefore heavily circumscribed by the decisions that others had already made. At the point that they approached our project, we found that CYP were effectively standing in a hole that had been dug for them by others. They were making short-term decisions based on a need to survive, rather than being in a position where they could make reasoned decisions about their future.

In some instances, where peers were considering whether they wished to continue on to higher education or enter employment, CYP were barred from both, and wondering how they would feed or house themselves in the immediate future. Rather than comparing entry requirements for different universities or colleges, they were considering whether to sleep in the park, or stay awake all night on a night bus to keep safe.

The overwhelming feelings expressed to us by our cohort were those of helplessness, hopelessness and frustration. Their lives and their options were limited by their immigration status. "What am I supposed to do?" was a phrase we heard often. There wasn't always an easy answer.

The impact of being a victim of abuse could extend beyond the CYP being removed from the abusive setting. A number of CYP were prevented from accessing documentation which would have supported any application for permission to remain even after they had escaped their abusive situation. However, a CYP who has no

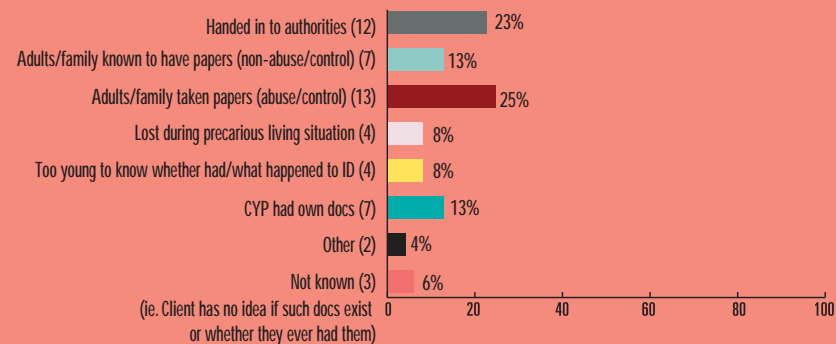
basis of stay in the UK is likely to find it unthinkable to risk accessing support from the police or other formal agencies in order to recover such items.

It is important to note that the forms of abuse suffered by CYP referred to in the graphic on page 69 and the graph on page 75 are not mutually exclusive, and therefore that the CYP involved could, and did, suffer multiple forms of abuse and coercion. Half of this group (ie. CYP who had experienced abuse) within the cohort experienced neglect. However, the CYP included in this group were also victims of crimes including rape, threats to kill, child trafficking, sexual exploitation, exploitation in domestic servitude and other forms of child abuse.

One of the main impacts that all of these difficulties had on the CYP was to delay the point at which the CYP were able to access legal advice and take steps to regularize their stay in the UK.

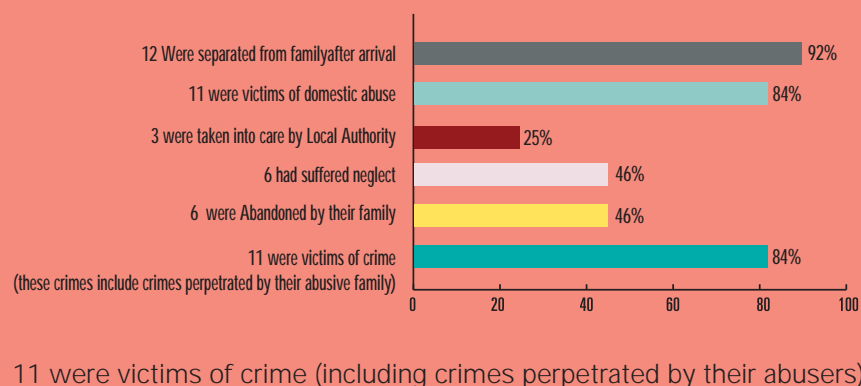
WHO HAS DOCUMENTS?

Reasons why children just don't have access to all the information they may need:



ADULTS / FAMILY HOLDING DOCUMENTS

A quarter of our cohort had their documents withheld from them as a form of abuse or control. Of these:



How did these problems and factors impact early identification?

By the time they engaged with or were referred to our project, many CYP were already limited in what they could achieve as a result of the delay in accessing advice and services. Timing is crucial in immigration applications, and the loss of childhood status before regularisation can seriously hamper efforts to resolve their situation. As such, long periods spent isolated from support left more than just a psychological legacy.

Access to documentation of the CYP's identity and history was a significant factor that impaired early identification of their

immigration status and potential routes to resolving any problems. We have explored above the gap between a CYP's self-identity and their actual nationality or legal connection to the country they consider home.

In our experience it is the physical possession of documentation that is key to resolving issues for CYP. It is for this reason that we monitored the experience of CYP who in fact had permission to remain in the UK. The problem is not always that of lack of permission to remain, but of lack of proof of that permission. With responsibility for immigration policing increasingly being delegated to private landlords, banks, employers, medical practitioners, colleges and even schools under the government's 'hostile environment' strategy this is not just an issue for recent migrants. It is an issue of race that will affect British children from diaspora communities too, in a way that it will not affect white British children.

The question of access to documents loomed large for our cohort. Only 13% of CYP were actually in possession of their own documents on referral. As such 87% faced an initial obstacle of trying to access their documents or copies of them whilst at the same time having no evidence of their identity.

Lack of identity documents was a barrier to accessing essential services, but also prevented CYP from accessing information about themselves held by other organisations, and which might have helped them to trace their status and their immigration rights. Whilst under the Data Protection Act 1984 individuals have the right to request copies of information held in relation to them by public bodies, that evidence will only be released on the production of documentary evidence to prove that the person requesting the information is entitled to it. Different organisations require different evidence, and the list of what evidence is acceptable is subject to frequent change. Whilst these requirements are understandable,

they represent an insurmountable obstacle for CYP trying to uncover what has happened to them in the past. This is particularly relevant in relation to CYP who are not in contact with their family members as set out above in Chapter 4.

Mediation & Advocacy

Another difficulty faced by CYP was in finding the courage to speak out about their situation, and finding someone who would listen. Again the hostile environment meant that CYP who had been socialised as British, and had identified as British were well aware of the views that others held of 'illegal migrants'. CYP spoke to us of hearing the words 'asylum seeker' used as a term of abuse in school, and being afraid of being identified as 'illegal', an asylum seeker or otherwise someone with 'no right to be here'. In this atmosphere, it took great courage, or great desperation for CYP to raise their heads above the parapet to speak about their immigration problems, or the other difficulties that they faced which stemmed from them.

When the CYP did speak out, they faced prejudice based on their age, their status, and their social position. As lone CYP they rarely had an adult who could speak for or with them, and their voices went unheard.

Due to their vulnerabilities they also often lacked the ability to self-advocate. Our experience illustrates that whether they struggled to articulate their difficulties or not, others certainly struggled to hear what they wanted to say.

As such, mediation formed a significant part of our work under the project. This was not formal 'mediation' as one might expect in a family law context, but rather project staff acting as a 'go-between' or intermediary between the CYP and a relevant third party (such

as a family member or service provider) to help them to advocate for their needs in circumstances where legal action was deemed inappropriate or would not have achieved such positive results.

We acted in this way partly in order to preserve relationships (with third parties such as family members or local authorities) for the CYP as far as possible, which might have been impossible if legal action were to be commenced. However, this less formal approach was also fitting in the context of our cohort being in a position where they did not want to bring themselves to the attention of the authorities unless or until they felt reasonably confident that they could make an application for leave to remain in the UK.

We used mediation in a number of settings in order to improve the practical circumstances of the CYP we were working with, and to secure their position as far as possible whilst we worked to regularise their stay in the UK. We also used mediation and negotiation to secure access to documents that would be essential in their applications for regularisation.

Mediation took many forms, and could be very light touch, in the form of providing CYP with supporting letters to explain absence from college, or provide proof of immigration status or pending applications. In other situations mediation was required to protect the safety of the CYP we represented, and in those circumstances trained staff members met with family members of CYP to obtain documents, supported children to report child protection issues, and liaised with police where CYP had been a victim of crime.

It was also necessary to support CYP in their interactions with health professionals and to make referrals where CYP were not receiving treatment that it was evident they needed. A number of the CYP we worked with, particularly boys, were unable to communicate some of their experiences and emotions, and as a result could not access treatment that had the potential to assist them in recovering or managing symptoms.

CASE STUDY

QASIM

Qasim was a former unaccompanied child asylum seeker from Afghanistan. Prior to leaving Afghanistan he had been shot by the Taliban, and his brother murdered. On arrival Qasim was very physically unwell, and his mental health was poor. He also had learning difficulties. He was overwhelmed with feelings of loss, grief and despair.

Qasim was placed in the care of a local authority. However his age was disputed, and although the local authority accepted that he was child, they found him to be a year older than he claimed. Despite Qasim's serious health problems he was not referred for medical treatment. Qasim struggled greatly with his mental and physical health problems, and began to self-harm.

Qasim had been in the UK for 2 years before he was referred to our project. It was only following our health mediation and referrals that he was able to access medical treatment and therapy to help him to cope with the consequences of his experiences.

Qasim's poor health and learning difficulties had interfered with his ability to explain his fear of return to Afghanistan, and his asylum claim was initially refused. The Local Authority then threatened to make him homeless, and advised him that he should co-operate with attempts to remove him to Afghanistan.

With project mediation he kept his home. He went on to be recognised as a refugee.

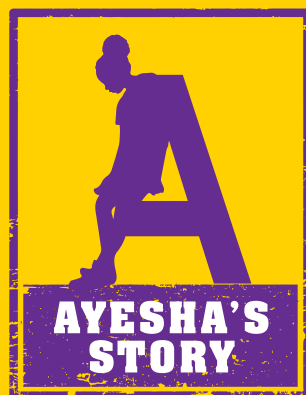
Managing relationships between CYP and the local authorities responsible for their care was another significant aspect of our work. Although enhanced by our legal skills, this mediation and advocacy has rarely ever been funded through legal aid unless it 'progresses' the legal case for a client. In fact, we found this form of mediation and advocacy was essential to enable CYP to provide full instructions, evidence their cases properly, and access their full entitlements.

Again there was a range of service provision. In some circumstances Local Authorities disputed key aspects of a CYP's account, including their age, and whether they had alternative housing provision with families and friends. There were also circumstances in which personality clashes between CYP and their support workers were best managed via a third party, and project staff provided this facility. This helped to iron out communication problems, and in some cases prevented the cessation of services.

Working with our cohort also showed us the difference that mediation with the police made to the prospects of obtaining evidence that CYP had been victims of crime. In 2 cases project staff made contact with police officers to obtain evidence that a CYP had been a victim of crime. In both cases the CYP had been raped. We required evidence of an investigation in one case, and of prosecution in another. In a third case, we liaised with police to request bail conditions that would prevent the perpetrator of abuse being able to contact or be in the vicinity of our child client.

In these cases, the CYP had been unable to secure this information alone, and project mediation was essential to require the police to engage with the CYP's request, and progress the matter.

In other cases CYP reported to us that they had been unable to pursue cases in which they were victims of crime, including familial and other sexual abuse. All 5 were young black females who reported rape or sexual abuse. 3 reported sexual abuse by a family member. All 5 reported feeling that the police were not interested in what had happened to them, and charges were not brought in relation to any of these allegations. All 5 described struggling to understand the process of the investigation, and why charges were not brought, and not feeling that this was explained to them at all.

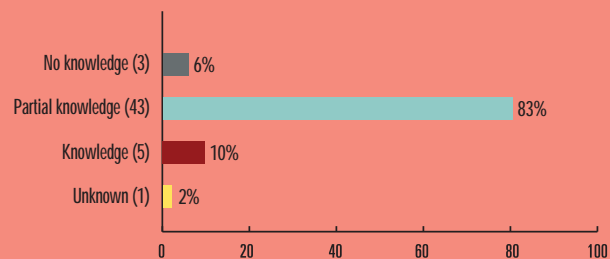


Ayesha became depressed and found herself acting in a hostile manner to other people. She began drinking alcohol in greater quantities to numb her feelings. Her relationships with friends deteriorated and she became more and more isolated and distressed. Ayesha continued to try to access legal advice, but the availability of free legal advice became increasingly limited at this point. Ayesha approached a number of advice agencies and non-profit agencies but was unable to obtain an appointment or to receive substantive legal advice as none of these agencies had capacity for new clients at the point when Ayesha approached them. Her inability to do anything to change her situation was incredibly upsetting and frustrating for Ayesha. Looking back at that time now, Ayesha says 'I was so angry all the time, so sad. When I think about it now I had such an attitude. I expected people to turn me away, and I was rude to them because I knew they would not help me. Nobody would help me. I couldn't understand why. I still can't really.'

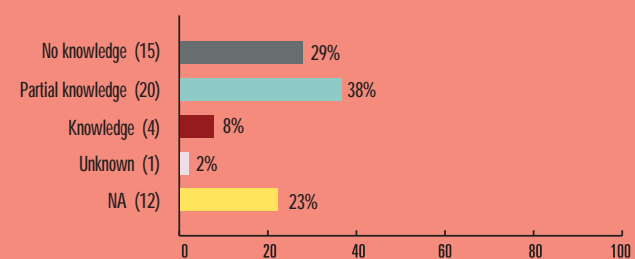
Ayesha's hostility impaired her ability to access help, as she was perceived by potential advisers as rude. Many had a limited capacity to assist and did not want to take on a combative client. Others struggled to understand her legal issues because she was, at this point, struggling to understand and express them herself. Ayesha was losing hope.

LACK OF KNOWLEDGE

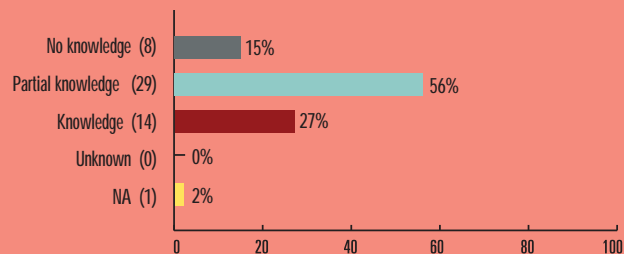
CYP'S knowledge of family history. Reason: %



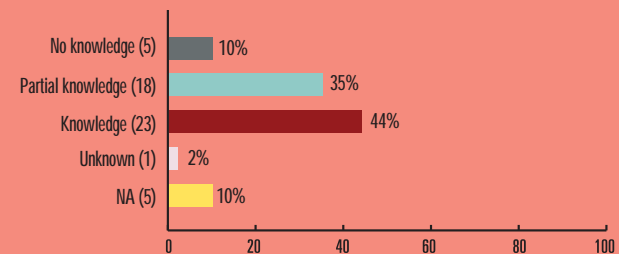
CYP'S knowledge of family's immigration status



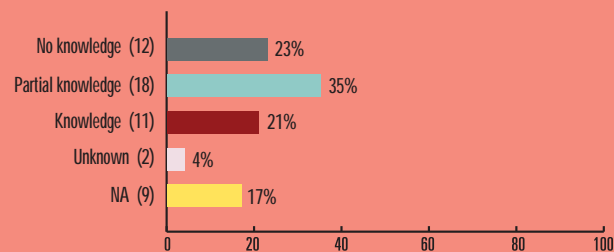
CYP'S knowledge of own previous immigration history



CYP'S knowledge of entry into uk



CYP'S knowledge of previous representative's details



How did these problems and factors impact legal assessments for our team?

The CYP brought with them a legacy of all of the times that they had been failed by adults in their past, and their feelings of frustration at being blocked from attaining the futures they dreamed of.

CYP also exhibited a range of different presentations and preconceptions which impacted upon legal assessments and indeed preparation of their legal cases. These were present in almost three quarters of all the cases in the cohort. Given their prior experiences, getting past their mistrust and fear (of unknown adults and/or perceived authority figures) were two of the main challenges to the preparation of CYP's legal cases. However, the biggest challenge was lack of knowledge by the CYP of crucial factors in relation to their immigration status.

A dearth of knowledge of their past, their families' pasts, their immigration history and their previous representation meant that as lawyers we were often starting from scratch, and helping CYP piece together what we could.

It was always necessary to consider whether making a Subject Access Request to obtain a copy of the CYP's Home Office file was worth the risk of bringing the CYP to the attention of the authorities, or whether there were other, less risky, options for obtaining details of what had gone before.

It was a painstaking process of listening to the CYP and understanding and mapping their life, listening out for the details that would give us the key to a formal record of their presence, identifying the names and contact details of individuals that could corroborate their presence, tracking down school records, medical records and pressing for detail from every source.

Understandably this was tiring and frustrating for CYP who wanted and needed something concrete to work with. However our intention was always to ensure, as far as possible, that applications were as fully evidenced as possible, and had the best prospects of success.

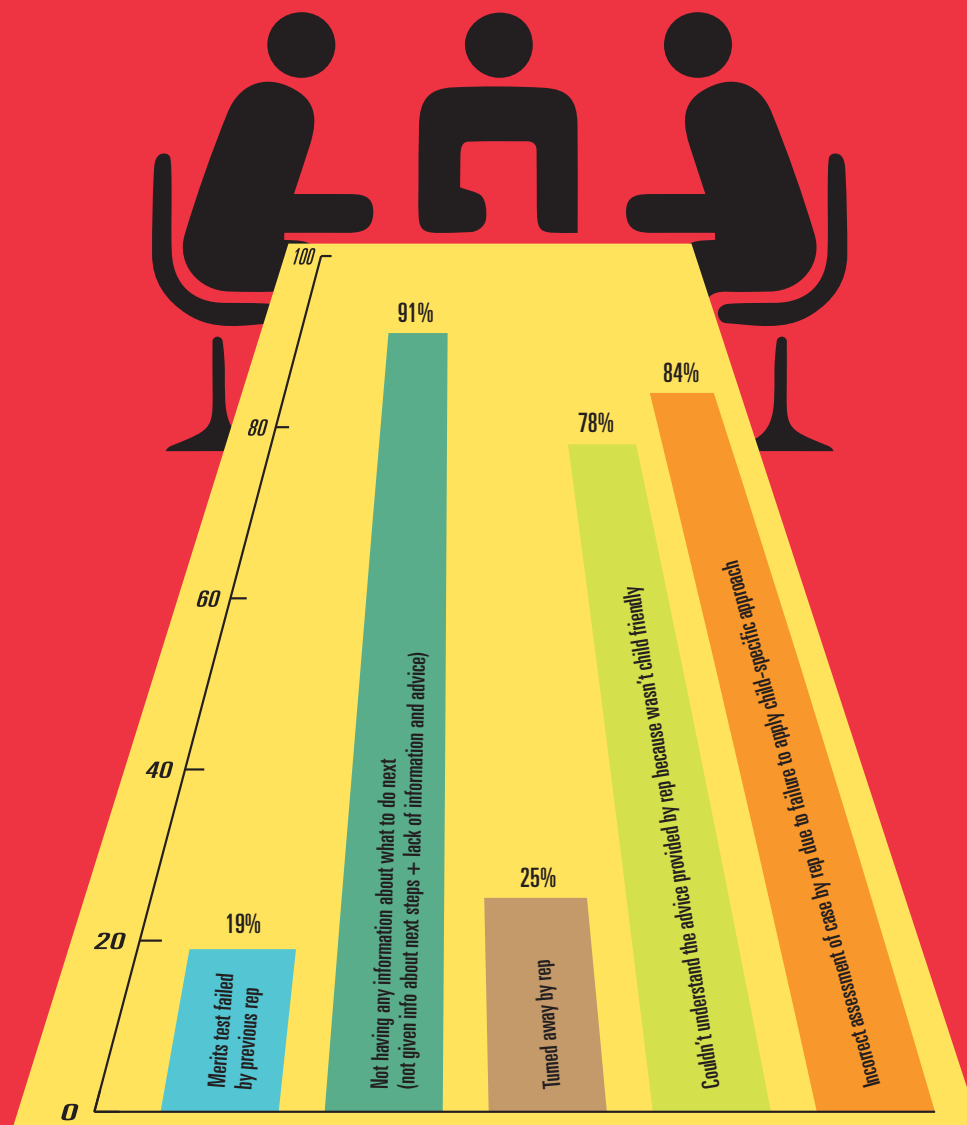
More than two thirds of CYP had received previous immigration representation or advice. Over 90% of those who had received previous representation or advice were unhappy with the service they had received and it became apparent that this dissatisfaction was not misplaced. Crucial opportunities to resolve the issues faced by CYP had been missed, and some CYP had been seriously prejudiced as a result, losing the benefit of their childhood status, and as a result needing to meet the more stringent requirements applicable to adults. Overall, the picture was of services that were not child-friendly, and not child-focused. Information and advice was not provided in a way that was accessible to CYP, and they were unclear about what had happened, and what next steps were required. Legal representation and submissions did not rely on child-specific information or evidence to put forward the CYP's case and did not plead cases on the basis of children requiring additional and different protections.

PREVIOUS REPRESENTATION

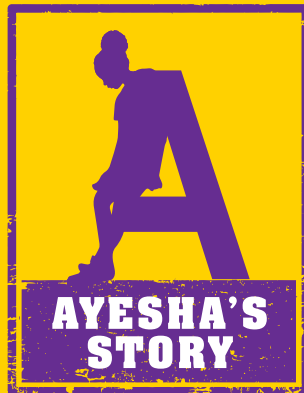
67% CYP HAD PREVIOUS
LEGAL REPRESENTATION



91% OF THESE WERE UNHAPPY
WITH THAT REPRESENTATION



Of those: (percentage is of those who had previous reps)



By the time Ayesha managed to refer herself to our project she was over 18, and pregnant again. The father of her child was a British citizen but wanted nothing to do with the child and didn't support Ayesha. Ayesha was no longer able to attend college as she was too stressed and her attendance had been an issue. Ayesha had been sofa-surfing and staying with a friend, but the friend's landlord had discovered her there (in breach of tenancy) and she had to leave. She had nowhere to go, no source of food or income, and was 18 weeks pregnant. After her earlier experiences of miscarriage Ayesha was relieved to have made it this far in her pregnancy, and was trying to stay strong so that her baby would survive.

When she met us, Ayesha was exhausted, depressed, and very angry. She felt let down by the adults in her life, and unwanted by pretty much everyone. Ayesha was hostile and unable to trust us. She didn't want to spend time discussing her immigration history or her life story as she didn't understand its relevance, and she didn't want to share her painful past with another bunch of adults who would surely let her down again.

It was therefore difficult to obtain instructions from Ayesha and we had to work hard to gain her trust. Obtaining accommodation and financial support at an early stage was enormously helpful, but Ayesha's struggle was not over at that point. The layers of problems that she had experienced resurfaced whenever life became stressful and manifested themselves in periods of anger, and also times when Ayesha was too exhausted to engage with the process.

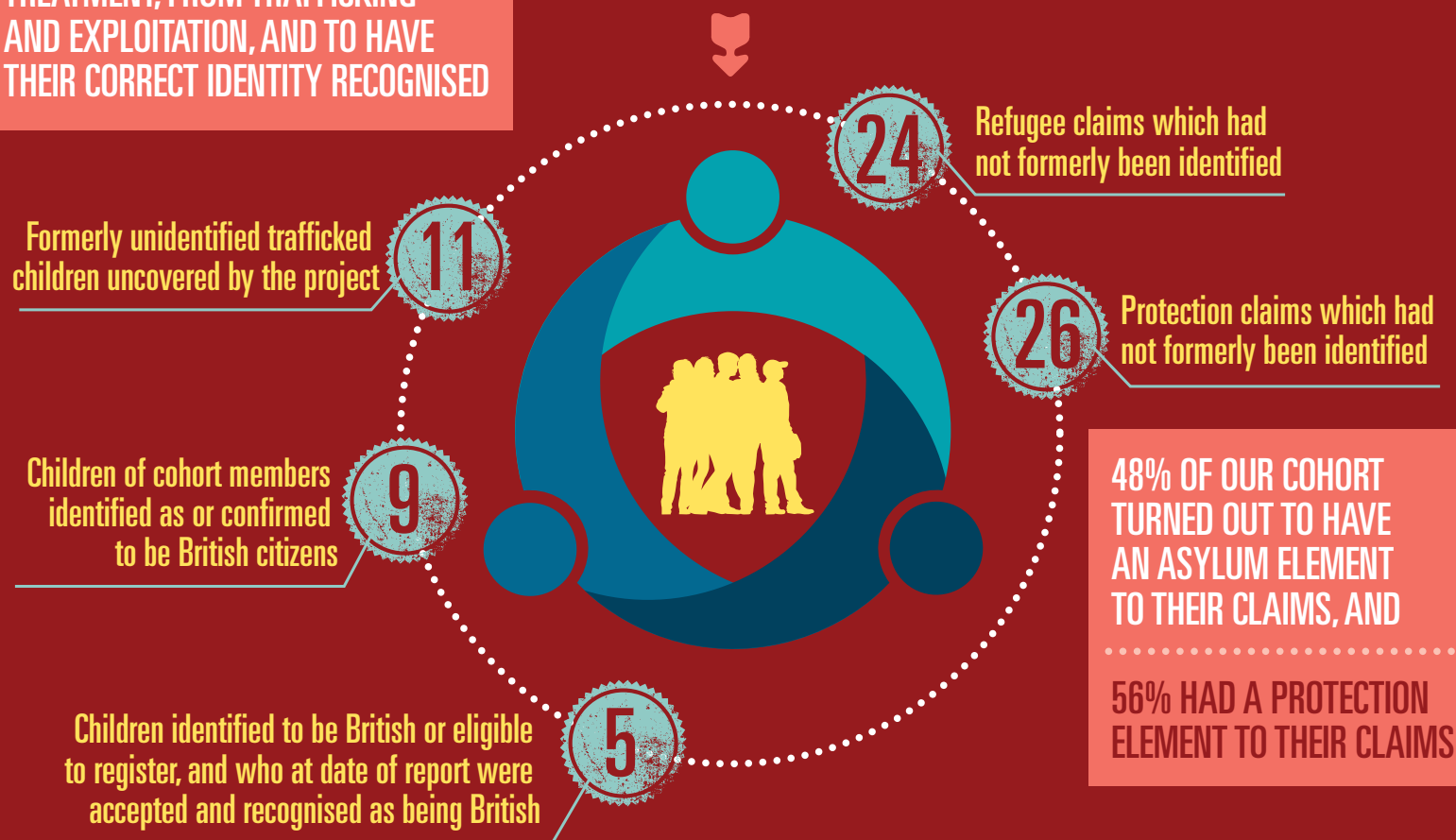
6. THE LEGAL NEEDS OF CYP

Immigration problems identified on referral

Although the entire cohort eventually required legal support to address their immigration problems, the route to identifying and accessing this support was not easy for CYP who relied heavily on those supporting them to make the necessary referrals.

THE RIGHT FOR YOUNG PEOPLE
TO BE **PROTECTED** FROM TORTURE,
INHUMAN AND DEGRADING
TREATMENT, FROM TRAFFICKING
AND EXPLOITATION, AND TO HAVE
THEIR CORRECT IDENTITY RECOGNISED

THE PROJECT IDENTIFIED:



Whilst it is unsurprising that qualified legal specialists are better able to identify the issues in a case than non-legal practitioners, it is nevertheless extremely concerning to note the dangers for CYP where issues such as trafficking, persecution and human rights violations remain unidentified and hidden by those supporting them. For the purposes of this report we will collectively term these applications 'international protection claims' of children. To make an application for international protection an applicant must make a claim for asylum through the UK asylum system. Although applications in relation to trafficking can be pursued otherwise than through an asylum application, in actual fact all of the CYP in our cohort did pursue their trafficking claims via an asylum claim where regularisation of their status was requested on the basis of risks associated with trafficking. Legal aid remains available for all asylum claimants, including CYP.

A stark finding from our work was the number of international protection claims that were left unidentified and unmet prior to the CYP's referral to our project.

We found that professionals supporting this group of CYP often relied on the CYP's primary account as a definitive exposition of their immigration legal case. Given the analysis and findings advanced in earlier chapters it should be clear that self-identification by CYP should not be treated as a reliable indicator for identifying and diagnosing CYP's immigration issues. Dependence on their self-identified immigration status or history is dangerous and has the potential to leave important issues unidentified and unexplored.

Without our project intervention CYP risked being returned or forcibly removed to family or country situations where their lives were potentially in danger. The worryingly large number of unmet international protection claims for this group of CYP is explored in further detail in Chapter 7.

Non-legal practitioner's understanding of CYP immigration needs

The first adult that a CYP will have discussed their difficulties with is likely to be a non-legal professional in their life, such as a teacher, youth worker, careers adviser, or social worker. They made up a large portion of the referrers in our project. Non-legal professionals we spoke to felt confused and concerned when a CYP they were working with expressed a difficulty related to the CYP's immigration status. They felt ill-equipped to help the child, and often had very limited information about where the child could turn. Some failed to recognize that an immigration problem existed. Others would support the CYP to access support and advice, but not the right kind of advice. For example, a member of our cohort who the school suspected of being abused and exploited in domestic servitude was referred to a youth agency specialising in assisting CYP to enter the workforce, rather than referring her to services for children who had experienced abuse, or for specialist legal advice (the school had already made a child protection referral to the Local Authority to no avail). Another CYP was advised by community members to approach the Home Office for legal advice.

When the cuts to legal aid came into force after April 2013, this situation worsened. Non-legal professionals supporting the CYP represented explained that they had not expected the legal aid cuts to impact so many of the CYP they worked with. They had nowhere they could refer CYP to. Problems they cited included:

- Immigration firms and Law Centres no longer taking on 'non-asylum' immigration cases they referred.
- There were very few alternative free points of access to qualified immigration advice available for CYP with immigration problems.
- The few sources there were did not meet CYP's needs:
 - o Lengthy waiting lists for face-to-face advice by appointment
 - o Drop-in only sessions took place during school hours with no guarantee of being seen
 - o Advice only accessible by phone which CYP found impossible to afford or understand
 - o They could not or would not unpack the CYP's history to establish whether there was an international protection dimension to the CYP's case. They did not consider it their role.
 - o They wanted to maintain boundaries with the CYP and not create confusion or raise expectations
 - o They were fearful of committing a criminal offence as an unregulated and unqualified person

On a practical level this meant that it was harder for CYP to access specialist support, but additionally CYP were receiving the message

CASE STUDY

TANYA

Tanya came to the UK as a small child with her mother following a successful visa application to enter the UK to join her father. During her teenage years the family relationship broke down and she was made homeless. Tanya was supported by a youth charity to access support and accommodation from her local authority but they refused to support her because they said she did not have permission to live in the UK. Tanya was street homeless and was urgently referred to us for immigration advice to resolve her immigration problems and to help with her housing issue. Following referral, we discovered that Tanya did in fact have permanent settlement rights in the UK but the local authority and youth charity failed to recognise this. Tanya was granted Indefinite Leave to Enter the UK but professionals were unaccustomed to this form of immigration status grant. Tanya had an entitlement to services, but crucially the Local Authority's lack of understanding of that entitlement rendered it inaccessible to her in practice without legal support.

that whatever their problem was, it was too big, or bad, or difficult for the adult they had approached to be able to assist them with – a difficult position for non-legal professionals but a baffling and frightening message for CYP to receive.

We also found that the word 'immigration' strikes fear into the hearts of other professionals. Assumptions are often made that a child with an 'immigration problem' cannot access any mainstream services, and other professionals are wary of breaching rules of which they are only dimly aware. CYP may not hold relevant

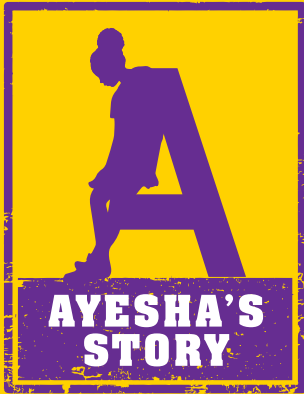
information, and it may not be safe (physically or emotionally) to access this information. For others, their focus is on children as children, and there is a risk that immigration issues will be ignored or avoided as being too complex, distressing or difficult for a child (or the professional) to deal with. These fears are valid, and this is a difficult line for professionals in other disciplines to walk in the absence of a clear strategy for accessing legal advice for undocumented CYP. In cases where the child appears to be 'British' the issue may not be diagnosed at all.

CYP were therefore placed in an invidious position where they might have had access to legal aid, (because their circumstances raised issues that amounted to an international protection claim rather than an 'immigration only' issue), but nobody sufficiently qualified to diagnose this would be funded to investigate the issue. It is therefore vital that provision is made for CYP to access initial advice from specialists in relation to their situation so that an accurate diagnosis can be made and so that CYP with international protection needs can receive their entitlements to free legal representation.

CYP understanding of their legal needs

When considering the extent to which CYP are able to understand their legal needs, it is important to keep in mind that many were particularly vulnerable and with little in the way of emotional and practical support from adults. Many were identified with additional vulnerability factors (see chapter 5 above) including:

- Homelessness and hunger on referral
- Experience of abuse, with many having spent a significant proportion of their childhood living with their abusers



Ayesha knew that she needed to regularise her immigration status, but only after a long spell of being a homeless teenager. She knew that she needed to have somewhere to live, but she did not know how to achieve this. She had been given misleading information when she attempted to resolve her problems alone, had no way of knowing that the information received was wrong, and as a result was confused and despondent about her rights and entitlements.

- Mental health problems, learning difficulties and developmental problems related to trauma and separation that impaired their ability to retain and process information

In order to understand their legal needs, CYP first need to be aware that they have a legal need. It is clear from our findings that not all of the CYP knew that they had an immigration problem.

In addition to the reasons above, further factors that caused lack of understanding included:

- Many CYP had lived in the UK for a long time, or were born here, and identified as British. As such, they were unable to conceive that they could have an immigration problem, let alone identify and resolve this

- A number of our cohort had had limited access to education, and some were illiterate (having been kept in isolation or working for family and/or extended family)
- Some of our cohort originated from cultures where there was little trust for officials, a magnified fear of the authorities and/or they or their family members originated from countries with legal systems that were not fully functioning, and/or in which corruption was endemic
- Immigration law is a fast changing and complex area of law with which even accredited immigration advisors struggle to keep pace

STEVE

CASE STUDY

Steve was born in the UK. He only discovered that he had immigration problems when he was told that he could not complete his degree at university as a home student. This discovery had a significant impact on his mental health and he could not understand why this was the case when all his family were British. Following our project intervention and legal investigations by our immigration lawyer we discovered that his estranged father, who had lived in London until the marriage with Steve's mother broke down, was from Italy. It later transpired that at the time of his birth his mother was a non-UK national. When British citizenship applications were made on behalf of the family Steve's name had been missed from the application. He had lived his life not knowing about his lack of British citizenship.

Our findings are consistent with those made in the participation element of a Child Rights Impact Assessment produced for the Children's Commissioner for England on the impact of the legal aid changes on children. In that report, it was found that "The majority of interviewees did not know that the issue they faced was potentially a legal matter, capable of being resolved by recourse to the law."

- Interviewees discovered the issue was a legal matter only after chance encounters and subsequent referrals to legal advice projects, sometimes years after first encountering the issue.
- The majority of interviewees did not know that they could access Legal Aid or even that Legal Aid existed.
- Interviewees were unable to resolve their cases without legal support and litigation, despite repeated attempts to do so unsupported¹.

In general, CYP from our cohort had very poor knowledge of their rights and entitlements.

Reasons for this included:

- They were children when they arrived in the UK, or at the point when their difficulties began
- As children, they had been insulated from awareness of the issues affecting them or misinformed by adults in their life
- Many were socialised as British, and were unaware that their legal problems related to immigration issues
- CYP who had more recently arrived in the UK were unfamiliar with the concept of rights and entitlements within their original society, and were not aware that there was potential to seek advice and resolve their issues

¹Carter, J (2014) The impact on children of Legal Aid changes since April 2013: participation work with children and young people, p.8. London: Just for Kids Law.

- In instances where Information and advice was provided to CYP about immigration rights and entitlements this was
 - o not written in a language the child could read
 - o not provided in a way that children could engage with and understand
 - o given at a point when a child was unable to engage with it (perhaps due to illness or distress)
 - o given at a point when a child was unable to relate the information to their own situation

These findings are echoed in other research looking at the legal needs of migrant communities more generally².

Previous immigration advice and representation

CYP aware of their immigration issues often had lawyers involved in attempting to resolve their situation in the past, although most had little understanding of what had been done for them and the outcomes of their involvement.

Some CYP did not know that an immigration lawyer had previously been involved in their immigration case, only discovering this following our project intervention and investigations.

Based on a review of the historical case files and feedback from the CYP themselves, it was clear that poor legal advice and representation had been a factor in prolonging the undocumented status of many CYP. Some of this related to poor immigration advice, or advisers who prioritized the needs or instructions of adults over the needs of the CYP. CYP were particularly disadvantaged in the (frequent) cases where immigration representatives failed

to accurately identify who their client was. In a number of cases, the CYP was clearly the adviser's client, as the adult whose care they were in was a British citizen. However, it was evident from reviewing files following transfer that instructions had been taken directly from the adult carer, and advice provided to them without the CYP being involved at all. Furthermore, where adults had subsequently decided that they no longer wished to support the CYP with their application, or actively wished to take steps to withdraw or damage the application with hostile intent, it was apparent that advisers did not recognise that their duty was to the child client rather than to the more vocal adult involved. CYP were therefore disadvantaged in that advisers effectively colluded with potentially abusive adults and applications in the name of CYPs were withdrawn without their consent, or even knowledge.

Overall, the picture was of services that were not child-friendly or child-focused. Information and advice was not provided in a way that was accessible to CYP, and they were unclear about what had happened, and what next steps were required. Legal representation and submissions did not rely on child-specific information or evidence to put forward the CYP's case and did not plead cases on the basis of children requiring additional and different protections.

- More than two thirds of our cohort had received previous immigration representation or advice, and more than 90% of those were unhappy with the service they had received.
- More than two-thirds of our cohort had received previous advice, or had previous immigration lawyers involved in their case, but the issues remained unresolved.
- Crucial opportunities to resolve the issues faced by CYP had been missed, and some CYP had been seriously prejudiced as a result, losing the benefit of their childhood status and consequently needing to meet the more stringent requirements applicable to adults in immigration applications.

² Minnesota State Bar Association (2011) Overcoming Barrier that Prevent Low-Income Persons from Resolving Civil Legal Problems, <http://www.lsc.gov/sites/default/files/attach/resources/LegalNeedsStudy-MinnesotaBarAssociation.pdf>

Toynbee Hall (2015) Trusting the dice: Immigration Advice in Tower Hamlets http://www.toynbeehall.org.uk/data/files/Immigration_Advice_in_Tower_Hamlets_KEY_FINDINGS_2.pdf and SRA report

Brownlees, L. and Smith, T. (2011) Lives in the Balance: The Quality of Immigration Legal Advice Given to Separated Children Seeking Asylum http://www.refugeecouncil.org.uk/assets/0003/1125/Lives_in_the_balance.pdf

TAAHIRA

CASE STUDY

Taahira had lived in the UK for 5 years. Following arrival to the UK she lived with extended British family members, but was in local authority care at the point of referral. She was referred on the basis that she had lived in the UK for a long period of time, and had no permission to be here as far as she knew.

Following meetings with Taahira we identified that she was a potential child victim of trafficking. We also identified that, in addition to having been exploited in domestic servitude during her childhood, she had been sexually abused and groomed by an older male relative in the UK. The result: she would be at risk on return to her country of origin as a single female child with no family protection, and with a perceived stain on her honour.

Taahira was supported to claim asylum and her trafficking experience is now being investigated. Professionals supporting Taahira did not identify her potential claim for international protection

Multiple legal needs of cyp

One third of the CYP referred into our project were referred for reasons other than immigration advice, but turned out to require legal representation or advice in relation to immigration issues. The CYP referred into our service usually required advice in relation to a range of legal issues, and this demonstrates the complexity of their lives, and the multiplicity of legal issues that flow from undocumented status.

Over half of those who were referred into the project for immigration or education advice turned out to have housing issues, and almost half who were referred for housing or immigration advice also experienced difficulties requiring legal support in relation to their education.

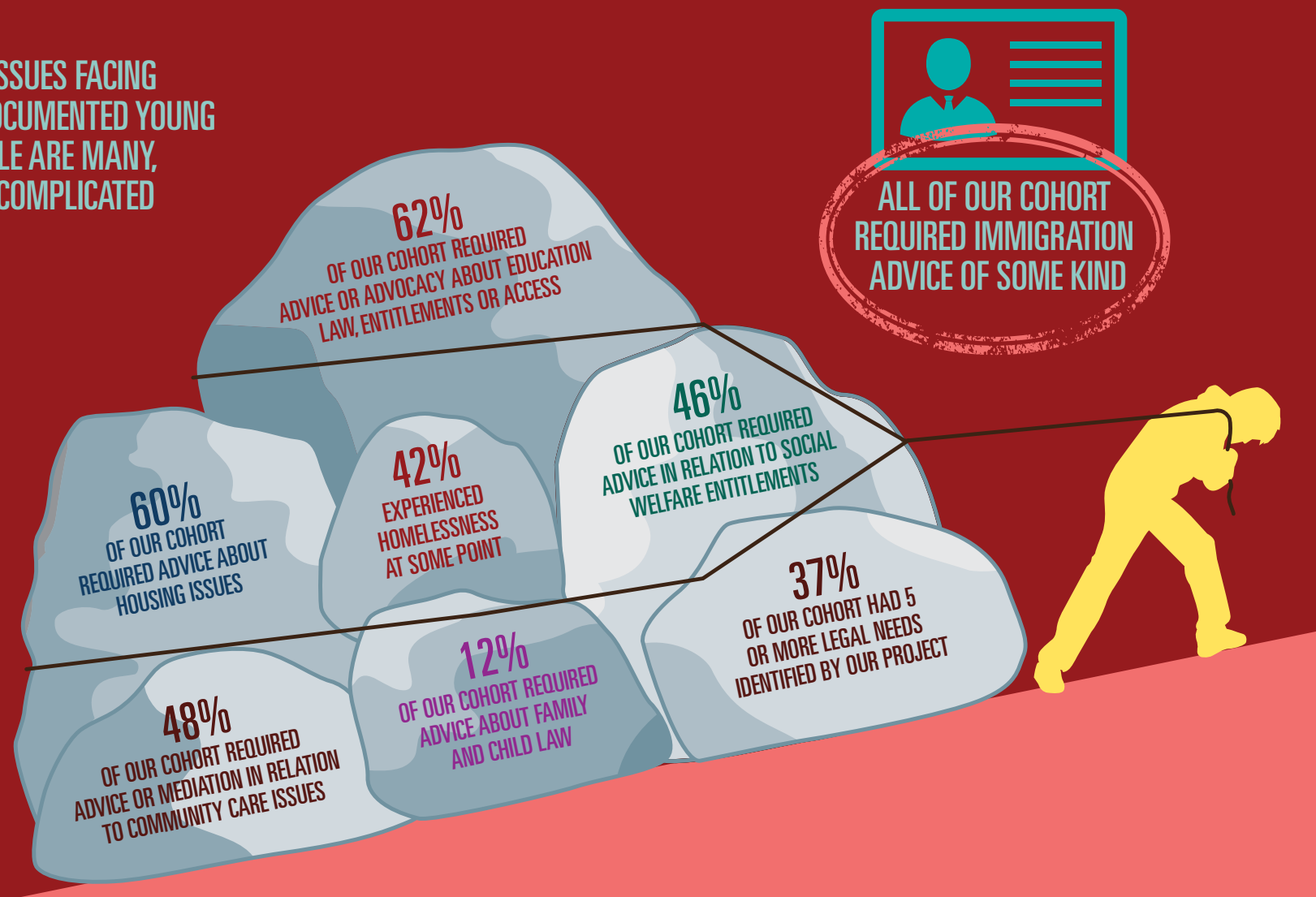
It is very difficult for CYP to identify the source of the many problems they are experiencing, and it can be equally difficult for other agencies to understand and map the full picture. The referrer and/or the young person may identify a 'main reason'

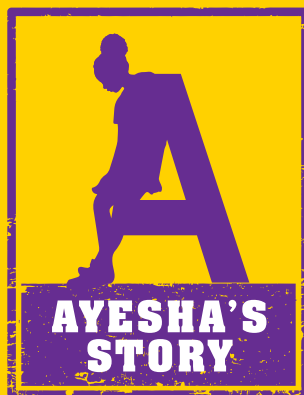
for their problems, whereas when we investigated the case, the real cause was undocumented status, or a lack of understanding of documented status. Of course, where a CYP has nowhere to live, they will identify themselves as primarily experiencing a housing problem, and may struggle to engage with the fact that the source of the housing problem is a lack of documented status. The benefit of our project was the ability to work holistically with the young person and identify their full range of needs, diagnose the source of the problems and begin work to address this, but also to be able to meet immediate needs such as those for food, housing and medical treatment. This allowed the CYP the best opportunity to understand and engage with the root of their problem: their undocumented status.

The complexity of the issues affecting CYP and the extent to which immigration problems touch on most areas of their lives mean it is rare for CYP to be experiencing one legal problem in isolation.

Most cases were referred to the project where 1 legal need had been identified by the referrer. However, following legal intervention of our project two or more legal needs were often identified.

THE ISSUES FACING
UNDOCUMENTED YOUNG
PEOPLE ARE MANY,
AND COMPLICATED





Project staff identified that Ayesha had multiple legal needs. Although her legal issues stemmed from her immigration status, the most pressing need was for safe accommodation and access to money to buy food. Our housing lawyer immediately made an application to the relevant local authority for Ayesha to be accommodated and supported as a vulnerable pregnant teenager with no

recourse to public funds. Ayesha was accommodated within 2 days on an emergency basis, but the local authority were resistant to providing ongoing support and this legal battle continued for many months.

Ayesha also needed to apply to regularise her stay in the UK. It was likely that any ongoing provision of local authority support would be contingent upon Ayesha making an application for permission to remain in the UK lawfully, or she would be required to accept financial support to return to Nigeria.

Our assessment was that Ayesha had a good chance of obtaining leave to remain on the basis of her private life in the UK as protected by Article 8 of the European Convention on Human Rights (ECHR) in light of her long residence in the UK, and the fact that she had spent most of her formative years here and no longer had any

connection with Nigeria. Ayesha also had an unborn British child. However, at the point of referral Ayesha's relationship with her baby's father was very poor, and her baby had not been born, and so it was not immediately possible to rely upon this. At the time Ayesha was taken on by the project, advice on immigration (non-asylum) issues remained within the scope of legal aid, and we were therefore able to access funding to advise and represent Ayesha without major restriction. Obtaining funding for advice and case preparation was essential because putting together evidence of Ayesha's history and presence in the UK was challenging.

We also identified that there might be a (fee free) European law application that would benefit Ayesha, but this would depend upon her child being recognised to be a British citizen, and this could not be relied upon before the child's birth.

Legal needs identified by the Protect project

Housing

A significant number of CYP experienced homelessness during the time we worked with them, and many of them were living in precarious circumstances prior to referral. Other CYP were highly mobile, indicating the insecurity of their housing situation, and their need to rely on informal sources of support such as friends and community members. Many lived under constant threat of losing the roof over their head, and others lived in circumstances which were unsafe, unsanitary or insecure. Immigration status was an important contributor to the likelihood that a CYP would be homeless, causing the housing problem in 20 of our CYP's cases.

We discovered that many CYP who were homeless and sought help from their local authority were unlawfully turned away for support because they were told that they did not have legal permission to remain in the UK. For some this was the first time that they learnt of their undocumented status. Others were told that they did not have permission to remain or had no entitlement housing or support when this was not, in fact, the case.

Following project intervention, all CYP under 18 secured support and housing under sections 17 or 20 of the Children Act 1989. Some CYP we assisted preferred not to go into formal local authority care, and accessed accommodation on an emergency basis invoking the local authority's duties towards them as a person in priority need under the Housing Act 1996.

Foster-care is usually deemed the appropriate form of care for younger teens and small children who are separated from their families³. Our experience is that CYP who are placed with foster families feel better supported emotionally and physically. Those who are recent arrivals learn English more quickly, and

understand British culture in a more positive way. For younger teens it is important to have constant access to an adult who is responsible for caring for them and supporting them to access services which meet their needs. However, disputes about the age of some of our cohort meant that they were housed with those much older than them, or were placed in accommodation that was inappropriate for their needs.

A number of CYP approached a local authority for support when they were under 18, but were turned away and given no support at this first point of contact⁴.

In total, six members of our cohort presented themselves to the Local Authority when under 18 but were denied support. Of these, four were victims of rape and one was suspected to have been raped (due to concerns raised by a medical expert) but did not disclose this. Three out of the four rape victims had been subjected to long term sexual abuse. One CYP had been detained and tortured as a child, and another had been trafficked and exploited in domestic servitude.

- Four of these CYP later accessed accommodation under s.17 of the Children Act 1989 as they were parents of small children that required accommodation to avoid a breach of their human rights. All of these CYP now have permission to remain in the UK.

Three very vulnerable CYP were initially turned away but, following our intervention, accessed local authority support:

- One of these CYP was made homeless by her father, who was her only relative in the UK. The Local Authority refused to accept this, and on several occasions sent the CYP back to the family address stating that her family could house her when her father would not.

³ Gregg, L and Williams, N (2015) Not just a temporary fix: the search for durable solutions for separated migrant children. The Children's Society.

⁴ Our definition of 'no support' is that at the time the CYP approached the Local Authority they were told that the Local Authority was not willing, or not able to provide the CYP with accommodation, financial support, or any other services.

- One of these CYP was in his mid-teens and had severe learning difficulties (he was able to function at the level of a 9 year old), physical disabilities and had suffered emotional abuse and neglect. Following our intervention he was able to access supported accommodation which met his learning and physical needs.
- One of these CYP left her abusive family as a teenager and was refused local authority accommodation. As a result she was living in a potentially dangerous and exploitative situation with several older male strangers of whom she was afraid. Following our project intervention the local authority agreed to accommodate her in supported accommodation.

Some CYP required numerous interventions to protect their housing position during their involvement with our project: even when they had accessed formal housing provision, they remained vulnerable to threats of homelessness, termination of support or the provision of inadequate accommodation.

Others were initially provided a service but that service was later terminated on the basis of age, lack of immigration status, or because the CYP was a care leaver and wasn't in full-time education. Not all of these service terminations were lawful and CYP in this group did manage to access some kind of support following legal intervention by our project.

The prevalence of homelessness and threats of homelessness amongst CYP in the general population is hard to map, and it is difficult to identify available data which would provide a full comparator⁵. The 42% homelessness rate experienced by our cohort is unlikely to be matched amongst the general CYP population even when hidden homelessness is taken into account, indicating that undocumented CYP are significantly more likely to be homeless than CYP in the general population.

CASE STUDY

HAMRAZ

Hamraz was 13 when he entered the UK, but the Local Authority assessed him as being 3 years older than his age – 16 years old – so they did not place him with a foster family, and decided that semi-independent living was appropriate for him.

He was then placed in a 3 bedroom house. When he was first placed there, there were no other residents so he had to cope on his own. Hamraz had never spent a night alone before, and didn't know how to do basic things like cooking for himself. Later, older boys were placed in the house with him. He was afraid – they were strangers to him and he had been mistreated by older boys en route to the UK.

Following a lengthy legal challenge by Protect, Hamraz's age was later accepted, but not until he had lost much of the support he should have received during his childhood including foster care and compulsory schooling to name but two.

It is also important to note that immigration status and eligibility for public funds are relevant in relation to access to homeless shelters, and that therefore UCYP are at greater risk of street homelessness than the general homeless population.

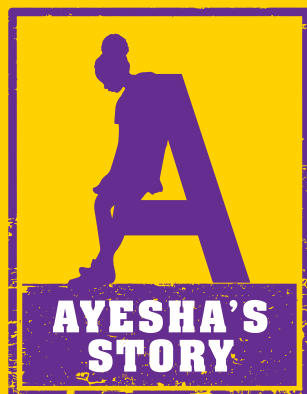
⁵ The three statistical tools provided by the government to measure homelessness (statutory homelessness, rough sleeper estimates and homelessness prevention and relief) do not capture all those who might ordinarily be considered homeless. See Reeve, K. (2011) The Hidden Truth About Homelessness, Crisis

Social welfare

Access to mainstream public funds (benefits) is also closely tied to immigration status. However, CYP do have entitlements to financial support outside the mainstream benefits system. Legal interventions in terms of benefits therefore consisted of ensuring that CYP accessed and maximized their entitlements whilst addressing the immigration problems which were the source of their difficulties.

Issues that arose frequently for CYP were:

- CYP were unable to access hardship grants, and could not therefore benefit from funds that other professionals assumed that they could access
- British children who would have been eligible for Child Benefit could not obtain it in practice where their sole carer was an undocumented person, as the adult/carer is the applicant for the benefit rather than the child
- Similarly, British children with an undocumented lone parent were unable to access state benefits, or allied provisions such as free school meals
- Older CYP who became carers for younger siblings did not routinely access Child Benefit or Tax Credits for the undocumented siblings in their care, to which they would have been entitled due to the age of the younger sibling they were caring for



The project identified that as a pregnant mother Ayesha was entitled to housing under Section 21 of National Assistance Act 1948 as she was pregnant and had no recourse to public funds. Ayesha was therefore assisted to approach the relevant local authority, and their refusal to support her was challenged on the basis that it was unlawful. This legal action ensured that Ayesha and her baby were accommodated immediately. After further legal challenges Ayesha was provided with financial support so that she could afford to feed herself and her baby.

Following this, Ayesha experienced a number of different legal problems relating to her housing. The Local Authority repeatedly threatened to stop providing her with services, provided her with accommodation which was in disrepair to the extent that it affected her health and that of her baby, and refused to provide her with services to which she was entitled under law.

Ayesha's housing difficulties became a part of her day to day life. From entry into the project, until the date of writing of this report, Ayesha has required no fewer than 7 legal interventions (even after being granted permission to remain in the UK) to ensure that she and her children remain in safe and appropriate accommodation.

CASE STUDY

ELLA

Ella was a teenage mum. She was undocumented, and a survivor of familial abuse. She had been thrown out of home when she reported her abuse to the police.

When Ella became pregnant, midwives and Young Parent support workers assumed that given her poor financial situation she would be eligible for a hardship grant and a maternity grant to help with essentials needed following the birth of her baby. However, when she applied for these she was turned down because she had no entitlement to public funds.

Nobody knew what to do for Ella because they had assumed that she would be able to access these funds.

Community care

Community Care law issues were often identified by our specialist lawyers and referred to Community Care experts to provide legal advice and representation. CYP who were not born in the UK were more likely to lack documentary evidence of their identity and age, and were therefore far more likely to be denied services based on age, or to be provided with an inappropriate level of service. The issue of age assessment is a complex and controversial one, and beyond the scope of this report. However, it is important to note that prejudicial assumptions made regarding migrant CYP based on their ethnicity and nationality led to them being held to a set of norms and expectations that would not, in all likelihood, be applied to 'native' CYP.

The result of this was the provision of inadequate services,

no services, or a complete failure to safeguard these CYP.

There were common issues that arose for a number of our clients:

- Challenges to the age of a client where that client was unable to provide evidence of their actual age. Age may determine whether a Local Authority owes a duty to a CYP and, if so, the nature of that duty
- CYP in the care of a local authority experienced difficulties in accessing support where they were not in education and were told by the local authority that they could not assist (in relation to accessing education, but also in relation to providing other services which relied on the CYP being in full-time education)
- Gatekeeping by Local Authorities, whereby they refused to provide services to a CYP who was entitled to them on the basis that the CYP was unlikely to be aware of their entitlements and would simply accept this.
- Local Authorities would not always engage with the specific needs of a CYP.

CASE STUDY

ABDUL

At 16 Abdul was moved from his foster placement to semi-independent accommodation many miles away from his family and sixth form college. He asked his social worker to help him with travel to college because he could not afford the fare. He was told that this would not be possible. Abdul stopped attending and was later informed that he was not entitled to support because he was not attending college.

CASE STUDY

AMIR

Amir, a vulnerable disabled child, approached the local authority aged 16 because he was being abused and exploited by his British family. The Local Authority agreed to provide services for him, and asked him to return pending these being arranged. He was forced to return to the family home and heard nothing more from the Local Authority, and they did not accommodate him or provide him with appropriate support until our project threatened legal action.

Education

Difficulty in accessing education was one of the factors most likely to cause a CYP with lengthy residence in the UK to discover they were undocumented. Many did not experience difficulties with accessing education until they were 16 or over and trying to progress on into further education. The problems often arose at the point that they moved from school to college and this was largely down to further education institutes requesting documentation of their identity and evidence to prove their immigration status to register onto courses. However, those who remained at school simply encountered the problems at a later date.

CASE STUDY

DILSHAD

Dilshad's foster mother Carol contacted our project team prior to his 18th birthday. Carol had cared for him since he was 10 years old. She was panicked and confused. Dilshad was doing extremely well at college and predicted to achieve high results in his A'levels but she was advised by the local authority that he would not be able to access support for higher education because he would not be legally present in the UK when he turned 18. Dilshad was devastated to learn about his lack of status and inability to go on to university. He refused to first engage with the legal process and Carol witnessed a deterioration of his mental health and was concerned about his wellbeing.

Following detailed investigations of his case files we discovered that Dilshad was found by police aged 9 working in the back of a takeaway. He was moved into local authority care as a child in need but all professionals working with him failed to identify that he was a child victim of labour exploitation. Dilshad found it very difficult to talk about his past and recall painful, and often suppressed memories. Through the support of Carol, various professionals and evidence held by authorities we secured ILR as a child victim of trafficking. Dilshad is now doing well and is able to pursue his education.

Regulations relating to Home Student fees, and Student Finance⁶ for university also prevented CYP accessing university placements unless they could show that they met the relevant immigration criteria: that they are British, have settled status in the UK, are an EEA national (for the moment), a person holding refugee status or Humanitarian Protection, or meet detailed requirements related to CYP with long residence in the UK who are also able to demonstrate a period of 3 years 'lawful residence' in the UK prior to commencing their university course.

CYP who have lived in the UK for long periods of time are likely to have had most of their education in the UK. Those with good academic attainment will be encouraged, with their peers, to look forward to higher education, and a much-prized place at university. As such, those CYP who reach their late teens unaware that they lack the right to remain in the UK experience what is akin to a bereavement. Their identity and sense of self is rocked when the future they had worked so hard for becomes unreachable. We also represented CYP whose secondary education had been seriously impacted by incorrect age assessments, or erroneous assumptions being made about their education entitlements and abilities as migrant CYP. CYP from countries affected by conflict, or those who had been trafficked or enslaved, may well have been unable to access education for long periods of time, and required additional support in benefiting from education in the UK. The situation was similar for those who had been through traumatic experiences. Children in Local Authority care were less likely to access the support they needed, and less able to challenge inadequate or inappropriate education provision. The information provided to us by our cohort made it clear that the impact upon them was considerable and long-lasting.⁷

Summary of findings

- Immigration status or lack thereof created huge barriers in accessing relevant support and services resulting in a multitude of legal problems for CYP
- Undocumented status blurred or obscured the identification of other legal needs of CYP
- Other legal needs blurred or obscured the immigration problems of CYP
- Undocumented status impacted upon the educational rights and entitlements of CYP

⁶ Education (Student Support) Regulations 2011 (SI 2011/1986), as amended by interim policy following (on the application of Tigere) (Appellant) v Secretary of State for Business, Innovation and Skills (respondent) 2015 UKSC57

⁷ For additional information about CYP whose immigration status blocks access to higher education, readers are referred to <http://www.justforkidslaw.org/let-us-learn>

7. TACKLING CYP IMMIGRATION PROBLEMS

Immigration status determination is a complex process, often requiring careful assessment of family and migration history. Although many non-legal professionals are qualified to assess the welfare and support needs of CYP, often assessing their family history and immigration background through the prism of immigration law can prove extremely difficult as they lack the practical knowledge and understanding of complex immigration policies, laws and procedures. There is a plethora of complex laws governing this legal field: international protection, immigration and British citizenship laws. These immigration problems and various legal entitlements are in no way easy to diagnose, and it is sometimes challenging even for experienced practitioners, especially when one takes into account the evidential, procedural, and legal hurdles CYP must clear to secure their status. In all cases for lone CYP they are so hard to navigate that it cannot be done without specialist and holistic legal representation.

The provision of immigration advice is heavily regulated. All immigration advisers providing publicly funded (ie. legal aid) immigration advice must be accredited, and those working with children or on appeals require a higher level of accreditation than others. The exams are challenging and specialist, and accreditation must be updated on a regular basis. Training can be expensive, and the accreditation and re-accreditation processes take time away from fee-earning work. Those who are not working in firms or organisations regulated by the Law Society or other recognized professional bodies cannot provide immigration advice unless registered with and overseen by the Office of the Immigration Services Commissioner. To provide immigration advice without the appropriate regulation amounts to a criminal offence. It is therefore impossible to obtain 'informal' immigration advice, and incredibly difficult for non-specialists to know where to start or whether they can start at all.

In light of this, in order to ensure that CYP are provided with assistance which is effective and meets their needs, it is vital that legal professionals engage with other professionals in the lives of CYP, and vice versa. Where positive professional relationships are forged with the CYP's best interests at heart there is a better prospect of CYP being able to access information safely and pursue regularised immigration status.

Unmet International Protection Claims

For the avoidance of doubt, the phrase 'international protection' is intended to capture the full range of circumstances in which the UK has an obligation to provide protective immigration status to prevent the return of an individual to a country in which they would be at risk of:

- Persecution in accordance with the definition in the Geneva Convention 1950¹
- Trafficking in persons in accordance with the definition in the Palermo Protocol²
- Torture, inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights³
- Death contrary to Article 2 of the European Convention on Human Rights
- Slavery, servitude or forced labour contrary to Article 4 of the European Convention on Human Rights
- Significant harm as a result of indiscriminate violence due to internal armed conflict⁴

Such applications fall under the umbrella of 'asylum'⁵ and as such, remain within the scope of legal aid⁶. This includes cases in which the applicant asserts a right to be provided with recognition as a refugee, a residence permit as a victim of trafficking, or subsidiary protection.

Child specific refugee and international protection claims

This project was not intended to represent CYP seeking international protection – those who need to make a claim for 'asylum' with

¹ UNHCR (2010, 1951 and 1967), Convention and Protocol Relating to the Status of Refugees, <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>

² OHCHR (1953) Protocol Amending the Slavery Convention Signed at Geneva on 25 September 1926, <http://www.ohchr.org/Documents/ProfessionalInterest/protocolslavery.pdf>

³ Council of Europe (2010) European Convention on Human Rights, http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁴ EUR-Lex (2011) Qualification Directive 2011/95/EU of the European Parliament and of the Council, <http://eur-lex.europa.eu/eli/dir/2011/95/oj>

⁵ In trafficking cases referral to the NRM is the primary means of accessing protection, but it is our practice to always make an application for asylum alongside such a referral.

⁶ Although trafficking cases are only within scope where a decision has been made by the Competent Authority (the part of the Home Office responsible for identifying and addressing trafficking claims) that there are reasonable grounds (to the lower standard – 'I suspect but I cannot prove' – R (on the application of Minh) v SSHD [2015] EWHC 1725 (Admin)) to believe that a person has been trafficked

the Home Office. Our project was designed to provide advice and representation to CYP who had immigration (non-asylum) problems to help map and address the needs of this group who, unlike those making an asylum claim, would be unable to access legally aided advice once LASPO came into force. However, what we also learned from this project was the extent to which CYP's claims for international protection were left unidentified by professionals and indeed CYP themselves – placing CYP at potential risk of return to countries where their lives might be in danger.

When CYP claim asylum in the UK, their cases are dealt with through a system which is intended to enable them to set out their reasons for requiring asylum. However, in order to enter that system, a CYP has to be aware that their circumstances are such that an application for asylum exists. If the CYP or those caring for them are not aware of this, CYP will not enter the asylum system.

A detailed analysis of the merits or otherwise of the current system of addressing asylum applications by children is beyond the scope of this report. However, certain issues either arose frequently, or were root causes of failure to identify child-specific risk, and therefore failure to identify that a child had an asylum claim at all.

We found that often children's claims were assessed within the prism of adults claims. There was an expectation that CYP could identify and understand the risk to them on return to their country of origin. They would be expected to account for why they might be targeted or why the government of their country of origin would be unable or unwilling to protect them from harm. There was little appreciation for the child-specific nature of claims by CYP, nor the need for a liberal application of the benefit of doubt in asylum claims involving CYP. It was not routinely understood that CYP may not have all the information that would be expected from or available to an adult because of their young age; that CYP may be unable to articulate their fears and/or that they may not even be aware

of all the risk they would face on return to their country of origin. There are a number of reasons why assessing risk may prove difficult for a CYP:

- Length of time in the UK – they may know or remember nothing of the country of proposed return
- They may not understand that they are at risk of being returned
- Children's claims can be complex to understand due to the nature of the harm caused, the means and methods used to inflict harm and exploit, and the motivations of perpetrators for doing so
- Parents / family members may condone, be complicit in or cause harm because of their own beliefs or material economic circumstances
- CYP may lack the maturity and insight to consider the motives of others, and the consequences of their behavior

The Home Office recognize and acknowledge that the asylum claims of children should be dealt with in a different way from those of adults, and provide a process that is intended to give effect to this. The Home Office's written policy⁷ recognises a non-exhaustive list of matters which may amount to 'child-specific' persecution or harm, including:

- forcible or underage recruitment into military service
- family or domestic violence
- infanticide
- forced or underage marriages
- discrimination against street children

⁷ Home Office (2016) Processing Children's Asylum Claims, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537010/Processing-children_s-asylum-claims-v1.pdf

- female genital mutilation (FGM)
- forced labour
- forced prostitution
- Creating and disseminating images of child abuse
- trafficking
- children born outside of strict family planning laws and policies

However, other forms of harm such as food poverty, lack of access to safe housing, lack of access to education, the use of child detention, and lack of functioning child protection services may also amount to persecution, or inhuman and degrading treatment. Children in our cohort have been recognised as refugees on the basis of risk of such treatment.

International protection claims by children should use a child-rights based approach, and demonstrate an understanding of the different ways and extent to which children experience harm in comparison to adults and the capacity or willingness of governments in their country of origin to protect them. When such an approach is taken, more international protection claims are identified, pursued and won, ensuring children can remain in the UK and be protected from serious harm. However, this is only achievable through specialist legal representation, and it is vital that the protection claim is identified at an early stage. All of the CYP in our cohort who had entered the UK unaccompanied and applied for asylum following arrival had become undocumented as a result of a failure to identify child-specific persecution/harm and/or to prepare their applications properly to demonstrate the risk of such persecution/ harm.

It is important to note however that throughout the process, children are reliant on the professionals involved in caring for and representing them to ensure that all relevant information is

elicited from them in relation to their asylum claim, and they are not necessarily aware themselves of what information is relevant or required. As such, the extent to which a child can participate in this process is governed by the quality of the representation and support that they receive. As other reports confirm⁸, the nature and quality of representation by legal representatives, and support from social workers is extremely variable. The extent to which children understand and feel able to engage in the process is also highly dependent upon the individuals involved. As such there is unfortunately no guarantee that a child will have the opportunity to have their case fully explored at first instance.

It is also clear from other reports that CYP are not always clear about what has happened in their asylum claims, and do not understand the different forms of leave to remain that are granted in response to an application for asylum or their implications for the future.

A child who applies for asylum may be granted:

- Refugee Status
- Humanitarian Protection
- Limited Leave to Remain

In our experience, many CYP do not understand that it is possible to have their asylum claim refused, yet to be granted permission to stay in the UK for a limited period because they are under 18 and there is no safe way that they can be returned to their country of origin. Being issued with a Biometric Residence Permit (BRP)⁹ showing that they have permission to remain causes many CYP to feel that they are safe and allowed to stay. As such, they may not pursue appeals which would have good prospects of success whilst they are under 18, as they do not understand or appreciate the need to do so. Social Workers do not always understand the implications of such decisions, and legal representatives do not always appreciate that children are less able than adults to comprehend and

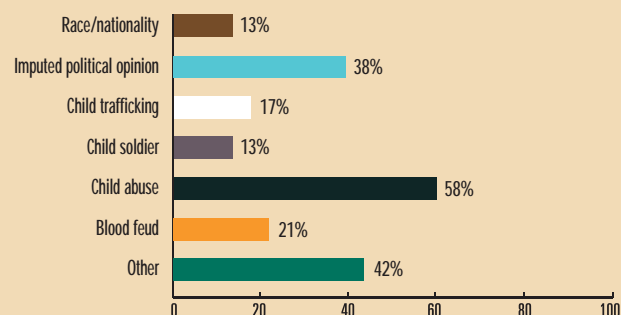
⁸ A Matthews 2014 *ibid*, Sandhu & Cronin 2015 *ibid*

⁹ See glossary

predict the consequences of their actions. In this way CYP may take their first steps on the journey to undocumented status by failing to pursue asylum claims that would succeed, and postponing proper consideration of the issues until after they become adults.

PERSECUTION

Grounds of persecution – % of each:



This project has uncovered the extent to which international protection claims of CYP can remain hidden behind other immigration or life issues. As described above, referrals into the project were only accepted in relation to cases where the person or agency referring the matter identified the case on referral as being 'immigration only' (ie. not being an asylum claim), but half turned out to be international protection claims, and therefore eligible for legal aid. Many were misdiagnosed as cases that only involved long residence and family life issues, and therefore were thought

to be outside the scope of legal aid because they were classed as 'immigration only' cases.

The definitional gap highlights the dangers resulting from the removal from scope of immigration family life cases, particularly for children¹⁰.

Our data indicates non-lawyers are likely to perceive children's experiences as relating to family life and domestic issues, rather than identifying the child as being at risk of future persecution. In relation to unaccompanied children who are applying for asylum, social work practice often fails to capture the full experience of the child before arrival in the UK. Social workers do not ordinarily take a full family history, including information about whether the child's family life was abusive, from unaccompanied children who are seeking asylum.

In part this is because of the ethical imperative not to require a child to discuss potentially traumatic events unless they are relevant to their care but the unintended consequence is a failure to capture their international protection claim, which (if accepted) would protect them from all forms of harm including state sponsored, societal and familial. The physical distance between the child and their abusive parents appears to operate as a barrier to experience of abuse being explored. Unlike children removed from their parents in the UK, to a certain extent asylum seeking children enter the children's social care system without a history; they become 'looked after' because they have no parent or family in the UK rather than as a result of a direct and present threat of parental abuse in the UK. However, it is important that those working with CYP understand that there are numerous issues in relation to their history in their country of origin which will be relevant to the CYP's international protection claim and care needs, and it is important to map these at an early opportunity to ensure that they can be included in the child's protection claim where necessary.

¹⁰ Matthews, A 2014 *ibid*; Cronin, K, Sandhu, B and Kohli, R (2015) Put yourself in our shoes. Law Centres Network

Reasons why claims were often left unidentified include:

- Too often CYP are seen through the lens of adulthood, and unrealistic expectations placed upon them in terms of their ability to understand their past and futures, respond, plan and articulate those plans.
- Strong community and quasi-familial links to the UK were often what led to their referral to our project on the basis that they had established private and family life in the UK without any understanding of the CYP's history and risk on return. In this group lack of access to high quality, child-specialist legal advice, or poor representation by the representatives that they had accessed, and prior experience of abuse were all common issues which had led to the CYP becoming undocumented.
- CYP were often viewed as complicit in their unlawful and/or clandestine entry to the UK and their undocumented status, as if the choices that adults made for and about them were in fact made by the child.
 - o Four CYP entered the UK on false documents (known and not known prior to the intervention of our project). All four originated from countries that experienced conflict and upheaval in recent times, and where grave human rights abuses, including those against children are sadly all too frequent. All four had their entry to the UK arranged and facilitated by adults without their involvement. All four have made claims for asylum and of those three have been recognised as refugees.
 - o As noted above, a third of the cohort that were not born in the UK entered the UK clandestinely. These children were all from war torn countries, and entered the UK to seek protection. Many were unable to articulate those fears

following arrival. Many were under the control of people traffickers or smugglers paid to bring them to the UK and all had experienced abusive and coercive conditions during their travel to the UK. Of the 14 CYP who entered the UK clandestinely, 8 were later recognised as refugees, and a further 4 were given leave to remain in the UK permanently with the UK government accepting that it would not be safe for them to return to their country of origin.

As mentioned above, applications that would succeed when made by a child may not succeed when that child has reached the age of 18. This is because, regardless of actual circumstance, the age of 18 seems to become a bright line for international protection purposes. The approach of the UK immigration authorities and courts is to recognise children's capabilities and particular vulnerabilities, their vulnerabilities to harm, and their need for particular care and protection. There is also recognition of the difficulties that a child would face in relocating within their country alone, in comparison to the difficulties this would pose for an adult. Procedures and policies on assessing the claims of children give effect to these considerations. However, as soon as the child reaches 18 there is a paradigm shift, and the CYP is, overnight, rendered culpable for all that has gone before in their life, and expected to return in safety. It is therefore vital that CYP obtain early diagnosis of their international protection claims and high quality specialist advice to enable them to present their case in the best way possible to the Home Office.

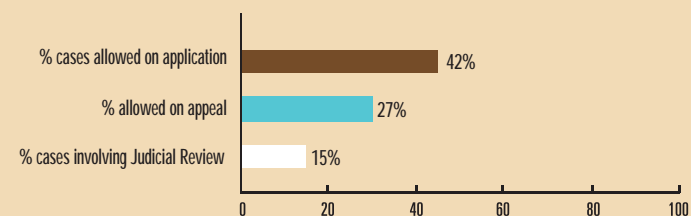
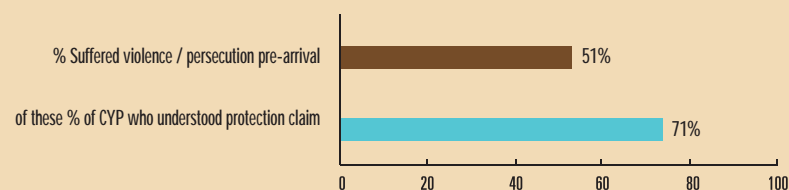
Summary of Findings

- Child-specific persecution can be hard for non-legal practitioners to identify
- Failure to identify child-specific persecution can rob a child of their chance to access legal aid

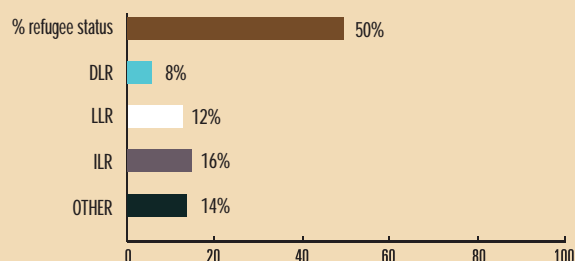
PROTECTION CLAIMS WITHIN PROTECT

NUMBER OF CASES WITH
PROTECTION CLAIMS **50%**

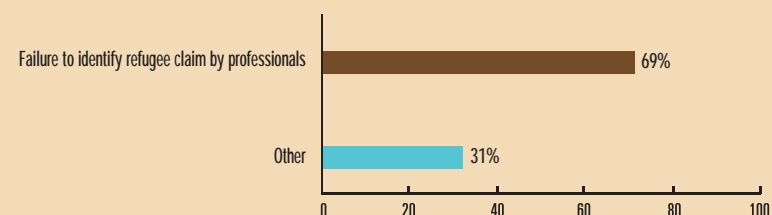
% OF PROTECTION CLAIMS WHICH WERE
UNIDENTIFIED PRIOR TO PROTECT INVOLVEMENT **34%**



Case outcomes (only of those with protection claims)



Reasons why protection claims were unidentified



CASE STUDY

GULWALI

Gulwali was 14 on arrival to the UK. He entered the UK clandestinely from Calais. Following arrival, he was placed into foster care and went to see an immigration lawyer. He found this meeting very difficult. He was scared and did not know what to say. He did not understand the details of the war and conflict he was continuously asked about. His claim for asylum was refused.

Following our project intervention, we met with Gulwali on several occasions. When we asked about his family he broke down. He said that he loved his foster family and the life he had built in the UK but he had also lived with a lot of guilt. It transpired that his father was killed by a powerful man in his community of origin. This man then forced Gulwali's mother to marry him and both he, his mother and younger brother were victims of significant violence daily. His mother was also raped by his step father's friends. His mother had sold her jewellery to help her oldest son escape.

Gulwali had scars from all the violence he had suffered but had told no one. He did not know that information about his family life in his country of origin was important. It was never asked so never relayed during the assessment of his initial claim for international protection. He had gone on to live his life in the UK, done well at college and was told by non-legal professionals that he may therefore have a good private and family life case in the UK. However what he needed was international protection.

- Children's cases require detailed evidence and preparation
- Legal aid is vital to this
- Failure to obtain international protection places CYP at risk of serious harm
- Timing is crucial – a claim that would succeed when the applicant is a child may not succeed once they reach 18

Survivors of domestic violence and abuse

A significant proportion of our cohort were survivors of child abuse and neglect. The abuse they suffered may have occurred before their entry to the UK, after entry or both. Whatever the location of the abuse, the impact upon the CYP was the same: physical and emotional scarring, which affected the CYP's development.

The 'othering' of migrant CYP has led to a situation where, if they are victims of domestic abuse, they are less able to access services and support to help them to escape and recover from violence and abuse.

For a number of our cohort, their lack of documented status was used by their abusers as a method of control and tool of their abuse, safe in the knowledge that the CYP would be unlikely to report the abuse or, if it was reported, it was unlikely to lead to any action being taken. Members of our cohort reported their abuser saying 'You're illegal; who's gonna believe you?', and others of being threatened that if they disclosed their abuse they would be removed from the UK.

Some abusive family members took the step of withdrawing pending applications to regularise the CYP status, whilst others failed to apply to extend their leave to remain in the UK for CYP who

CASE STUDY

AJALA

Ajala was born in the UK and lived here until he was 5. Ajala's case was referred to us via his British foster carers after he was removed to Nigeria with his biological mother. At the time of his removal he was under the supervision of the local authority who had recently returned him to his mother's care following her release as a psychiatric inpatient. He had an allocated social worker, and was enjoying regular contact with his foster family as the local authority helped with his transition back into the care of his mother.

Ajala had spent several months in foster care after his mother was admitted into a psychiatric ward, during which time it had become clear that Ajala had suffered neglect, and emotional abuse. His development had been impaired. It was apparent that his mother struggled to meet his needs without help and support.

We provided legal support to a Judicial Review which successfully obtained an order for Ajala's return to the UK so that risk to him in Nigeria and his best interests could be considered properly.

Ajala's case was referred to us as a case based on Ajala's private life and connections to the UK. Following his return to the UK and a careful examination of the wealth of files relating to his mother's twenty year long immigration history in the UK; social services files and medical and school records, our team identified the case as actually being one that raised issues in relation to Ajala being at risk of persecution, trafficking, abuse

and exploitation if he was returned with his mother to Nigeria.

We obtained considerable evidence in relation Ajala's needs and vulnerabilities, his mother's health problems and learning difficulties, and the circumstances in which they would have to live if returned to Nigeria. This included evidence from his former foster carers, doctors, children's rights specialists and teachers.

The Home Office refused the application but on appeal the court accepted that on return to Nigeria Ajala would be likely to suffer treatment that would amount to persecution because of his specific needs as a child, and the inability of his mother and the Nigerian state to protect him from these. Ajala has been recognised as a child refugee.

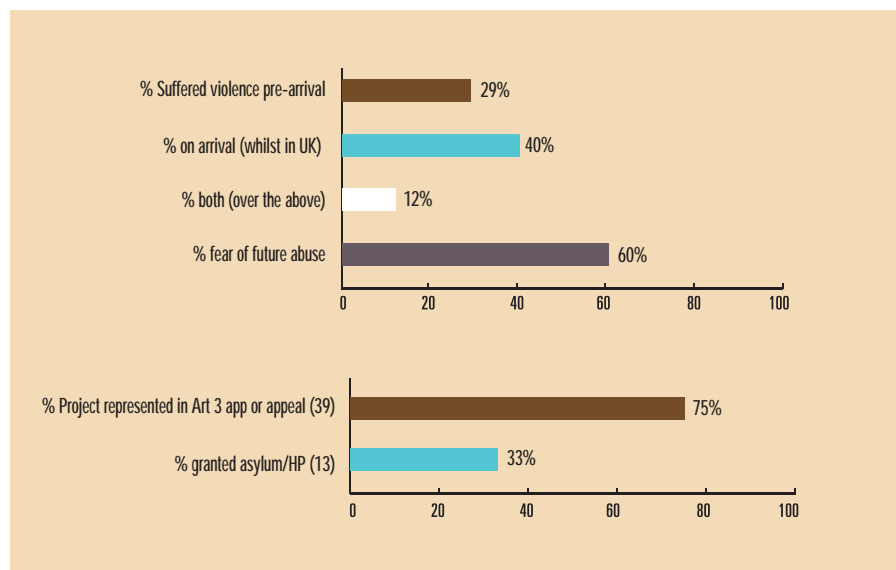
would not cooperate. Many CYP came to realise that speaking out to stop the abuse may make things more dangerous for them.

Whilst an adult who enters the UK to join their British or settled spouse or partner is protected by the Immigration Rules¹¹ and able to access public funds and settled status if their marriage breaks down as a result of domestic violence, the Immigration Rules provide no such protection for CYP.

Children whose experience of abuse was in their country of origin face other difficulties in having their voices heard. Whereas a CYP who is removed directly from a situation in which they are being

¹¹ Home Office (2015) Immigration Directorate Instruction Family Migration: Chapter 8 Transitional Provisions - Family Members under Part 8 and Appendix FM of the Immigration Rules.

SURVIVORS OF ABUSE AND DOMESTIC VIOLENCE



abused will be asked about their experiences and have these recorded, the same is not true of CYP who are now in a different country from their abuser. As such, a social worker taking a family history from an unaccompanied child who has applied for asylum may take details of the names and family positions of the child's relatives; it is significantly less likely that they will obtain detailed information about whether the child's family of origin setting was an abusive one. Whilst it is understandable that social workers are focused on mapping immediate risk to a child, and are unlikely to focus on family members who are located outside the UK, it is nevertheless important that this information is captured.

This is for several reasons:

- CYP may require assistance and support in relation to the effects of prior abuse; secondly,
- it is important that the social worker, who is in loco parentis, is aware that a child they are responsible for is a survivor of abuse; and
- experience of abuse in the country of origin is likely to be a relevant factor in relation to whether the child will be at risk on return to their country of origin.

CYP are not able to identify which aspects of their history are relevant to an asylum claim, and may not volunteer information which they find difficult to discuss. Equally, they may have perceived their treatment as normal, and not consider it something worth remarking on. Where a social worker investigates the issue with the child this assists them in coming to an understanding of the need to provide information in this regard.

The fear of future abuse is a highly relevant factor in relation to CYP and regularisation of their status – a risk of further abuse on return to their country of origin may provide the basis for an international protection claim. Creating a relationship between CYP and a legal adviser that allows them to disclose experience of abuse is essential to this, as is identifying whether or not the risk of future abuse might amount to a protection claim.

A number of cases within our cohort raised issues in relation to Article 3 of the ECHR – the right to be protected from torture, inhuman and degrading treatment – but following investigation, discussions and instructions from our clients it was decided that these issues would not be pursued as a main platform of their application for permission to remain. There were various reasons for this:

- Where a CYP had a clear route to obtaining documented status under the immigration rules, but a less certain prospect of success via a protection application, it was usually deemed in the CYP's best interests to pursue and evidence the case with the better prospect of succeeding and resulting in documented status as quickly as possible
- CYP who were socialised as or identified as British were sometimes reluctant or unable to identify themselves as 'asylum-seekers' and preferred to pursue an immigration application, which better represented their sense of identity as they largely follow application criteria rather than intrusive assessment (including by interview) of their adverse experiences as the asylum process does.

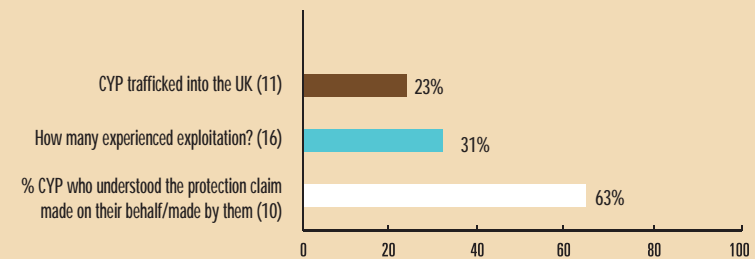
Summary of findings

- Undocumented CYP experience a high incidence of domestic abuse
- Undocumented CYP are less able to access protection from abuse because of additional layers of risk and fear for them
- Social workers need to investigate whether the child has been a victim of abuse even where the abusers may live abroad
- Fear of future abuse in the CYP's country of origin may found an international protection claim

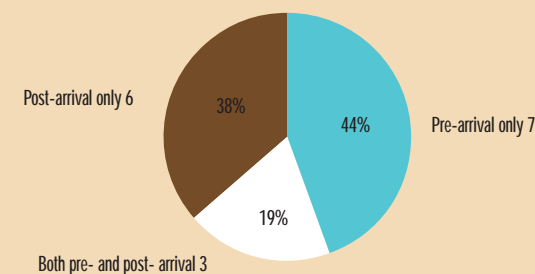
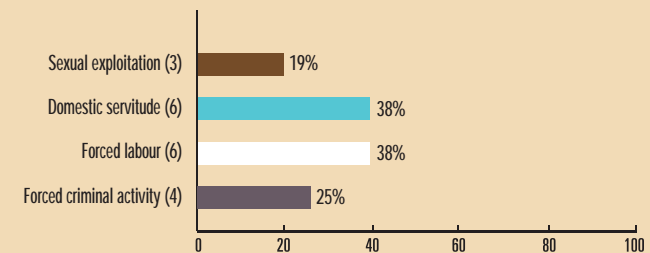
Child exploitation and modern day slavery

The UK government has prioritised policy and legal responses to trafficking and modern slavery through, for example, the publication of a modern slavery strategy¹², creation of an Independent Anti-

CHILD EXPLOITATION AND MODERN DAY SLAVERY



Different forms of exploitation – % experience of each:



¹² Home Office (2014) Modern Slavery strategy.

Slavery Commissioner, and the passage of the Modern Slavery Act 2015. Although these are more recent developments, they need to incorporate and be able to respond to the systemic shortcomings identified through the lived experiences of the CYP we worked with.

Changes to legal aid, and cuts to children's services are likely to result in CYP remaining in situations of exploitation and slavery for longer periods of time, and perhaps indefinitely. These changes reduce or remove CYP's access to support, opportunities to disclose, and legal advice in relation to routes out of their exploitative situation, and into safe, lawful stay in the UK.

A number of CYP referred to our project were described as having been resident in the UK for a long period or having significant private and family life in the UK. Following an in-depth investigation of their cases from an immigration law perspective, and upon taking a detailed history from the child, project staff were also able to identify where children appeared to have been trafficked and exploited. The involvement of a specialist immigration lawyer with experience of running cases involving asylum and trafficking is essential to the identification of trafficking cases amongst CYP. Lack of access to such a diagnostic assessment is likely to result in direct harm to a significant proportion of undocumented CYP.

Identifying that a CYP has been trafficked and/or exploited may found an international protection claim for that CYP. It can also prevent further crimes against CYP in the future by the same perpetrators. Where a child is recognised as having been trafficked, international protection will only be available where the child's circumstances meet the threshold for protection. However permission to remain may be granted to allow a victim to rehabilitate from the effects of trafficking, and to participate in a prosecution of the perpetrator¹³. Leave to remain may also be granted where the victim's circumstances are compelling and necessitate a grant of leave to remain. In relation to children, EU law also requires that

a durable solution – or long-term plan – is put in place for the child to give them stability, security and a chance to recover.

Self-identification by CYP victims of trafficking is an unrealistic expectation in light of the position of the CYP, and their experiences, but also in light of the complexity of the legal definitions involved. This is particularly the case where the CYP has been trafficked and/or exploited by a family member, or person they perceive to be a family member. However, in all circumstances, the fact that a child does not recognise that what has happened to them was trafficking and exploitation does not mean that it was not, in fact, trafficking and exploitation. Our courts have recognised that historical experience of trafficking exploitation does indicate a risk of such treatment in the future if returned to the context in which the original harm occurred¹⁴.

Those CYP amongst our cohort who had been trafficked were not treated as victims of crime and abuse, but as immigration offenders. This is an oft-repeated cry in relation to victims of transnational trafficking, but as long as penalisation of victims continues, the prospects of bringing perpetrators to justice remain low¹⁵.

A particularly difficult issue for undocumented CYP who have been trafficked is the fact that they may have been in the UK for a long period of time, and are likely to have been brought into the UK using false documents. Where they are the victims of traffickers who are organised criminals or repeat offenders, documents may have been recycled for more than one child. Where a child is brought at a young age they may not even know their true identity. However, lengthy unlawful presence in the UK and the use of false documents are factors that are still regarded by immigration authorities as indicators that the individual is an immigration offender. A CYP's inability to provide accurate or coherent personal details is viewed as evasion. Immigration officials, and other practitioners, too often fail to consider these factors through the dual lenses of childhood

¹³ Home Office (2015) Asylum policy instruction: Discretionary leave

¹⁴ R(Atamewan) v SSHD [2013] EWHC 2727 (Admin)

¹⁵ Tuggey, L and Smith, T (2015) Achieving a durable solution for trafficked children. Unicef UK.

and victimhood. This failure perpetuates a state of affairs whereby child victims are held culpable for the offences of the adult perpetrator.

Summary of Findings

- Trafficking and modern slavery victimisation is hidden behind assumed immigration cases
- Trafficked children are too often expected to self-identify as victims of trafficking
- Trafficked children are still being treated as offenders rather than victims
- Failure to engage with child victims of trafficking as victims places other children at risk
- Lack of specialist immigration advice leaves trafficking cases undiagnosed, and leaves those children at risk
- Trafficked children may be able to access leave to remain via an international protection claim where this is in their best interests
- Whilst legal aid is only available for trafficking cases where the government has decided that there are reasonable grounds to believe that a child has been trafficked, legal aid is available from the outset in relation to an international protection claim.

Immigration and Citizenship problems

Some CYP had cases which raised issues in relation to their safety, and in relation to their family life. Such cases could be run either as 'international protection' cases, or as 'family life' cases, and it was therefore necessary to make a legal judgment call, following detailed advice and instructions from the CYP, about which aspect of the case to pursue to achieve the best outcome for the CYP involved.

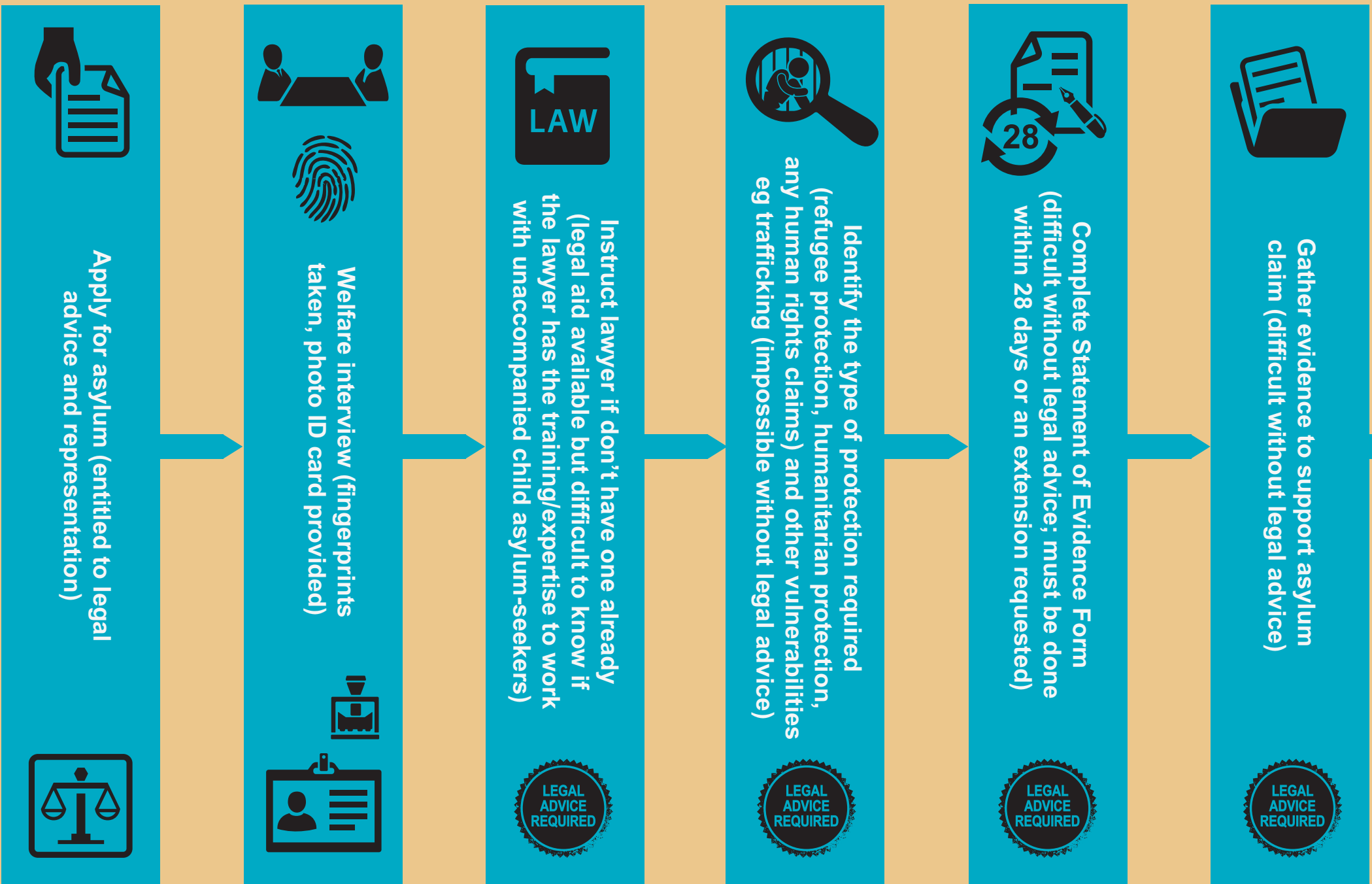
Once a CYP has identified that they have an immigration problem there are few, if any, child-friendly sources of information that will let them know what the next steps they need to take are likely to be. Now that immigration (non-asylum) cases are outside the scope of legal aid, there are no obvious avenues for advice, and non-specialist and non-legal support agencies do not have the knowledge or skills to identify these issues, and cannot provide immigration advice unless appropriately regulated and trained to do so.

Immigration and citizenship applications can be heavily reliant on documentary evidence, including evidence from family members which may be inaccessible to CYP who have experienced family breakdown.

Completion of the correct application is essential to the making of a valid application. Choosing which application to make is also important. Not only is expert legal knowledge required to ascertain which specific application to make, and on which form, but it is also necessary to identify what type of application to make and why. Even if a CYP is able enough to go online and locate the relevant section of the government website, what they will find there is hardly straightforward. There is no clear, child-friendly explanation of the immigration process, no easy-to-use guide to what forms need to be completed for a particular set of circumstances.

The forms themselves are usually very long and detailed, and designed to cover numerous options, so that not all pages of the

MAKING AN ASYLUM APPLICATION



Identify why the application for asylum was refused and whether this is lawful (difficult to do without legal advice). Address issues in an appeal within the time limit, or a judicial review if the claim is certified (impossible without legal advice; legal aid should usually be available but may be wrongly refused on the merits)

LEGAL
ADVICE
REQUIRED



REFUGEE
STATUS



OUTRIGHT
REFUSAL

HUMANITARIAN
PROTECTION



OTHER
LEAVE



Case considered
(this can take a long time)



Submit any supplementary evidence
(difficult to identify what might
be needed without legal advice;
time limit of 5 working days)



Attend interview about case (an adult that CYP has
never met before will ask them lots of questions)



Benefits of making an international protection claim	Drawbacks of making an international protection claim
CYP can obtain protection against return to a country where they are in danger.	CYP have to go through a lengthy procedure involving 2 interviews and completion of a lengthy application form
There are more formal safeguards and accepted procedures in place for assessing applications made by children	They are expected to relive and recount often traumatic and painful events to prove their entitlement to protective status
There is a right of appeal against refusal in most cases	Asylum claims by children are less likely to be granted due to poor understanding of child-specific persecution and their capabilities
There is no fee for making an application	There can be lengthy delays in the asylum system and cases can take years to be considered
There are no mandatory documents required to make an application	Asylum process is procedurally and administratively complex and expensive from the perspective of government
Legal Aid is available for legal representation in these claims	The Home Office may fail to engage with risk to a child who has been out of their country of origin for some time
Leave to remain is granted for 5 years with access to public funds	CYP with periods of long residence may struggle with the need to identify as an asylum seeker
CYP can apply for ILR on completion of 5 years with leave to remain in the UK, and that application is fee free, and attracts a right to legal aid if financially eligible	There is a 'culture of disbelief' which permeates asylum consideration, including claims by children

form will need to be completed by any one applicant. It is not easy to ascertain which sections of the form are relevant to which circumstances. Although forms state that some parts of the form are mandatory, it is unlikely to be immediately obvious to the CYP applicant that this means that failing to complete that part of the form or completing it wrongly may lead to the application being refused outright, and any fee lost. Application forms can be updated several times a year to reflect changes in law or procedure, and applications made on out of date forms are rejected.

A recently added complicating factor is the introduction of 'mandatory documents' without which an application will be invalid unless the applicant cannot provide the document for reasons beyond their control. Although there are guidance notes to accompany each form, these are very brief, and do not engage with the complexity of the process, and do not reflect the full guidance that is available to the immigration caseworkers who will consider the application. In some cases the information in the guidance notes would appear to indicate that there are additional requirements for

certain applications, and it would be necessary to be familiar with the contents of the Immigration Rules themselves, in addition to the guidance to caseworkers, in order to be aware that the information given on the guidance notes is not complete. For undocumented CYP this is an enormous barrier to being able to apply for permission to stay.

The availability of the fee exemption/waiver process, and the formalities of this are not immediately apparent to the untrained eye. The form that needs to be completed is named only 'Appendix 1 FLR(O) and (FP)', and again the full guidance as to what is required in an exemption application is unclear. In addition to payment of the fee to make the application, CYP are also required to pay the 'Immigration Health Surcharge' (IHS) which is payable online only.

Payment of this generates a reference number which must be included on the application for leave to remain, without which the application can be treated as invalid.

Even where a CYP has obtained permission to remain, this is no guarantee of safety and permanence. Immigration applications granted on the basis of long residence usually result in the CYP being given permission to remain in the UK for 30 months, regardless of how long the CYP has lived in the UK¹⁶. Each time the CYP's leave to remain expires, they must apply for a further period of 30 months leave to remain until they have completed a total of 120 months (10 years) with limited leave to remain. It is also common for this period of leave to remain to be granted with a condition preventing the holder from accessing Public Funds

Benefits of making an application on the basis of private and family life	Drawbacks of making an application on the basis of private and family life
Applications are dealt with comparatively quickly	Fees are high, and it is hard to obtain exemption if the applicant is not a child in care
Where a CYP meets the requirements of the immigration rules a grant of leave to remain is likely	Mandatory documents are required, in addition to evidence of long residence
The application process is relatively light touch and can be dealt with by post	There is not usually a right of appeal unless a human rights decision is made
It is possible to obtain recourse to public funds where an application addresses this	Limited leave to remain is granted for a short period of time
The process is quicker and simpler and so the costs for government are lower	The CYP is likely to be placed on a 10 year route to settlement, with renewals required every 30 months
	There is not usually legal aid available for applications of this type

¹⁶ This does not include citizenship applications, as citizenship cannot be granted for a limited period

(mainstream benefits and social housing) unless they have provided evidence with their application that they would be destitute without such recourse. If a CYP does not know that they need to do this, they may obtain permission to stay in the UK, but be in virtually the same position as when they were undocumented, but for having the right to work. Whilst it is possible to apply for the No Recourse to Public Funds (NRPF) condition to be lifted, the CYP will not be able to access benefits and social housing whilst they wait for their application for a change of conditions to be considered, and there is no guarantee that such an application will be granted, particularly where the CYP is single and over 18.

Grants of limited leave to remain are extremely practically difficult for CYP to manage. Their access to the labour market is restricted, as employers are reluctant to offer permanent contracts to those with time-limited permission to remain in the UK. At each point that they need to renew their leave to remain the CYP has to spend a period of at least 3 months without access to their identity documents. As such, for that period they cannot leave their job, and if they lose their job will find it nigh on impossible to obtain alternative employment or access benefits because they have no identity documents or proof of their right to work in the UK. Whilst the law states that a person who makes a valid application for further permission to remain in the UK must be treated as retaining their rights under that leave to remain until a decision is made on the new application, employers are mindful of the potential penalties for employing someone without the appropriate permission to work and want to see original documents.

Where a CYP is on benefits or a low income at the point where they come to apply for an extension of their permission to remain in the UK, they come back to the need to apply for a fee waiver for any extension application. The fees for immigration applications are high, and it would be extremely difficult for a CYP reliant on benefits or a low income to save sufficient money to pay the fees. At the

time of writing this report the fee for an application for limited leave to remain on the basis of family life is £811, and the IHS is £500. This fee increased by over £160 in the last financial year, and fees ordinarily increase each financial year. However, if the CYP makes an application for a fee waiver along with their application for further leave to remain, and the fee waiver is refused, then they risk their application being rejected as invalid due to failure to pay the fee. If the application is rejected after the CYP's previous period of leave to remain has expired, then they will become unlawfully present in the UK once again, losing their right to work, to claim benefits and to access social housing. They may also face further consequences in the future in terms of being unable to naturalise as a British Citizen due to periods of time spent in the UK in breach of immigration laws.

Citizenship applications or diagnosis also involve financial and procedural difficulties. Again, fees for applications are very high (£936 for children, and up to £1236 for adults as the writing of this report), and are not refunded if the application is unsuccessful. However, unlike other applications there are no fee waivers. The government's rationale for this is that 'citizenship is a privilege not a right'. In our view this fails to take into account the situation of CYP born in the UK and with periods of long residence who may not be able to access citizenship rights of any other country thereby leaving them effectively without any citizenship of a country. Due to birth and length of stay in the UK they lack documentary evidence of their connections with the country of nationality of their parents/family. This is particularly the case with CYP who are separated from their family members and cannot therefore access any evidence of their original nationality. It also fails to engage with CYP's self-identity as British youth.

Many CYP also have a legal entitlement to become British, but this entitlement is illusory when access to it is impossible due to prohibitive fee levels, and a lack of waiver. They are being

punished for the actions or inactions of their family from whom they are separated. As lone CYP they may have little or no money.

Procedural difficulties include the lack of legal aid for citizenship applications, and the complexities of British nationality law. Immigration and citizenship in the UK has changed dramatically over the last century, with relationships with former commonwealth countries fracturing, and the implications of joining (and now leaving) the European Union. As such, a question as to whether a CYP acquired British citizenship at birth is not always a straightforward one, and even experienced professionals may struggle. In the case of one of our cohort, his entitlement to British citizenship (which was closely intertwined with his mother's presence in the UK as an EEA national) was so unclear that even a specialist European Law advice charity was unable to make a correct diagnosis. Our client's British citizenship has now been formally recognised.

Another issue is that in order to make the correct application for citizenship the CYP needs to know the legal basis upon which their application is to be made, as different forms must be completed depending on the legal basis of the application. It is unclear how CYP are expected to be able to do this without legal advice.

Summary of Findings

- Immigration and Nationality law is complex and difficult to understand
- High quality legal advice which is free at the point of delivery is hard to access, particularly for CYP
- Sources of accessible information and guidance are virtually non-existent
- Application processes are complex and full of pitfalls for undocumented CYP

- The prospects of making a successful application without legal advice are significantly lower than if advised and represented
- Fees are disproportionately high, and the waiver system is hard to use (where it exists)
- The consequences for the individual of failing to meet procedural requirements are grave
- Obtaining documented immigration status may not resolve all of the practical issues that CYP face
- Legal advice is vital to enable CYP to identify the correct issues involved, and the correct applications to make

Dangers if Legal Needs are left unidentified

- Wrong application is made
- CYP obtain a form of leave to remain that does not meet their needs
- CYP lose their leave to remain at the point of renewal
- CYP unable to access leave to remain
- CYP unable to obtain housing, benefits or access education
- CYP needs as vulnerable children not properly recognised or met

[illegible][illegible]

**LEGAL
ADVICE
REQUIRED**



LEGAL
ADVICE
REQUIRED



START APPLICATION



UNDOCUMENTED

A circular seal with a scalloped edge. The text "LEGAL ADVICE REQUIRED" is written in blue capital letters inside the seal. The seal is set against a background of orange and blue vertical stripes.

SUBMIT APPLICATION



APPLICATION CONSIDERED



Application rejected as invalid

ALLOWED



Identify the correct method of challenge
(appeal/Administrative Review/JR and deadline
for challenge – impossible without legal advice)

LEGAL
ADVICE
REQUIRED

No basis of challenge
= REMAIN
UNDOCUMENTED

Identify whether the decision is challengeable
(impossible to know without legal advice)

LEGAL
ADVICE
REQUIRED

LTR
GRANTED

ALLOWED

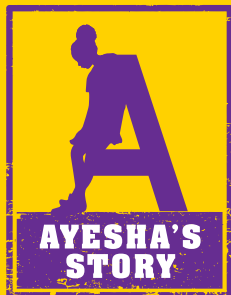
REFUSED

Address issues and re-submit/challenge rejection
within the time limit (difficult without legal advice
and potentially impossible to meet requirement for
documents if you are undocumented)

REMAIN
UNDOCUMENTED?

Identify reasons why, and whether this
is lawful (impossible without legal advice)

LTR
GRANTED



Ayesha's immigration application

We submitted an application for Ayesha to be granted leave to remain on the basis of her long residence in the UK, her private and family life here, and her lack of connections to Nigeria. It took a long time to get all of the evidence in support of Ayesha's case. This was because she did not have any documentary evidence of her presence in the UK due to the years she had spent living precariously and sofa-surfing. We had to piece back together her life, using evidence of her school attendance, medical evidence, contacting friends to take witness statements, and persuading the baby's father to provide evidence to show that he was settled in the UK. Ayesha had previously had legal representation but the organisation had gone into administration whilst acting for her. A significant period of time was spent trying to obtain a copy of her file from the administrators. This eventually proved impossible as they stated that the file did not exist. Several years after Ayesha's application had been decided, they located the file and sent it to us.

At the time Ayesha was making her initial application it was necessary to pay a fee to the Home Office before the application would be considered. Ayesha had no money and could not pay the fee. Only children in local authority care, or victims of domestic violence could be exempt from fees at the time, and Ayesha didn't qualify

for an exemption. We therefore identified that it would be necessary to make the application without the fee and argue that the level of the fee (£500 at the time) was disproportionate and unlawful in light of Ayesha's financial position, and the fact that she was trying to enforce her rights under the ECHR. At this point, there had been no similar challenges to the fee regime, and so this had the potential to make change for other vulnerable and low income individuals and families. The application was submitted with an application for the fee to be waived due to Ayesha's very poor financial situation. The application was rejected by the Home Office due to non-payment of the fee. We advised Ayesha of the possibility of challenging this decision, and began preparation of this. However, whilst this challenge was pending, a test case on the issue of fees and exemptions for cases engaging Article 8 of the ECHR was heard, and a fee waiver application process was established by the Home Office. Ayesha's application was therefore re-submitted with an application for the fee to be waived. This was granted, but by this point Ayesha had spent a further 9 months in the UK without leave to remain because of procedural obstacles to submission of her application.

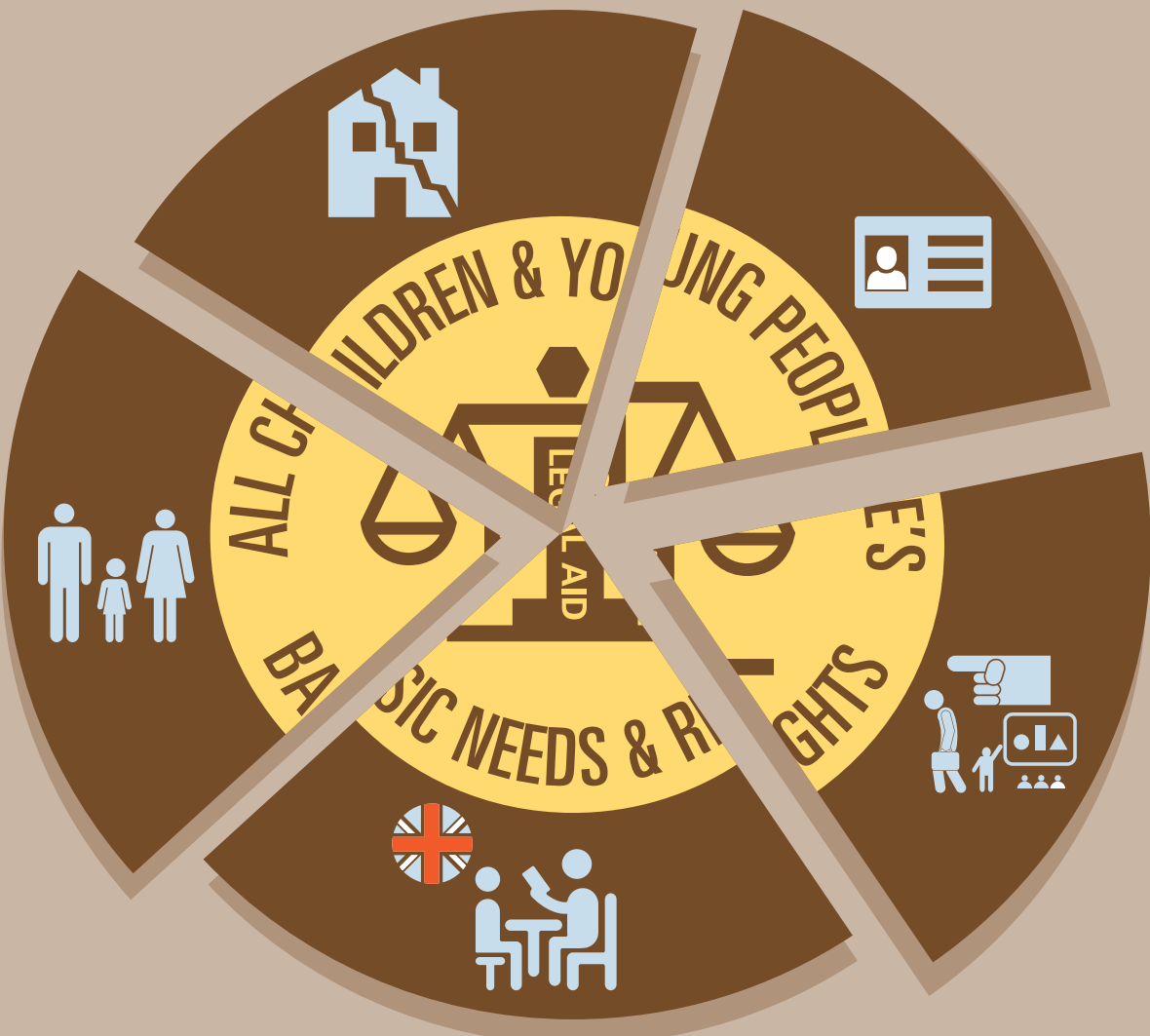
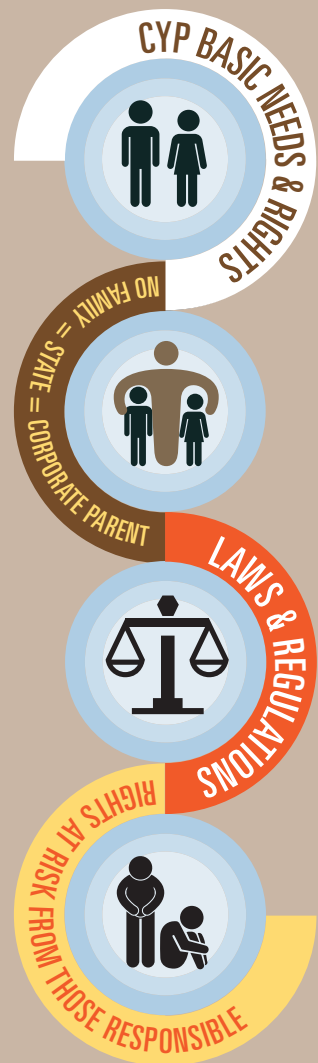
Ayesha's baby was diagnosed with a hereditary condition which caused her to become ill very often, and to need hospital treatment regularly. Ayesha still received little support from the baby's father, and had to cope with numerous medical appointments and a sick baby whilst also dealing with insecure immigration status, and intermittent threats from the local authority to make her homeless, or to move her to live in a part of the country where medical services for her child's condition were less readily available.

8. THE CARVING UP OF HUMAN RIGHTS

Under international law¹, all children have a right to have their basic needs met which include an optimum standard of health, education, food and shelter. They also have a right to be protected from harm. In domestic law, those providing a service to CYP have a duty to promote and safeguard their wellbeing² and should ensure that their current and future development is not impaired. Various individuals are responsible for ensuring that these needs are met, including their parents or carers and the State.

¹ UN Convention on the Rights of the Child, which the UK government ratified in 1991

² s.10 Children Act 2004, and s.55 Borders, Citizenship and Immigration Act 2009



Where a CYP has no family to care for them they will need to turn to the State to ensure that these rights are met and effectively implemented. In cases where a child has no family the State, through the local authority, will become the child's corporate parent. In turn, there will be a plethora of laws and regulations to govern various systems, which ensure that these responsibilities and obligations are met. But sometimes these laws, obligations and responsibilities are not implemented as they should be – and children's rights can be put at risk of being violated and/or be breached by those responsible for implementing or promoting them.

In order to make these rights a practical, rather than theoretical, reality, CYP need to understand that these rights exist, be aware of what they are and who is responsible for ensuring that they are respected. Access to independent legal advice is essential to enable the CYP to understand their rights and explore, unpack and address legal problems and issues where the State is failing to meet their responsibilities and obligations. Prior to April 2013, anyone who had little or no money (financial means) to address their legal problems had access to free legal assistance through the UK's legal aid regime. However, following the implementation of LASPO a whole host of areas of law have since been taken out of the scope of legal aid in England and Wales.

What does this mean?

CYP, particularly undocumented CYP, live lives which are governed by an array of laws. These are designed to meet their basic and specific needs and address their vulnerabilities. However, in the absence of legal aid CYP can no longer necessarily ensure that those laws are in fact protecting them and/or ensure that they are properly

and fairly implemented. Without access to free and qualified legal advice CYP have no mechanism by which they can interrogate the duties owed to them or hold anyone to account for any failures or misapplication of laws and regulations.

Legal aid has been retained in some areas to protect urgent needs and/or prevent the violation of rights:

- violence and abuse from the police
- to help defend a person if they have been accused of a crime
- to provide legal advice and representation if they are at risk of becoming homeless
- to challenge the failure of local authorities to protect them from certain forms of harm
- To pursue an application on the basis of international protection

However, many areas of law, which were designed to protect the rights of CYP and ensure that these rights are not being violated and/or at risk of being violated, have been taken out of scope of legal aid. The examples are plentiful but to give some contextual understanding:

- Although legal aid remains for homelessness cases – it does not for cases involving disrepair. If homes are uninhabitable the effects can be devastating for the CYP³
- Although it is recognised that there is a fundamental right for all CYP to have access to education – legal aid no longer remains for CYP who may wish to challenge such access e.g. if a CYP wants to challenge an exclusion from school which they do not think is fair, they no longer have access to free independent legal advice

³ Paragraph 35 Part 1, Schedule 1 of LASPO provides that legal aid is available in housing disrepair cases only in relation to the removal or reduction of a serious risk of harm to health

- Although the UK government recognises that in all immigration decisions they make the best interests of children must be a primary consideration, there is no legal aid available to challenge failures to do so
- Whilst there is legal aid to enable a child to obtain recognition as a refugee, there is no legal aid available to advise the refugee child in relation to an application to bring a parent to the UK to care for them
- Young parents who have separated from their child's other parent cannot access legal aid to enable them to make applications to have contact with, or obtain financial support for, their child as there is no longer legal aid for private family law matters

This 'carving up' of legal aid has effectively 'carved up' children's rights and their ability to pursue cases where their rights are being ignored or infringed, undermining two of the fundamental principles of a child rights based approach: that rights are interdependent and indivisible, with the deprivation of one right adversely affecting the child's ability to access others; and that a child must be able to challenge these infringements and seek a remedy and redress.

This carving up of rights bites particularly hard for undocumented CYP as their lives are governed by so many different laws, and the points at which these intersect is so complex. There is now no automatic right for legal aid for CYP who wish to address their immigration (non-asylum) matters - even where the need to address their right to remain in the UK is clear or where failure to make a valid application will result in the loss of existing leave to remain. The issues involved are fundamental to consideration of whether it is in the best interests of the CYP to remain in the UK rather than be removed to their country of origin or nationality. The UK courts have recognised that the assessment of a child's

best interests is an important factor in deciding whether the UK will be in breach of a CYP's right to a private and family life (article 8 ECHR). A best interests assessment will establish key issues such as the child's current and future needs (e.g. to meet their welfare and development needs) and the extent to which they can be met in the UK or in the country of return. However, work in relation to Article 8 of the ECHR is considered by the Legal Aid Agency as an 'immigration' (non-asylum) area of law and so is not within the scope of legal aid. This leaves CYP in a position where they are expected to identify, articulate and evidence their fundamental needs without any idea of how to do so.

Summary of findings

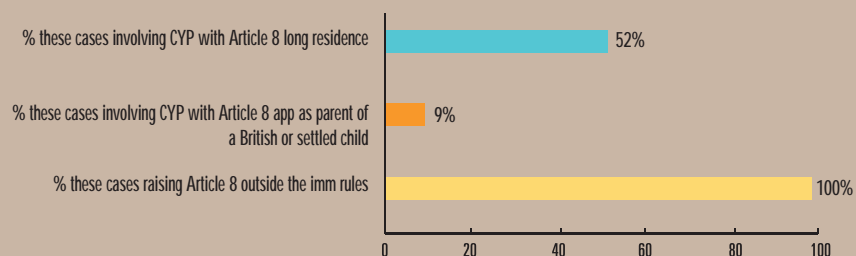
- Legal aid cuts have made serious inroads into the ability of CYP to have their fundamental needs and rights met
- The government's assessment of what areas should remain within the scope of legal aid does not reflect the daily lives of undocumented CYP
- Lack of access to legal aid prevents the state from making a full and accurate assessment of the best interests of undocumented CYP
- The existence of a right is of no effect if that right cannot be enforced

ARTICLE 8

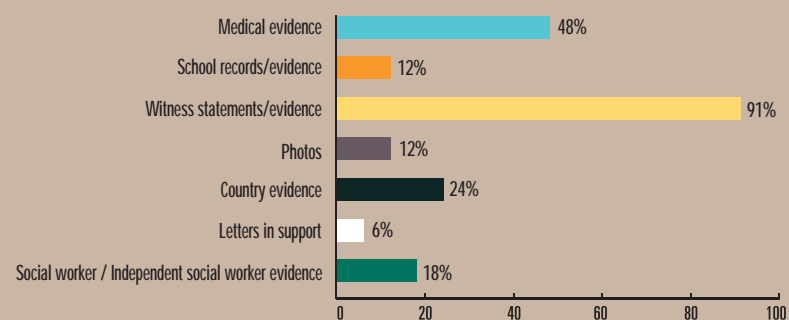
CASES INVOLVING ARTICLE 8 CLAIMS

63%

CYP's right to private and family life



Types of evidence put forward in art 8 cases:



9. CASE OUTCOMES FOR THE PROTECT PROJECT

Our project was designed to provide legal advice to undocumented CYP which met their needs, and made a tangible improvement to their lives. Whilst in many, if not most, of our cohort's cases, the crux of their problems was lack of documented permission to remain in the UK, the ancillary legal problems resulting from that lack of status were the ones that affected the CYP most on a day to day basis. The complexity of the immigration legal process, and the challenges in preparing immigration applications meant that our project could not just focus on making immigration applications. It needed to meet the other legal needs that the CYP experienced whilst they tried to regularise their status, and monitor and address any ongoing issues once the CYP became documented.

In addition, our project had to address the best interests of the CYP we represented. As such, it was sometimes necessary to help CYP understand that they were unlikely to be able to resolve their undocumented status, and consider whether their needs were more likely to be fully met by making a planned and supported return to their country of origin. Nevertheless, the focus of the project was, as far as possible, to facilitate CYP in obtaining lawful permission to remain in the UK.

There were some CYP that we were unable to represent formally in relation to their immigration matters either because of the prospect that they would lose their legal aid if their cases transferred to the project¹, or because we did not have capacity at the point that they required advice. However the work that we had done with other CYP in similar situations meant that we were better able to support those CYP in relation to housing, social welfare, education or other legal issues, and provide representation and advice in relation to those issues which was informed by an awareness of their immigration issues and the impact of these on all aspects of the CYP's daily life.

It is clear from the outcomes achieved by the project that specialist advice and representation is effective in enabling undocumented CYP to obtain permission to remain in the UK lawfully, and also to access other services that are vital to their welfare and best interests. Our aim for each CYP whose immigration case we took on was to assist them to obtain the longest form of leave to remain, and that which provided them the best prospects for a settled and positive future life. Therefore where possible we made applications for CYP to become settled, rather than accepting grants of limited leave to remain, and where CYP had the potential to become British we pursued this at the earliest possible opportunity. We also ensured that conditions attached to any grant of leave to remain were effective in allowing CYP to access services and maximise their potential as far as possible.

Immigration

From the information in this section, it is clear that this approach was successful. Only 4 of the cohort of 52 undocumented CYP were not known to have obtained a positive resolution to their undocumented status at the point of preparing this report. A further 3 CYP are still awaiting the outcome of their applications. Two of those CYP were trafficked, and delays in processing trafficking claims have had a significant effect upon this. As such, well over 80% of our cohort had documented permission to remain in the UK by the end of the project.

As part of our legal advice, we identified two CYP as having been born British (both of whom had been incorrectly informed that they were not British by other agencies). Three CYP were registered as British citizens following applications made by the project.

In 19 cases we advised CYP in relation to challenging the type of leave to remain that they had been granted in order to obtain a form of status that better represented their legal situation, and better met their needs, including the need for ongoing protection and durable solutions. More than two thirds of those challenges were successful. The types of legal challenges brought included applying for refugee status where only limited leave had been granted, applying for Indefinite Leave to Remain where only limited leave to remain had been granted, and applying for citizenship where Indefinite Leave to Remain had been granted.

In relation to challenges to a grant of Limited Leave to Remain where we believed Refugee Status was required to recognise the CYP's true protection needs, 88% of these challenges were successful, and the remaining case is still under challenge at the point of providing this report. It is our opinion that this reflects a tendency for the Secretary of State for the Home Department (SSHD) to refuse asylum claims made by children due to a failure to engage with child-specific persecution, and the differential

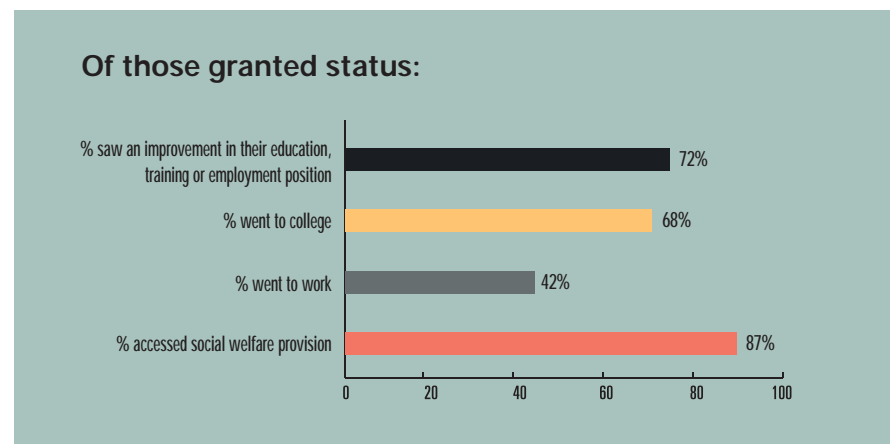
¹ Where a CYP had instructed solicitors prior to LASPO coming into force on 1/4/13, they would retain the benefit of legal aid in relation to their case, until conclusion provided that they remained with the same organisation. If they ended their retainer with their representative after 1/4/13 and instructed our project, they would have been unable to obtain legal aid, despite this being effectively the same issue.

threshold for harm in children. Applications to obtain Indefinite Leave to Remain in the UK after a grant of limited leave to remain were more difficult. Although most of these cases involved CYP with over 10 years residence in the UK, only 40% of the cases were successful. This reflects the current position of the courts in relation to the recognition of private and family life of CYP in the UK, and to the view that the SSHD is entitled to specify the length of leave to remain to be granted in a case of this nature. We would also describe this as further evidence of the need to ensure that CYP apply for leave to remain in the UK before they reach 18, as both the Home Office and the courts are significantly more likely to agree that a grant of Indefinite Leave to Remain is required where the applicant is still under 18.

This aspect of our success also underlines how crucial it is that CYP receive specialist legal advice from representatives who are able to make an accurate diagnosis of the CYP's legal problem, and ensure that the correct application is made. Applications that are made on the correct basis, and with necessary and relevant evidence are significantly more likely to succeed. It also underlines the need for specialist advice in relation to grants of status, an assessment of whether the most appropriate form of leave to remain has been granted to meet the legal situation and the needs of the CYP, and a commitment to challenge grants of leave to remain which do not achieve this.

The impact of obtaining documentation of their right to remain in the UK was considerable for those who obtained it, with almost three quarters seeing an improvement in their education, training or employment position. It is worth bearing in mind that younger members of our cohort were unlikely to have yet experienced any direct impact of their immigration status upon their education, training or employment position, and therefore the real impact of this improvement is likely to be even more statistically significant than the data indicates.

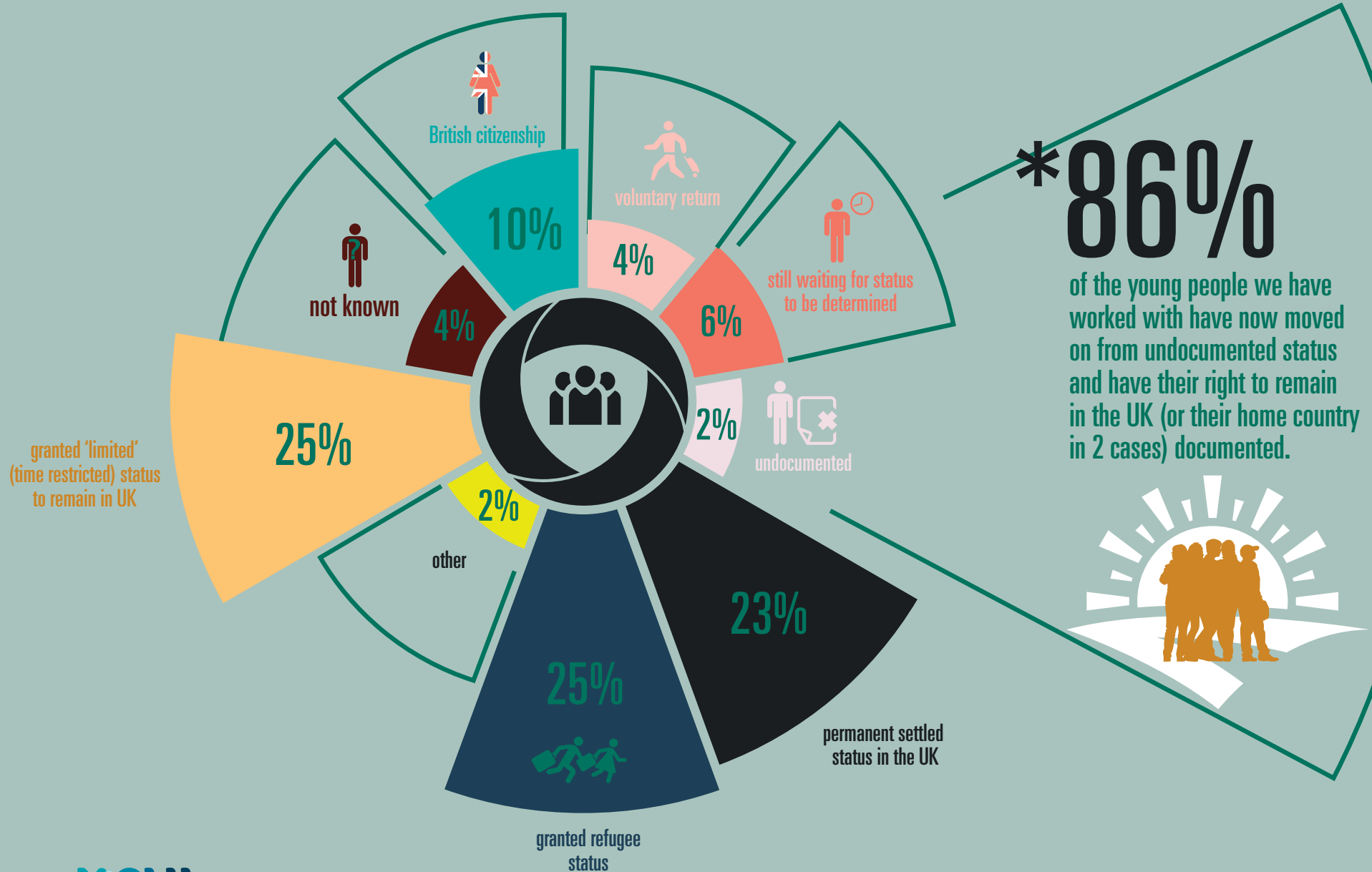
IMPROVED LIFE CHANCES WITH DOCUMENTED STATUS



Summary of findings

- Immigration legal advice significantly increases the prospects for undocumented CYP to regularise their stay
- To have maximum impact, immigration legal advice needs to be provided in a child-friendly way that meets the needs of the whole CYP
- Obtaining documented status results in significant improvements to all aspects of the lives of CYP
- The CYP's future needs must be taken into account and legal representatives should pursue the most advantageous form of leave to remain for CYP

IMMIGRATION STATUS OUTCOMES



Housing

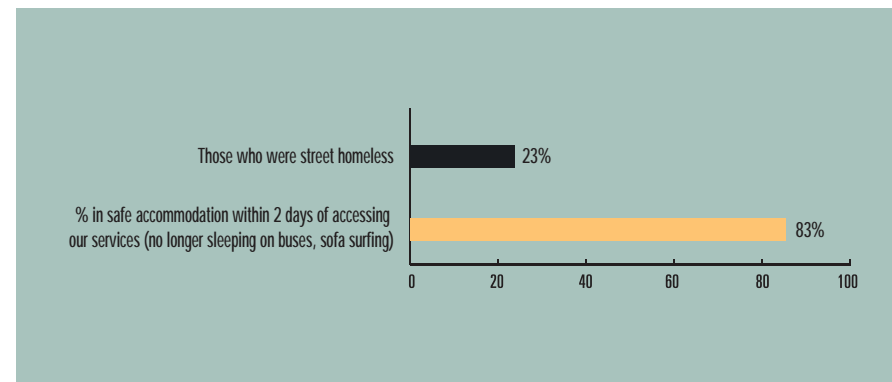
The importance of specialist housing advice for CYP is another aspect of our project that we want to emphasise in this report. This is because we found that for many of our CYP safe housing was a crucial issue. Whilst the major problem underlying access to safe housing may have been insecure (or non-existent) immigration status, the lack of safe accommodation seriously undermined the CYP's ability to engage with or address that problem. A specialist young person's housing adviser is able to engage with CYP on an appropriate level and assist them in accessing sources of safe accommodation where they can remain whilst their immigration status is assessed. Whilst undocumented CYP may not have the same access to mainstream housing provision as other CYP, there are options available, but they may be inaccessible without legal advice.

The outcomes in relation to housing therefore evidence the extent to which such advice is essential for undocumented CYP in crisis.

As can be seen from the above, more than a fifth of our cohort were street homeless on referral, and our housing adviser was able to resolve this issue for them within 2 days so that they were able to access safe accommodation. The remaining two CYP were able to access hostel accommodation in due course.

Of the cohort in general, our intervention resulted in an improvement to the housing situation of more than half. In fact, whilst 31 CYP were identified at the outset of their matter to be in unstable housing, 30 saw an improvement in their housing situation. By 'unstable housing' we mean housing over which the CYP had no enforceable legal right, housing provided by friends or family that was precarious, and forms of homelessness such as sofa-surfing, street homelessness, living in hostels, sleeping on buses. This indicates a 97% success rate in resolving housing issues.

HOMELESS TO SAFE ACCOMMODATION IN 2 DAYS

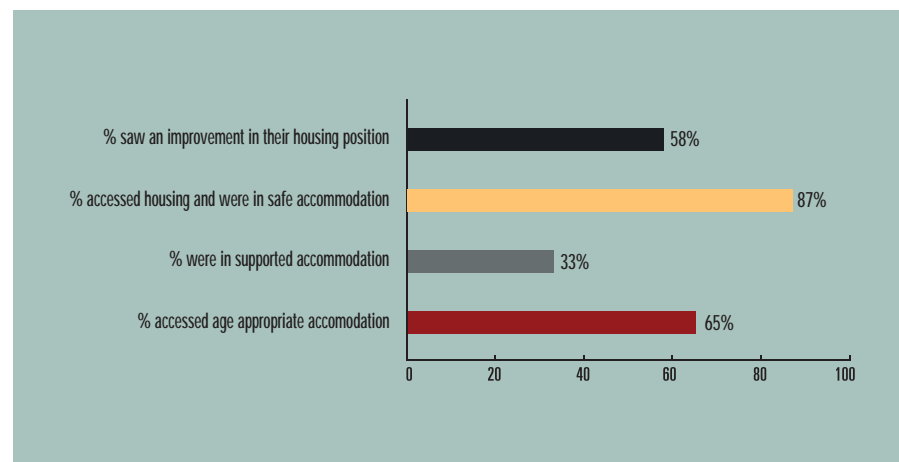


A resolution to a CYP's housing issue can be defined as the CYP accessing safe housing over which they had legally enforceable rights and/or appropriate support to meet their particular needs.

We supported and represented CYP to ensure that they were in a housing situation which best met their needs, and the data below indicates the types of accommodation that CYP in our cohort accessed. It was also essential that the CYP accessed accommodation that was appropriate. Due to their age, medical conditions or vulnerability, some of the CYP required supported accommodation. Others required, and accessed, accommodation that was appropriate to their age.

Whilst in many cases project work in relation to housing consisted of bringing legal challenges to access housing that was being denied, in other situations formal challenges were not required, and instead project staff used mediation and advocacy to ensure that services that a CYP was receiving were maintained, when a local authority proposed changing arrangements that a CYP required.

ACCESSED APPROPRIATE ACCOMODATION



In addition, work was carried out to mediate where CYP were having difficulties in their accommodation such as bullying or disrepair, and it was then possible to resolve issues without the need for formal legal action. This had the benefit of ensuring that the CYP was able to access or maintain the service they needed, but also the relationship that the CYP had with their accommodation provider or local authority was maintained on good terms.

Summary of findings

- Housing advice is essential for undocumented CYP in crisis
- Obtaining secure housing places CYP in a situation where they are more likely to be able to regularise their status
- Many undocumented CYP will require advice in relation to housing issues

- Advice from a housing lawyer who specialises in cases involving CYP provides the best chance of accessing suitable safe accommodation
- Advocacy and mediation services are essential to maintaining the housing services that undocumented CYP have already accessed and to avoid the breakdown of relationships with local authorities and accommodation providers.

Education

As can be seen above, immigration status problems cause problems for CYP and can prevent them from accessing education, or accessing it at the right level. Resolving immigration issues had a significant impact on the problems that some of our cohort experienced, and as a result their situations improved. However for others, the benefits of moving from undocumented to documented status did not extend to resolving their most pressing education problem.

As set out in chapter 6 not everyone who has permission to remain in the UK has equal access to education. Whilst there are no legal bars to a person with limited leave to remain accessing higher education, there are overwhelming practical issues relating to access to home student fees and Student Finance. The cost of attending university when paying overseas student fees is prohibitive, and the prospects of obtaining a loan which will have a repayment term well in excess of any residence permit a CYP can show to the bank are minimal. None of the CYP in our cohort had any prospect of paying their fees themselves, nor of obtaining loans to cover the cost prior to our intervention. In practice therefore CYP with limited leave to remain and limited (or even adequate) means are not able to access education. The current regulations

in relation to payment of home student fees and access to Student Finance require CYP to demonstrate that they have lived in the UK for more than half their lives and have held permission to remain in the UK for 3 full years prior to making their application for funding². These regulations only came into force in June 2016 and prior to this CYP who had limited leave to remain had no access at all to home student fees and Student Finance. This meant that, of the 13 CYP who were granted limited leave to remain in the UK, 11 were unable to pursue a university education even though they wanted to do so. This was despite most of them having been in the UK education system since primary school age (63%), and all of the remainder attending secondary school in the UK.

These findings are strongly allied to our project aim of obtaining the most beneficial form of status possible for CYP. In light of the fact

that those who are British citizens, hold Indefinite Leave to Remain in the UK or are recognised refugees have full access to higher education with home student fees and funding, our aim was to maximise the potential for our cohort to obtain a form of status that would enable them to access university if they were academically capable. This strategy was successful and 57% of our cohort were granted a form of leave to remain which would allow them to have access to university education on the same basis as British children.

Project intervention in education matters resulted in 27% of our cohort accessing or returning to education, who had not been in education on referral. Work done by project staff which facilitated return to education included legal interventions, advocacy, mediation, and advice on entitlements.

ANGELINA



Angelina arrived in the UK at the age of 9 to live with her grandmother. Her mother and younger sisters also lived with her. Angelina's home life was difficult. Her grandmother was abusive, both physically and emotionally. Whilst Angelina found school difficult at first, she soon came to see it as a place where she could shine without fear of abuse. By secondary school Angelina was excelling. She was popular with her teachers, and a talented artist. Eventually Angelina, her mother and sisters were housed separately from her grandmother following intervention from the Local Authority due to child protection concerns. Following legal advice, they managed to obtain leave to remain when Angelina was 17. Angelina was thrilled, and assumed that she had the right to remain permanently.

The following year, Angelina applied to university to study art, and received several offers of a place. However, her application for student finance was rejected. It was only at this point that Angelina came to understand that she was not settled in the UK and therefore not entitled to be treated as a Home Student and access Student Finance. Her university dreams were shattered.

² The Education (Student Fees, Awards and Support) (Amendment) Regulations 2016

Advocacy and mediation were important aspects of our service in relation to education, as the lives of our CYP were complex and difficult, and this did have an impact on their education. CYP were not always able to resolve these issues alone, and risked losing their place on a course. Whereas other CYP might be able to re-enrol at a later date with only time lost, the consequences for our CYP were potentially much more serious. However, embarrassment and shame about their immigration status, and fear that disclosing lack of immigration status would lead them to lose their place at college meant that CYP frequently kept the nature and extent of their difficulties secret, and didn't access pastoral support at their education institution. As such, non-legal interventions were vital in ensuring that CYP who were in education remained there. Such issues are hard to map and record, and therefore the absence of hard data in this regard should be considered in the context of the information available in relation to the need for mediation described in Chapter 5 above.

Summary of findings

- Immigration status is a highly relevant factor in relation to access to education, particularly for over 16s
- Obtaining the most advantageous form of leave to remain is essential when representing CYP in order to protect their educational prospects
- Moving from undocumented to documented status will not ensure immediate access to home student fees and eligibility for student finance
- Mediation and advocacy are vital to ensure that CYP maintain their education places and continue to achieve

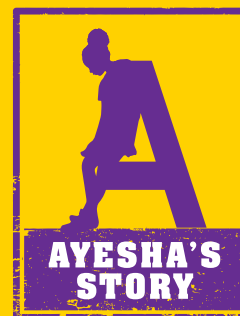
Other improvements (financial, health and social care)

Our cohort also experienced other improvements in their lives, and these were not only encountered by those who obtained regularised immigration status. Accessing legal advice, representation, advocacy and mediation meant that CYP benefited from improvements in their circumstances before they obtained lawful status, and that a grant of status allowed them to build their new lives on firmer ground.

Legal representation and intervention was essential to ensure that CYP's financial situation was promoted as far as possible. Firstly, this was by providing specialist housing advice and support and making referrals to community care lawyers to ensure that CYP were getting as much financial support and provision of accommodation as possible whilst their immigration cases were prepared and pursued. Representation was also required in two cases in our cohort where limited leave to remain was granted, but the CYP was granted leave to remain with a condition preventing them having recourse to public funds (mainstream benefits and social housing). This condition was put in place despite both CYP being young single women with no source of support. One was a single mother of two children and faced destitution, and the other was a young woman who had been unable to work due to her immigration status for a lengthy period, and was therefore unlikely to be able to access the labour market immediately. She was also at risk of destitution. Successful challenges were brought for both CYP and the condition preventing recourse to public funds removed. Secondly mediation was used to negotiate with other parties, including CYP's former partners, to facilitate the (documented) partner making benefits applications for shared children, and providing these funds to the CYP for the support of the children.

As can be seen below, legal intervention resulted in an improvement in financial circumstances, and also in relation to access to food and other necessities for a significant proportion of our CYP. These were vital changes for the better in the precarious lives of the CYP who were some of the most deprived CYP in the country due to poverty and lack of access to mainstream services. Many of our cohort were in dire financial circumstances on referral, and the stress and poor living conditions resulting from this aggravated the existing vulnerabilities they experienced. In some cases improvements were seen, to an extent, before leave to remain was granted as a result of other legal interventions by our team. However, the grant of leave to remain increased the level of financial support provided or accessible, and also improved the security of provision. A grant of leave to remain also secured access to mainstream benefits, the ability to open a bank account, and the ability to work which are likely to result in a significant further improvement in financial circumstances for the future. Remaining undocumented would have put access to financial support at risk, and linked it to immigration status to a considerable extent.

As has been made clear throughout this report, our cohort were a particularly vulnerable group of CYP who required access to health and social care provision in order to lead safe and healthy lives. Many of them experienced health problems that remained undiagnosed until our project referred them for services which they had been unable to access prior to this. Our advocacy and mediation services played a vital role in obtaining these outcomes for CYP. Whilst referral for health services is not technically part of legal representation, our project acknowledged that in order to obtain the best outcomes for CYP we need to represent the whole person to the best of our abilities, and ensure that they accessed services which met their needs. A CYP experiencing physical or mental health problems is much more likely to be able to focus on and make progress in regularising their immigration status if their



Outcome of Ayesha's application

A further 8 months later Ayesha's application was granted, and she was lawfully present in the UK for the first time since her arrival. By this time she had a second British child. She had access

to public funds and social housing, and the project assisted her in obtaining suitable accommodation for herself, and her children.

The difference in Ayesha was immediately visible. She smiled more in her first appointment following the grant of leave to remain than she had in all of her previous appointments put together. She was thrilled to finally have photographic ID and to be able to open her own bank account. She was very glad that she would be able to apply for Child Benefit to be paid directly to her, rather than being stuck in a situation where her abusive ex-partner had control over money she needed for her child. Ayesha was considerably less stressed, and began looking to the future for herself and her children.

health needs are being met. Ensuring that CYP with mental health problems were adequately supported in relation to their health needs and any other social requirements resulting from their ill-health resulted in CYP being able to remain engaged with us, and increased the extent to which they were able to trust us to act in accordance with their instructions and best interests. In addition, liaising closely with those treating and supporting them allowed us to obtain detailed evidence on difficult issues, with the knowledge that CYP would be supported with the health consequences of exploring difficult emotions and memories. Again, the improvements experienced by our cohort were not only experienced by those who had permission to remain granted to them, although those suffering from stress and anxiety found that their symptoms were alleviated when this issue was resolved.

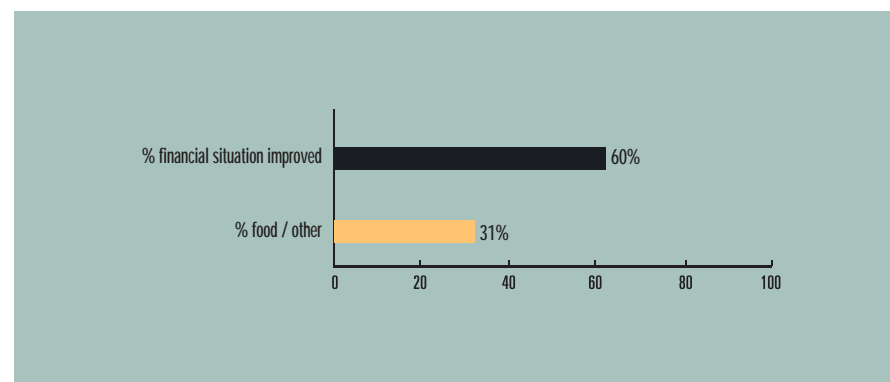
The above data indicates that half of our cohort accessed healthcare provision that they were not otherwise receiving prior to project intervention. Given that not all of our cohort experienced health problems, this is a significant finding. It is also important to consider the wider benefit to society of CYP with health problems accessing health services to which they are entitled. A society in which CYP are able to access optimal health is likely to be healthier, happier and safer.³

The infographic on page 144 sets out the types of treatment that CYP accessed due to project intervention. 'Other' reasons captured by our data include CYP whose stress and anxiety did not reach the threshold for clinical intervention, but nevertheless experienced a significant improvement in symptoms following a grant of permission to remain in the UK. Another CYP captured in this group is a young woman whose mental health problems did meet the clinical threshold, and who was hospitalised on a number of occasions due to self-harm and suicide attempts. Although she still required ongoing treatment for depression and trauma, her health

improved after she obtained settled status, and other symptoms which were stress related such as migraines and other somatic illnesses, reduced significantly. The final CYP captured in the 'other' health improvement category was a young woman who was pregnant but had not accessed any ante-natal services. When supported to access these she was found to be very anaemic, and therefore intervention resulted in health benefits for her and her unborn child, and a considerably safer pregnancy.

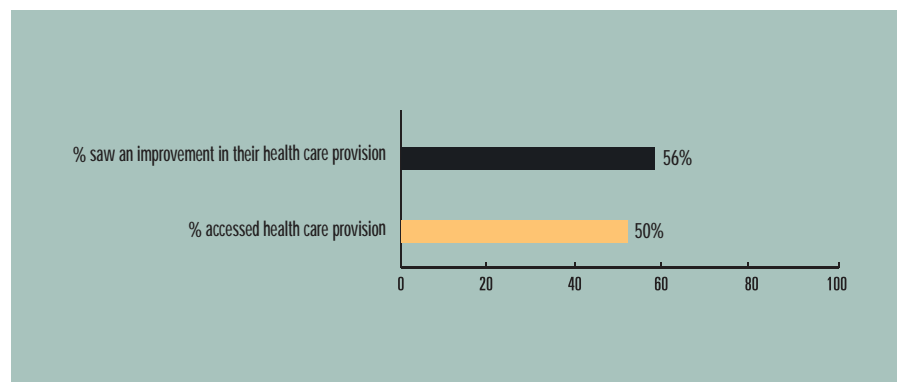
Again, mediation and advocacy was an important aspect of the service we provided to clients, and resulted in improvements to the healthcare received by CYP. Just under a fifth of our cohort required mediation in order to access treatment. Our work resulted in referrals into specialist services, which themselves then liaised with the CYP's GP or other practitioners to ensure that the CYP's full medical needs were met. Our interventions also included assisting CYP to obtain the services of an interpreter for GP appointments so that the CYP could explain their needs properly. In addition, with our clients' consent, we forwarded copies of any expert medical reports

IMPROVEMENTS TO FINANCIAL SITUATION



³ Marmot, M (2008) Fair society, healthy lives: the Marmot Review. UCL Institute of Health Equity.

HEALTHCARE PROVISION



produced in support of immigration applications to their GP to aid their understanding of the issues that our CYP had experienced, but did not feel able to disclose repeatedly. Medical evidence was also sought from GPs and other clinicians in support of applications to remain.

Summary of findings

- CYP require support in relation to a range of issues in addition to the specific need for immigration legal advice
- Addressing these needs during the preparation stage places CYP in a better position to be able to pursue their application fully and safely
- CYP struggle to access their full financial and medical needs without mediation and advocacy services
- Legal representation is vital to CYP accessing the full range of their requirements

Future Needs

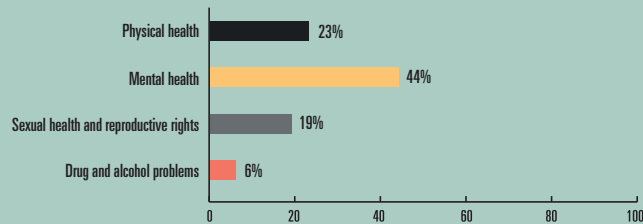
Many of our CYP spoke to us of being unable to see a future for themselves whilst at a point when their immigration status was undocumented. Others described how they had watched dreams of their futures crumble when they discovered that their immigration status meant that they were not able to access services and opportunities open to their documented peers. For many of our cohort, our intervention in their immigration matters has placed them in a position where they can now look to the future with some certainty. They are able to plan and dream again.

For others the future is clearer than it was when they were undocumented, but remains uncertain. Those granted Limited Leave to Remain are less able to feel sure that they will be allowed to remain in the UK and remain particularly vulnerable. Their route to settlement will take 10 years and there will be many obstacles to overcome:

- Every 30 months they will need to find the money to pay the fee to make their application, or they will need to decide whether they can risk applying for an exemption from paying the fee. Each year the fee will increase, so that between each application there is a significant increase in the fee payable
- On each application there is a risk that a No Recourse to Public Funds condition will be placed upon the CYP's leave to remain, pulling away their safety net in the form of access to benefits and social housing
- Each time an extension application is made the CYP will fear that an oversight may render their application invalid and result in a fall back into undocumented status once more
- Those who were granted limited leave to remain prior to 4

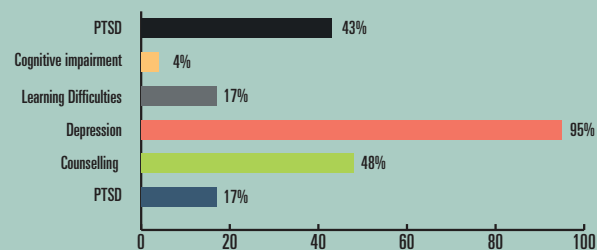
ACCESS TO HEALTHCARE PROVISION BY TYPE

% of those that required assistance/treatment:



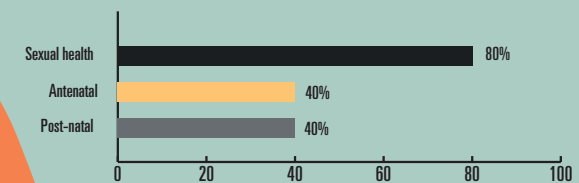
44% OF OUR COHORT EXPERIENCED MENTAL HEALTH PROBLEMS

Types of Mental Health issues:



19% OF OUR COHORT NEEDED SEXUAL HEALTH & REPRODUCTIVE RIGHTS ASSISTANCE

Those who needed Sexual health and reproductive rights assistance:



April 2015 will need to provide a passport, travel document or national identity card for the first time in relation to any future application⁴. For undocumented CYP this is a very difficult requirement to meet, and is impossible for some. Undocumented CYP who have lived outside their country of origin for many years and/or who have no contact with family members are likely to find it particularly difficult to obtain a national passport from their home country. They may not possess any documentation to confirm that they are in fact a national of that country. Increasing automation of application procedures makes it virtually impossible for those whose cases are not straightforward to obtain a passport or identity card. However, proving a negative is extremely difficult.

- Access to education is limited for this group of CYP due to the difficulty in accessing student finance and the need to prove their connection to the UK in order to do so once they have completed 3 years in the UK with leave to remain
- Access to employment is difficult for those with limited leave to remain as employers are concerned about employing someone who may not have permission to remain for the duration of their contract

Many of these issues are very difficult for CYP to understand. Those who are parents of British children are unlikely to cease to hold that status. As such, it is hard for them to understand why the government requires them to divert money from the upkeep and wellbeing of their children into making repeat applications at great expense. Those with periods of very long residence who identify the UK as their home feel increasingly alienated from their documented and settled peers and resentful that they are not welcome in the only place they call home.

A final issue that arises for some CYP is the impact of periods of undocumented status upon their prospects of becoming British. New definitions of 'good character' in place since December 2014 characterise periods of time spent in the UK in breach of immigration laws as being evidence of 'bad character', such that naturalisation cannot be granted until 10 years have elapsed from the period in breach. For CYP who have inadvertently spent time in the UK in breach of these laws either whilst children, or due to the acts of others, this is particularly harsh.

CASE STUDY

AMAL

Amal entered the UK under family reunion provisions to join her parents. Her father was abusive, and Amal left home at 17 to escape his unwanted attention. Unbeknownst to Amal, her father had not included her on the family's application for Indefinite Leave to Remain (ILR) in the UK, and she had therefore become unlawfully present in the UK at the point when her refugee status should have been extended and converted into ILR.

The project assisted Amal in obtaining ILR. She is now trying to naturalise as British. However, Amal's application has been refused because of the period of time she spent in the UK unlawfully as a child, and as a result of her father's actions. She has been informed that she cannot become British for a further 9 years. This decision is under challenge, but the impact upon Amal remains considerable.

⁴An amendment to the Immigration Rules which came into force on 6th April 2015 made it mandatory to include certain documents, including passports, travel documents or identity cards for all applications under the Immigration Rules. Whilst these requirements apply to all those making applications from that date onwards, the issue is likely to adversely impact upon undocumented CYP who have previously been granted permission to remain without needing to provide such documents as they are less likely to be able to provide them, and unlikely to expect to have to provide them, having been granted permission to remain without these documents in the past.

10. CONCLUSIONS AND RECOMMENDATIONS

What changes would assist CYP to move from undocumented to documented status?

What changes would make a difference to the identification of undocumented young people, and support them through the process of becoming documented? Our work on the Protect Project allowed us to track the routes of our cohort into and out of undocumented status. We mapped the obstacles to this, and their impact on CYP. This provides us with a unique and important perspective on changes which can and should be made by the adults with whom they come into contact.

CYP are unlikely to be aware of their immigration problems during their childhood and upbringing. Normally, they find out at a point of crisis, when they try to find accommodation, access health provision, or at pivotal points in their transition into adulthood e.g. beginning their first job, or applying for college or a place at university. Having no proof of identity can effectively block a CYP's access to a range of opportunities and public services including housing, education, mental health support, or financial support. That, in turn, has a profound effect on the CYP's wellbeing: mental, physical and emotional. They are unable to either learn or earn, and often depend on friends and friends' families for a place to sleep and food to eat. Their future is on hold, the support they have is inconsistent, and their friendships come under strain.

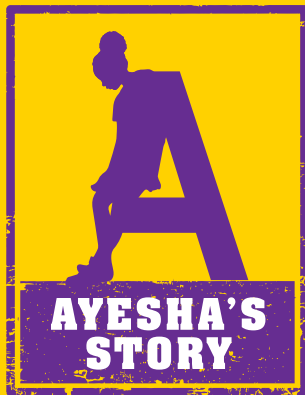
The government's package of measures (being unable to apply for a driving licence or current account, become a private tenant, work or access hospital care) that aim to create a 'hostile environment' for those in the UK without valid leave is having a detrimental impact on CYP. Mainstreaming immigration vetting creates a climate of fear and, in the cases where some of our undocumented CYP were living in a coercive environment, allowed those abusing and exploiting the child to continue to be able to abuse because of the CYP's dread of the consequences of exposure. The hostile environment allows for no discretion, and sets a tone that supports the 'othering' of these CYP.

Being faced with someone with an uncertain immigration status seems to blot out the ability of some frontline workers in a range of public services to identify or respond to the multiplicity and level of needs these CYP bring with them. They see a migrant first – a vulnerable child second. If they feel unable to respond to the migrant, they turn away the CYP. All too often we found local authorities unlawfully refusing to house vulnerable young people because of their undocumented status.

Even children's social care practitioners seem, in general, to be unaware of this group of CYP and, once they discover they exist, are unsure how to support them. Social workers do not need to be, and indeed cannot be¹ experts in immigration law and policy, but they do need to be able to recognise that a CYP's immigration status is unclear, and understand what to do next. Our casework made it clear that even those professionals who had some experience of working with CYP and migrant populations were unable to offer the help required without specialist legal intervention.

Access to justice for this group of CYP is restricted due to cuts to legal aid provision. That must change. Effective legal representation for undocumented CYP can provide the difference between successful and unsuccessful outcomes. Expert legal investigation and preparation helps CYP disentangle the different issues they are confronting; legal support can help them address their immediate legal and welfare needs (health care, financial support, a place to live) so they can focus on their immigration case and engage with complicated application and legal processes connected with this. Our case outcomes demonstrate a new approach: how access to holistic legal services significantly enhances the CYP's prospects of addressing their needs and regularising their status. Legally informed mediation and advocacy services can also assist undocumented CYP to help identify the array of their legal needs and help navigate them through the statutory and other regulated assessments and processes. Together, such vital services can provide CYP the chance to be treated as full members of the communities they grew up in, to thrive as well as simply survive – to have a future with dignity and reach their full potential.

¹ In the UK, the provision of legal advice on asylum and immigration is regulated under the Immigration and Asylum Act 1999 so that only authorised advisors can lawfully give legal advice and provide services.



Ayesha's future

Ayesha was granted limited leave to remain for 30 months. She will need to apply for further periods of leave to remain at the expiry of her 30 month period, and a further 2 times after that until she has completed 120 months in the UK with leave to remain. This means that, having arrived in the UK aged 8, Ayesha will not be able to apply for settlement in the UK until she is 33 years old.

Ayesha has completed her first period of 30 months, and has returned to the project for assistance in applying to extend her leave to remain. Ayesha is now working, and continues to be the primary carer for her children. Their fathers do not provide financial support although the children see their fathers regularly. Although Ayesha receives assistance from the state to support the children in addition to her wages, her financial situation is not easy. Ayesha comments that it is much better than it was, and she is determined to keep a roof over her children's' heads and give them the settled childhood she didn't have. She wants to work and provide her children with a positive role model for their future. Her oldest child still suffers periods of ill-health, but Ayesha knows what to do, and ensures her child is appropriately supported and cared for. The confident capable woman that comes to her first

appointment in relation to extending her stay appears very different from the unhappy, angry teenager we met when she first came to us.

Despite all of Ayesha's hard work, the money she has coming in each month is all accounted for in feeding and clothing her children, and making sure that her older child is kept warm and can access medical treatment quickly. Ayesha has managed to buy a second-hand car because her older child's illness causes her a lot of pain when walking, and makes her susceptible to cold and infection. The car is vital to Ayesha to enable her older child to be mobile, and also to get her to hospital quickly if her health deteriorates.

There is no longer legal aid to pay for legal advice in relation to immigration matters such as Ayesha's application. She has no spare cash to pay for a lawyer. We try to get her access to legal aid under Exceptional Case Funding (ECF).

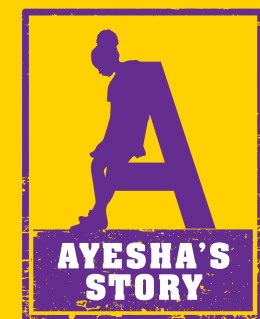
We explain to Ayesha that on each occasion she applies for leave to remain she will need to pay an immigration application fee, or apply to be exempt from the fee. She will also need to pay a contribution to the NHS known as the Immigration Health Surcharge. The costs involved in obtaining a further 30 months leave to remain in the UK on this first occasion amount to nearly £1500. Fortunately, as her children are British, there are no additional fees to pay for them. We advise Ayesha that there remains a fee waiver system but that, as she is working, she will need to provide very detailed evidence of her income and outgoings, and there is no guarantee that a fee waiver will be granted.

If she is refused a fee waiver this may result in rejection of her application. If her application is rejected after her period of leave to remain has expired, then she will be present in the UK unlawfully. She would then lose her right to work and claim benefits. She risks losing her home. Although it might well be possible to challenge this legally, the risk is too great for Ayesha to take. She has to make difficult decisions about whether to default on her rent, or try to obtain an emergency loan with which to pay the fees.

We also advise Ayesha that the formal requirements of the application process have changed, and that the Home Office now require that a passport is submitted with all applications, unless there is a good excuse why this is not possible. Ayesha is stunned. She doesn't have a passport. She has tried to obtain one, but the Nigerian passport system is now online only, and the online procedure does not account for applications by people who know little of their background information. She cannot provide an address in Nigeria, or other required information, without which her application cannot be completed. Ayesha abandoned her attempt, as she didn't need a passport on a day to day level, and could not afford to travel abroad.

Once again, the impact upon Ayesha is visible. At times she reverts to the angry hostile teenager she used to be. Re-engaging with the possibility of becoming unlawfully present, reliving the obstacles she experienced last time causes Ayesha to regress towards her old self. Ayesha is terrified that her children are now old enough to appreciate some of the implications of her uncertain status. She feels unsafe and adrift.

We submit Ayesha's application before her leave to remain expires, ensuring that she remains lawfully present in the UK. Her employers are aware of her limited immigration status, and as soon as the date on which her limited leave to remain ends arrives, request evidence that she has submitted a valid application to extend her right to remain. We provide this. However, very shortly afterwards the Home Office write, stating that as Ayesha has not submitted a passport her application cannot yet be considered valid, despite the fact that she has submitted the photographic ID that the Home Office issued to her when they granted her first period of leave to remain (at which time they did not require a passport). She must provide further evidence to justify her inability to provide this. We put together further evidence of the impossibility of Ayesha obtaining a Nigerian passport and submit this to the Home Office together with other evidence of her identity, including her driving licence. So far Ayesha's application for further leave to remain has not been rejected, but Ayesha remains on tenterhooks.



1. Undocumented migrant children are vulnerable children whose uncertain immigration status places them at risk of harm

Lack of knowledge or clarity about one's own status is, in itself, an indicator of vulnerability. When undocumented CYP come to the attention of public authorities, their overwhelming need is for a child protection response that respects their views, and responds to their needs by giving them stability, security, and the chance to heal and develop. Both local authorities and the immigration service should undertake a holistic assessment of the child's Best Interests – and all public services must be aware that the CYP's needs as a child cannot be fully understood unless their needs as a migrant are also addressed; conversely, the CYP's needs as a migrant must be informed by a Best Interests assessment of their needs as a child.

We recommend that the UK government:

- **Includes specific reference to undocumented CYP in its forthcoming revision of its statutory guidance on the care of unaccompanied and trafficked children²**
- **Includes a section outlining the situation of, and appropriate responses to, undocumented CYP in its forthcoming safeguarding strategy for unaccompanied asylum-seeking and refugee children and young people**

2. Awareness-raising and capacity building among those working with or in contact with undocumented CYP

Although the first adult that a CYP will discuss their difficulties with is likely to be a non-legal professional, too many frontline workers

including social workers, housing officers, health workers, education staff, independent advocates and NGO staff are unaware of the implications for children of having no clear immigration status, as are too many lawyers who are neither immigration, nor child, specialists. It is imperative that they understand the need for the CYP to receive specialist immigration advice that meets their needs as a child.

We recommend that the UK government works with local authorities and representative organisations such as the Association of Directors of Children's Services (ADCS), Local Government Association (LGA), the Royal Colleges, National Association of Independent Reviewing Officers (NAIRO) and others to:

- **Develop resources and deliver training for non-immigration workers to help equip them with a basic understanding of the immigration system and processes in order to help them better support the child**

In particular, legal representatives must become better at working with and on behalf of a child client to ensure that the CYP understands and is able to participate fully in their case. We recommend that the Law Society:

- **Develops and promotes guidance for solicitors on how to act for child clients in immigration and asylum cases**

3. Social work practice

Nearly all our CYP cohort had been abused or exploited by family members, their carers, or their traffickers before, on the journey to, or after arriving in the UK. Some of this abuse occurred in private fostering arrangements. Those who had fled abuse or exploitation in their country of origin had never been asked about it, even though those details would provide critical evidence to support their immigration application and inform their care plan.

² DfE (2014) Care of unaccompanied and trafficked children: statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children.

We recommend that the UK government:

- **Reviews and revises both its statutory safeguarding guidance³ and Family and Friends Care guidance⁴ to ensure that, where the migrant child feels able to disclose it, children in need assessments include a full family history to help identify evidence of abuse or exploitation that may have occurred before the child arrived in the UK as well as after**
- **Requires every local authority to designate a named social care lead on unaccompanied and separated migrant CYP, to include undocumented CYP**
- **Updates and promotes the statutory guidance on private fostering⁵ to make sure local authorities are clear about their duty to ensure privately fostered children are safe and their best interests are being met**

4. Access to specialist legal support

Undocumented CYP require access to specialist legal support to help them investigate and diagnose their legal issues, and navigate a complex legal terrain – not only immigration law, but access to other public services including housing and social care. Specialist advice and representation is effective in enabling undocumented CYP to obtain permission to remain in the UK lawfully, and also to access other services that are vital to their welfare and best interests. Statutory guidance for local authority children's services makes it clear that children's social workers should understand how to access specialist legal advice and representation for unaccompanied children⁶. Under the new National Transfers Scheme, interim guidance⁷ notifies local authorities due to receive unaccompanied children of the need to ensure they have appropriate

access to legal representation. However, we continue to receive information about cases where unaccompanied migrant CYP are unable to access the legal advice and representation to which they have a right. The responsibility of the local authority to ensure this needs to be clearer.

We recommend that the UK government:

- **Places a duty on local authorities to ensure a child's access to legal advice and representation as part of their corporate parenting responsibilities**

5. Legal aid

Until March 2013, all children and young people in care were entitled to publicly funded legal advice and representation to address their immigration issues. However, following the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) immigration matters were removed from the scope of legal aid funding in England and Wales, which means that children with non-asylum claims no longer have automatic access to legal aid, despite many being eligible for immigration status. It is also of concern that there are areas of England with either no legal aid asylum advice available, or only one or two providers struggling to serve a growing number of clients spread over a large geographical area. This vulnerable group of children must have access to free legal representation to address their legal needs as children subject to immigration control.

We recommend that the UK government:

- **Brings immigration cases involving looked after children and care leavers back into scope of legal aid, and make sure legal aid is available to all unaccompanied and separated migrant children**

³ HM Government (2015) Working together to safeguard children: a guide to inter-agency working to safeguard and promote the welfare of children.

⁴ DfE (2010) Family and friends care: statutory guidance for local authorities.

⁵ DCSF (2005) Replacement Children Act 1989: Guidance on Private Fostering

⁶ DfE (2014) Care of unaccompanied and trafficked children: statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children.

⁷ DfE, Home Office, DCLG (2016) Interim National Transfer Protocol for Unaccompanied Asylum Seeking Children 2016-17.

- **Monitors and addresses shortfalls in the geographical distribution of legal aid providers who work in immigration and asylum law, particularly in areas where public authorities accommodate these CYP**
- **Introduce a freestanding (ie. not attached to the rights of a parent or adult carer) right under the Immigration Rules for child victims of domestic abuse to obtain Indefinite Leave to Remain where they are forced to leave their home as a result of domestic abuse by those they live with**
- **Provides clear and accessible guidance on what legal aid is available, including special measures in children's cases, so that those assisting the child, including local authorities, understand the legal aid regime**

6. Asylum and immigration application processes

Applicants find the application system slow and labyrinthine. Navigating the asylum or immigration application process requires expert specialist legal advice and representation. Even then, the system does not always work to the benefit of CYP. Three examples from the Protect casework illustrate this: applications for fee waivers for those unable to afford the application fees; the stuttering 30 month reapplication requirements for the 10 year route to settlement which impedes the CYP's ability to access or retain education or employment; and the failure to assign a case number to dependent children who are part of their parent's application. The short-termism of the system makes it difficult for the CYP, or those supporting them, to plan for their future or reach a durable, long-term solution.

We recommend the Home Office:

- **Issue separate child-specific guidance on handling and processing the immigration claims of undocumented CYP**
- **Create a special disclosure process whereby undocumented CYP have the right to access immigration documents pertaining to them**
- **Extend the automatic fee waiver for immigration applications and appeals currently available to looked after children to care leavers, and apply the waiver to both groups for citizenship applications**
- **To avoid making repeated renewal applications, increase the use of indefinite leave to remain when it is in the CYP's best interests and will help lead to a durable solution for that CYP**
- **For undocumented parents of British children:**
 - o **Apply an automatic fee waiver for those who are in receipt of public benefits**
 - o **Introduce a 5 year default leave to remain for parents of British CYP**

7. Right to an identity

The right to an identity is a fundamental human right for all. The way in which the immigration system operates appears to override this right: for example, immigration applicants are required to submit all original documents that prove their identity (and the renewal process can take 6 months to 2 years), leaving them at a serious disadvantage when trying to access a range of public services, or education and employment.

We recommend the Home Office:

- **Issue a written notification of receipt of the application with confirmation of their status, rights and entitlements pending the outcome of their application – with an official copy of the applicant’s biometric card**

8. Transition to adulthood

Schedule 12 of the Immigration Act 2016 will remove access to Children Act 1989 leaving care support from those who reach 18 years and either do not have leave to enter or remain in the UK, or are appeal rights exhausted. Undocumented CYP will be depending on their local authority to help them regularise their status before they reach 18. As corporate parents, local authorities should have an active duty to promote and ensure provision of legal representation and funding restrictions should be lifted to allow this to happen effectively.

We recommend the UK government:

- **Develop a transition plan for unaccompanied migrant children, including undocumented CYP, as part of its forthcoming safeguarding strategy for unaccompanied asylum-seeking and refugee children and young people**
- **Monitor and review the impact the Schedule 12 Immigration Act 2016 changes have on those who previously would have been eligible for leaving care support**
- **Ensure undocumented CYP retain the right to access and continue education and training opportunities**

GLOSSARY

A

Application Registration Card (ARC) – Identity card issued to all asylum seekers and their dependants.. The card holds data about the asylum seeker, a photograph and indicates whether or not the asylum seeker has the right to work or not.

Appeal rights exhausted (ARE) – This is used to describe a person who has had their asylum or immigration application refused and who has exhausted all possible appeals against that refusal.

Asylum Claim / Application – When a person makes an application for protection as a refugee or person fleeing treatment contrary to Article 3 of the ECHR (protection from torture inhuman and degrading treatment) then the UK government defines that as an ‘asylum’ application. Also known as claims for **International Protection**. A successful application for asylum/international protection will result in a grant of refugee status or Humanitarian Protection in the UK.

Asylum Seeker – A person awaiting a decision on whether their application for asylum will be accepted is frequently referred to as an ‘asylum seeker’.

B

Best interests – Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) states that the best interests of a child must be a primary consideration in all actions concerning the child, whether by public or private institutions, courts or administrative or legislative bodies. Section 55 of the Borders, Citizenship and Immigration Act brought this into force in relation to immigration decisions from November. This means that any immigration decision (including any decision relation to immigration functions as well as immigration application decisions) which affects a child (whether directly or indirectly) must treat that child's best interests as a primary consideration in reaching the decision. The starting point in making an immigration decision must be to look at what immigration decision best meets the child's needs. A decision contrary to those needs and best interests may only be made where there are important countervailing factors which outweigh the child's best interests.

Biometric Residence Permit (BRP) – A plastic card similar to a UK Driving licence which contains a picture of the holder, identity details (name, date of birth, nationality) and a biometric chip containing details of the holder's photo and fingerprints. The card confirms what permission they have to remain in the UK, and any conditions on that permission.

C

Care leaver – A care leaver is defined as a person aged 25 or under, who has been looked after by a local authority for at least 13 weeks since the age of 14; and who was looked after by the local authority at school-leaving age or after that date.

Care order – Interim / full care order – where a Local Authority has concerns that a child is suffering, or is likely to suffer significant harm, and that harm is attributable either to the fact that the care being given to the child is not what it would be reasonable to expect a parent to give her, or the child is beyond parental control, then the Local Authority can apply to the court for a care order under s.31 of the Children Act 1989. A care order under s.31 is compulsory and can only be varied by the court. Where the risk to the child is not clear, an interim care order may be obtained whilst the risk is considered. If, following assessment, the court decides that the risk of harm is ongoing, then a full care order can be made. Where a child has been the subject of an interim care order, or a full care order but work is being done towards returning them to

live with their parent or carer, they may initially be returned under a supervision order which compels the parent/carer to engage with the local authority and obliges the Local Authority to maintain supervision over the family for a specified period after the child returns to them.

Child in need – A child in need is defined in law (s.17 Children Act 1989) as a child aged under 18 who needs local authority services to achieve or maintain a reasonable standard of health or development, or needs local authority services to prevent significant or further harm to health or development, or is disabled.

Child rights based approach – our legal work with children adopts a child-rights based approach. We define this as meaning that we consider what our young clients' need, and are entitled to as children first rather than as migrants. In order to meet these needs we work in a child-friendly way, ensuring that we use language that is readily understood by children and young people, that we deliver services in places and at times which fit in with children's educational and social needs. We place children at the heart of our all our services listening to their views to inform our work. We also deploy legal arguments and obtain evidence which recognise and demonstrate the needs of our clients as children, and explain why these are different from those of adults. We analyse our client's circumstances, and any evidence available, in the context of the rights protected by the UNCRC, to ensure that as far as possible we enable our clients to access those rights in a meaningful way in the UK, and are not removed to a country where these rights are not protected or respected, and where harm would be caused to the child.

Children and young people (CYP) – Children are aged up to age 18. This report also includes experiences of 19 to 24-year-old Young People whose undocumented status was unidentified or not addressed during their childhood.

Children's rights – Children's rights are the human rights of children, with a particular focus on rights of special protection and care afforded to children as embedded in The 1989 UN Convention on the Rights of the Child (UNCRC). The UNCRC defines a child as any human person who has not yet reached the age of eighteen years.

Community care lawyers – Community care is used to describe services provided by public authorities to help adults and children with health and social care needs. Practicing in community care law for example, involves challenging the decisions of social services, educational institutions and government where their actions are considered to be unlawful

D

Documented status – this describes the situation where a person can provide documentary evidence which establishes their identity, including name, nationality and date of birth, and can also provide documentary evidence of their right to be present in the UK. Identity documentation may include birth certificates, passports or identity cards. Evidence of the right to remain in the UK may include a Biometric Residence permit, a passport endorsed with leave to remain, an immigration status document or other documents issued by the UK government which confirm the holder's right to live in the UK, and any conditions on that right.

E

EEA national – An ‘EEA national’ is a citizen of a European Economic Area country: which include all the EU countries, Iceland, Liechtenstein and Norway. EEA nationals currently have preferential immigration rights due to the rights of Free Movement within the European Union for EEA nationals as defined in the treaties of the European Union and subsequent EU directives.

European Convention on Human Rights (ECHR) – The ECHR is an international treaty to protect human rights and fundamental freedoms in Europe. It was drafted by the Council of Europe and entered into force

in 1953. All Council of Europe Member States are party to the Convention. The provisions of the ECHR are enforceable in UK law courts and the European Court of Human Rights (ECtHR), set up in 1959 in the city of Strasbourg, can consider cases brought by individuals, organisations and states against the countries which are bound by the convention.

Article 3 of the European Convention on Human Rights (ECHR) states that “No one shall be subjected to torture or inhuman or degrading treatment or punishment.” A person can make a claim for international protection based directly on Article 3 of ECHR because states are prohibited from returning a person to a country where they may suffer a violation of rights under Article 3. Article 3 claims are considered ‘asylum claims’ and are within the scope of legal aid.

Article 8 of the ECHR states that “Everyone has the right to respect for his private and family life, his home and his correspondence.” Article 8 issues can be raised as part of an immigration or asylum application, or as part of an appeal against deportation or removal. Article 8 is a qualified rather than an absolute right which means that governments can interfere with the right to private and family life in certain specified circumstances (where such interference is in accordance with the law, and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.) Article 8 claims no longer automatically fall within the scope of legal aid in the UK. See Exceptional Case Funding below.

Exceptional Case Funding (ECF) – In April 2013, major changes were made to the legal aid system in England and Wales by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). As a result of these changes, many cases are no longer ordinarily eligible to receive legal aid. The Legal Aid Agency (LAA)’s Exceptional Case Funding (ECF) scheme has been in operation since April 2013 and provides legal aid funding for certain cases in areas of law that are otherwise out of the scope of legal aid. Exceptional funding will only be available to people whose human rights or European Union rights would be breached if they did not have legal aid. In general, this involves situations where it would be in some way unfair or even impossible for a person to deal with a case themselves. This might be because a case is complicated, or because the person’s individual characteristics mean that they would not be able to put their case properly alone, or because the case is so important to that person that it is not fair for them to prepare the case themselves. An applicant for ECF will need to make a formal application to the LAA providing information about their financial circumstances, and the legal case they require ECF for. The Legal Aid Agency will then make a decision on whether the applicant can access legal aid for their case.

F

Formal care arrangements – in this report we use this phrase to describe circumstances in which a child or young person is formally taken into care by a Local Authority under the provisions of legislation relating to the welfare of children, such as under a Full Care Order, an Interim Care Order, or under s.17 or s.20 of the Children Act 1989. This includes the placement of a child into formal foster care.

Foster Care – separated children under 16 are likely to be placed in foster care once a Local Authority accepts that they have a duty to provide services to the child. The child will be placed with foster carers: trained individuals who are paid by the local authority or fostering services to care for children on a short or long term basis. The child will live in a family setting and receive parental guidance and support from the foster carers who will be responsible for their day to day care. Foster placements may last until the child is 18, or the child may enter semi-independent accommodation (under s.20 CA 1989 as described below) prior to their 18th birthday. Once the young person reaches 18, the Staying Put arrangements (see below) enable the young person to continue to reside with their foster carers in certain circumstances..

G

Gatekeeping – Gatekeeping can refer to the control that states exert over their boundaries. This might involve construction of physical boundaries such as gates or border fences, but also encompasses the role of law and policies for migration. The UK government under David Cameron and Theresa May have declared the intention to create an openly “hostile environment” for illegal migrants (see “Hostile environment” below), and measures to this end have included extending “gatekeeping” responsibilities to landlords, employers, banks, the driving licence authority and potentially NHS trusts, through requiring them to examine and report on immigration status. Gatekeeping in such a context may also extend to increasing the hostile attitudes of frontline staff, effectively preventing people from accessing services.

Gatekeeping may also refer to the practice of public authorities refusing to provide services to children and young people on an unlawful basis, or putting in place obstacles to accessing services on the assumption that some of those refused will not have the support or knowledge to challenge these. In this way public authorities with limited financial resources reduce the number of children and young people accessing their services.

H

Home and Overseas students

‘Home students’ is used to refer to those who are eligible to pay university tuition fees at a lower rate than students who have come from abroad specifically to access education. Generally, British citizens qualify as home students, as do EEA nationals, refugees, those with Humanitarian Protection, and those with Indefinite Leave to Remain. Following recent changes to the law, some young people with long residence in the UK, and permission to live here will be treated as home students but the regulations are complicated and not always applied correctly. A person who has limited leave to remain will need to show that they have been present in the UK with permission for 3 years or more, and that they have lived in the UK for more than half their life on the date that their course starts. Anyone not considered to be a home student is considered to be an overseas student and must therefore pay higher international fees.

Hostile environment – A set of policies, measures and messages that aim to deter migrants from entering or living in the UK illegally. The Immigration Act 2014 brought in restrictions on access to privately rented accommodation, driving licences, bank accounts and the introduction of an NHS surcharge. The Immigration Act 2016 further develops these restrictions with provisions to deter people from working illegally in the UK, to enforce sanctions against those who employ illegal workers or landlords who let property to people who cannot prove their immigration status. The extension of a “deport first appeal later” regime, increased powers of immigration officials to search property and seize documents, among other measures. The then Home Secretary Theresa May, described these measures as being designed to create a ‘hostile environment for migration’.

Housing Act 1996 – The Housing Act 1996 specifies which homeless people are to be considered ‘in priority need’ for accommodation provided by a local authority. This includes a duty upon the Local Authority to provide them with some form of emergency or interim accommodation whilst suitable long term accommodation is identified. By virtue of the 2002 Homelessness (Priority Need for Accommodation) (England) Order those in ‘priority need’ include 16 and 17 year olds, regardless of whether they are in the care of the local authority or not. Some CYP we assisted preferred not to go into formal local authority care, and accessed accommodation on an emergency basis invoking the local authority’s duties towards them as a person in priority need.

Humanitarian Protection (HP) – This form of protection is granted to people who do not qualify for refugee status but cannot be removed from the UK because they would face a serious risk to their life,

or of torture, inhuman and degrading treatment on return to their country of origin. Those granted Humanitarian Protection will be granted 5 years HP, and have to complete 5 years before they can apply for Indefinite Leave to Remain (ILR). Persons with HP are entitled to claim benefits and have the right to work.

Immigration 'lawyers' – Immigration advisers providing advice and representation directly to clients can take many forms – CYP often use the catch all term 'lawyer'. Immigration lawyers deal with all legal matters relating to immigration, asylum and nationality law. This can range from assisting with making asylum and human rights claims, or applications to stay by family members and students, to advising businesses on how to secure immigration status for their employees. Some immigration lawyers are qualified solicitors, whereas others are supervised by solicitors. Non-qualified individuals are able to provide immigration advice provided that they are registered with the Office for the Immigration Services Commissioner (OISC) to provide advice and have completed training and passed relevant competency tests. Providing immigration advice without the relevant supervision or registration is a criminal offence. Some immigration lawyers provide free legal advice under legal aid. Lawyers providing legal advice under legal aid are required to pass additional exams, and can only advise children if they have passed higher level exams. Other immigration lawyers provide advice on a private basis which means that they charge clients money for their services. Some lawyers provide both legal aid and privately funded advice.

Immigration Rules – The Immigration Rules are some of the most important pieces of legislation that make up the UK's immigration law. Essentially, they are regulations which govern the detail of immigration and asylum legislation. Changes to the rules must normally be made via a Ministerial Statement to Parliament, generally in the form of a written statement.

Immigration status – Immigration status indicates the type of legal permission a person who is not a British citizen might have been granted by the UK government to stay in the UK, and the limits and the conditions placed on that permission. Immigration status may also be referred to as 'leave to enter / remain' or 'stay'. CYP may also refer to immigration status colloquially as 'a visa', although a visa is a specific type of permission to enter and remain in the UK.

Immigration Status document – Immigration status document refers to a document such as visa or biometric residence permit that indicates the type of immigration status a person has been granted. In the past, the government issued a particular document called an 'Immigration Status Document'. These Immigration Status documents have been discontinued and replaced by Biometric Residence Permits (BRPs). Some people will still hold a paper Immigration Status Document, but these are becoming less common as BRPs are more widely issued.

Indefinite Leave to Enter (ILE) – Indefinite Leave to Enter is a form of permission to stay in the UK which is granted to people who make their application to live in the UK from abroad. The terms of ILE are identical to those of Indefinite Leave to Remain (ILR – defined below). A person with ILE has no time limit on their stay in the UK. Where a child living abroad applies to join a family member in the UK who is living in the UK with ILR or British citizenship, in some circumstances the child will be granted permission to enter the UK which describes them as holding 'Indefinite Leave to Enter' (ILE) the UK. ILE is normally noted in a visa vignette that will be issued by a British Embassy or High Commission outside the UK. The visa will be issued with a 'valid from' date, which is the first date upon which the visa can be used for travel. The visa will also show a 'valid until' date, which is the date by which the child will need to travel to the UK on the first occasion in order to be able to rely on that issued visa with ILE. If the child enters the UK before the 'valid until' date, then on arrival an Immigration Officer will place a date stamp on the page of the passport containing the visa, and this will demonstrate that the child entered the UK before the 'valid until' date, and the visa has therefore been used during its validity window and its validity is 'triggered'. Once validity is triggered, then the visa cannot 'expire' since the child has been given permission to enter the UK for an

indefinite period. If the child does not travel to the UK within the validity window, then the visa will not be valid for travel and has not been triggered. The child will then need to make a further application to the relevant British Embassy or High Commission for a new visa vignette to be issued, or a completely new visa applied for depending on the circumstances. Some children granted ILE may have received this only on the basis that their sponsoring relative has signed an undertaking to maintain and accommodate them without recourse to public funds. This is unlikely where the Sponsor is a refugee or person with Humanitarian Protection.

Indefinite Leave to Remain (ILR) – A person who is granted ILR has no time limit on their stay in the UK. In some circumstances there is a restriction on accessing benefits but in the majority of cases full access to benefits is permitted. Indefinite Leave to Remain can be lost or revoked, but cannot expire. Documents evidencing the ILR can expire, but this does not mean that the permission to remain permanently has been lost, any more than a person with an expired British passport has stopped being British. A person with ILR who is absent from the UK for 2 years or more will usually lose their ILR. ILR can be revoked if the holder commits a serious crime.

Informal care arrangements – In contrast to formal care arrangements, defined above as those in which a child or young person is taken into care by a local authority under the provisions of child welfare legislation, informal care arrangements are those in which an unpaid individual, usually a relative or family friend, takes responsibility for a child's care and welfare on a casual basis or without the involvement of the authorities. Where the care is not provided by a close relative, this may be referred to as 'Private Fostering'. There is no supervision of such care, and no legislation which governs this, other than general child welfare legislation. Many undocumented CYP spend time in informal care arrangements.

International protection – this phrase describes situations in which an individual is forced to leave their country of nationality or origin and seek protection from another state due to a risk of persecution, or breaches of fundamental human rights in their country of origin. The phrase covers both applications for refugee status, and applications based on Articles 2 and 3 of the ECHR. International protection may also include permission to remain as a survivor of trafficking (due to risk of harm if returned to the country of origin as a result of the trafficking experience or allied future risk. International protection also describes situations in which a person would be at risk of serious individual harm from indiscriminate violence resulting from an international or internal armed conflict affecting their country of origin or nationality.

Judicial Review – This is a mechanism for challenging administrative decisions, actions or failure to act on the part of a public authority (eg. Home Office, local authority). It can only be used where there is no alternative remedy (ie. no right of appeal), and the authority has made a reviewable error of law. It can only be used where the authority has acted illegally, irrationally or where there has been a procedural impropriety.

L

Lawful residence

Residence in the UK other than by nationals or citizens of EU member states is lawful if the individual in question has one of the following: existing leave to enter or remain, temporary admission, or an exemption from immigration control. In the cases of temporary admission and exemption from immigration to control, a grant of leave to enter or remain must subsequently be awarded in order to establish a period of continuous residence. By way of example, asylum seekers may be granted temporary admission following their arrival to the UK pending the outcome of their application. If recognised as RS or HP then awarded the relevant immigration status.

Leave to remain – Leave to remain simply means permission to stay on the territory of the United Kingdom. Such leave might be limited in length, and/or subject to conditions.

Leaving care provisions – children aged 16 or 17 who have been ‘Looked After’ children by the Local Authority for more than 13 weeks in between their 14th and 18th birthdays are entitled to ongoing support from the Local Authority beyond the age of 18 in order to ensure that they are able to care for themselves, set future goals, and enter adulthood safely and with support. This aspect of the care system is supposed to reflect the position of CYP who remain with their families, and who are unlikely to be sent out into the world on their 18th birthday without further support. Leaving care provision will include a personal adviser who maintains contact with the YP and advises them, creates a pathway plan to map their future goals, and assists them to access services they need, including financial assistance with employment, education and training, accommodation if the YP’s welfare requires it, and other general assistance. This will be provided until the YP is 21. If the YP is pursuing an educational course, this may continue until the end of the course, or until age 25, whichever is earlier.

Legal aid Legal aid is the provision of advice and assistance to people otherwise unable to afford legal representation and access to justice. Legal aid in the UK pays for the person to receive advice and representation from a lawyer who is contracted by the Legal Aid Agency (see below) to provide advice which is free at the point of delivery in a particular area of law. Legal Aid is not available in all areas of law, and the government decides what areas of advice are within the scope of legal aid. Access to legal aid is means tested.

Legal Aid Agency (LAA) An executive agency of the Ministry of Justice that administers both civil and criminal legal aid and advice in England and Wales. They award contracts to legal advice providers to provide legal advice and assistance under the terms of their legal aid contract.

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) – legislation that brought about significant changes to the justice system in the UK, including the abolition of the Legal Services Commission, its replacement with the Legal Aid Agency and the removal of legal aid in many areas of law including, private family law, education, housing, social welfare, employment, debt and immigration (though ‘asylum’ cases still fall within legal aid). The provisions of LASPO came into force on 1 April 2013 and affect any new grants of legal aid from that date onwards.

Legal needs Issues for which an individual is not currently receiving legal support but for which legal advice, assistance, mediation or representation could be beneficial are understood as legal needs.

Legal advice / representation – When a dispute is brought to court, the position of both sides must be represented. Individual defendants, applicants or appellants can choose to represent themselves, use the assistance of a lay representative or be represented by a legally-trained expert or ‘lawyer’. In all but the most straightforward cases the use of representation by a lawyer is in the individual’s interest. In immigration cases a lawyer will usually identify the appropriate part of the immigration rules that apply to their client, explain the procedure involved, the evidence required, and any administrative issues such as identifying the relevant application for and payment of or exemption from fees. Lawyers may assist clients to complete application forms, collate evidence, and draft legal submissions demonstrating how the client meets the requirements of the Immigration Rules, or should otherwise be allowed to remain in the UK. Lawyers should also advise on the legality of any decision made, and methods of challenge if the decision is unlawful. Lawyers may appear at court if the matter goes to appeal or review.

Live asylum cases – An asylum case can be understood as ‘live’ if a decision has not yet been reached on whether the individual is eligible for refugee status.

Local Authority – a local authority is an administrative body in local government (public authority) which is responsible for the day to day funding and administration of services and facilities in a defined local area. Different Local Authorities have different structures. A Local Authority has a duty to monitor the welfare of children within its jurisdiction and ensure that they are able to access accommodation and support where there is no responsible adult capable of providing this.

Looked after child – A looked after child is any person under the age of 18 who is accommodated for more than 24 hours by a local authority.

M

Mediation is a way of resolving disputes without going to court. Typically, mediation involves a third, independent party helping those involved in the dispute to negotiate a settlement in order to avoid escalation of the dispute. In our report, ‘Mediation’ is used to describe support services we provided to our clients where they felt unable to express or communicate their needs or ensure that they were met without intervention e.g. where the child is in dispute with their parent or corporate parent. The Protect Team provided mediation services to our clients to ensure that they were able to express these needs and have them met without needing to use formal legal processes and/or where the child felt unable to communicate directly with a person because of fear or distress.

Modern slavery takes a number of forms including human trafficking, slavery, servitude and forced and compulsory labour. It also covers exploitation which can take a number of forms, including sexual exploitation, forced manual labour and domestic servitude. Victims of modern slavery may have entered the United Kingdom (often through force and/or against their will) legally, on forged documentation or clandestinely, or they may be British citizens living in the UK..

N

National Referral Mechanism (NRM) – The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support and protection. Normally, the individual’s case will be referred to the Competent Authority. There will be a brief initial investigation following which the Competent Authority (in immigration cases this means UK Visas and Immigration) will make a decision as to whether there are ‘Reasonable Grounds’ to believe that the person has been trafficked. A positive reasonable grounds decision will allow the individual a 45 day period of lawful residence in the UK for the purposes of rest and reflection. A positive Reasonable Grounds decision also brings the case within the scope of legal aid for their trafficking case and any application to remain in the UK as a result. Following the making of a positive Reasonable Grounds decision, a more detailed investigation will take place so that the Competent Authority can assess whether there are Conclusive Grounds to believe that the individual is a victim of human trafficking or modern slavery. A positive Conclusive Grounds decision may lead to a grant of 12 months leave to remain. Negative decisions in relation to whether there are Reasonable to Conclusive Grounds to believe that the individual is a victim of human trafficking or modern slavery do not attract a right of appeal and are challengeable only by Judicial Review. A new model NRM is being piloted to the end of March 2017.

No Recourse to Public Funds (NRPF) – Under s.115 of the Immigration and Asylum Act 1999, access to welfare benefits is restricted, and only those who are not ‘subject to immigration control’ may access benefits which are defined as ‘public funds’. Public Funds include welfare benefits and public housing. In effect this means that anyone who requires a visa to be in the UK may be unable to access public funds unless their permission to remain allows this. British citizens, those with Indefinite Leave to Enter or Remain (unless there is a specific prohibition due to a relative having undertaken to support the individual), and EEA nationals (subject to some restrictions in relation to having worked in the UK for a specific period) will usually have access (recourse) to public funds. Refugees, people with Humanitarian Protection, and children granted limited leave to remain in the UK because there are no safe arrangements to return them to their country will usually have leave to remain with access to public funds. Other people with permission to stay in the UK will only be able to access public funds if they have been issued with an immigration status document which does not contain a restriction stating ‘No Recourse to Public Funds’. Most students,

spouses, and people with permission to remain in the UK because of their family life will be issued with BRPs which show a condition preventing access to public funds. People with no permission to remain in the UK, such as those who have overstayed their visas, or whose asylum claims have been finally rejected will not have recourse to public funds. British citizen children whose parents do not have permission to remain in the UK, or who have a condition preventing recourse to public funds will be effectively prevented from accessing benefits such as Child Benefit or some disability benefits because of their parents' immigration status.

Non-asylum cases – we use this phrase to refer to all immigration matters which do not involve an element of international protection (see definition above). This broadly reflects the cases for which there is no automatic legal aid, and for which an application for ECF (see above) would be required in order to fund legal representation.

O

Overstayer – an overstayer is a person who was given permission to enter or remain in the UK for a defined period, but has remained in the UK beyond that period without making a successful application to extend their permission to remain before the expiry of this date. A person who submits a valid application for extension of their leave to remain before it expires is not an overstayer (see s.3C leave below) unless and until that application is refused, and any in-time appeal is considered and finally refused. An overstayer has no legal basis to stay in the UK and is at risk of removal to their country of origin. Overstayers do not have the right to work in the UK or access public funds. Overstaying is a criminal offence under Section 24(1) (b)(i) of the Immigration Act 1971. Overstaying a visa can have significant implications for the prospects of a future application to enter or remain in the UK being successful.

P

Points Based System (PBS) – the system for controlling economic immigration by those who wish to work in the UK. Points are awarded on the basis of particular attributes held by the person from outside of the UK, such as qualifications, age and work experience, and financial circumstances. Only those who meet the points requirements will be granted a visa which allows them to work in the UK. Most applications to enter the UK to work and study are now dealt with via the PBS.

Private fostering – Private fostering is when a child under the age of 16 (under 18 if disabled) is cared for by someone who is not their parent or a 'close relative'. This is a private arrangement made between a parent and a carer, for 28 days or more. Close relatives are defined as step-parents, grandparents, brothers, sisters, uncles or aunts (whether of full blood, half blood or marriage/affinity)¹.

Protection needs – We use this term in the report to address child protection, welfare, safety and safeguarding needs in the UK as well as child's need for international protection because their country of origin may not be able to protect the child's welfare, safety and safeguarding needs.

Post-traumatic stress disorder (PTSD) – an anxiety disorder caused by very stressful, frightening or distressing events. Someone with PTSD often relives the traumatic event through nightmares and flashbacks, and may experience feelings of isolation, irritability and guilt. They may also have problems sleeping, such as insomnia or sleep disturbance (nightmares), and find concentrating difficult. These symptoms are often severe and persistent enough to have a significant impact on the person's day-to-day life. People who repeatedly experience traumatic situations such as severe neglect, abuse or violence may be diagnosed with 'complex PTSD'. Complex PTSD can cause similar symptoms to PTSD and may not develop until years after the event. It is often more severe if the trauma was experienced early in life as this can affect a child's development.²

Public Funds – include a range of welfare benefits and tax credits, and housing support for people living on a low income who meet the eligibility requirements. A full list of those benefits considered 'public funds' can be found here: <https://www.gov.uk/government/publications/public-funds-2/public-funds>

R

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 or, owing to such fear is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, unwilling to return to it. "Refugee" is a legal definition and is set out in Article 1 of the 1951 Geneva Convention Relating to the Status of Refugees, as well as other regional conventions. A person who is recognised as a refugee will be granted permission to remain in the United Kingdom for 5 years and will have permission to work and access benefits. A refugee can lose his or her refugee status (and therefore ILR obtained following refugee status) if she returns to her country of origin, or if it is discovered that her refugee status was obtained by deception.

Regularise stay / status – this describes the process by which someone who has no lawful permission to remain in the UK can apply to obtain permission to stay here legally.

Residence Permit – a document which sets out a person's immigration status and right to remain in the UK, including any time limits or other conditions on their stay such as access to public funds and the right to work. Any conditions are positively stated, and so the absence of a condition specified on a residence permit can be taken as evidence that no such restriction applies.

S

Section 3C leave – this describes a situation where a person is granted permission to remain in the UK for a defined period, and applies to extend that permission to remain.

Under s.3C of the Immigration Act 1971 a person who makes a valid application for an extension of their permission to remain in the UK before their existing period of leave to remain expires is considered to have made an in-time application. Where an in-time application is made the person's rights and entitlements flowing from their original period of leave to remain continue until a decision is made on their extension application, and any appeal against a refusal to extend leave to remain. Unfortunately, currently, during this period a person will not have documentary proof of their permission to remain in the UK other than any acknowledgement letter from the Home Office. This can create confusion for young people and their carers and create significant barriers for young people accessing services, education, training and employment and for those who support them. However, they will have what is referred to as 's.3C leave' during this time and are lawfully present in the UK for immigration purposes.

Separated child – a person under 18 who is not living with their parent or or main care giver. In our report we refer to children who are living in sibling groups as being 'separated children' – although they may be living with part of their family unit, they are not living under parental care and support.

Sofa Surfing – where a person who is homeless and has no safe home of their own avoids being street homeless by staying in people's homes for short periods, moving from one home to another at regular intervals e.g. with friends, neighbours, members of their community etc.

Status document – A document issued by the UK Visa and Immigration Service of the Home Office setting out the form of immigration status that the person shown on the document holds. This has largely been replaced by the Biometric Residence Permit. See 'Immigration Status Document' above.

¹ S.105 Children Act 1989

² <http://www.nhs.uk/conditions/post-traumatic-stress-disorder/pages/introduction.aspx>

Statutory agencies – a statutory agency is an authority or agency established by legislation in order to undertake specified duties and functions on behalf of the state (e.g. local authorities).

Staying Put arrangements – this describes the situation where a former looked after child in foster care is facilitated by a local authority to remain with their foster family beyond their 18th birthday. Both the young person and the foster carer must agree to this for the arrangements to be put in place. These arrangements are designed to support former looked after children in transitioning to adulthood in a gradual way, which is more representative of young people living within families. Staying Put arrangements may continue until the former looked after child reaches their 21st birthday, and may last longer if the former looked after child is completing an agreed educational programme which they were undertaking at the point of their 21st birthday.³

Subject Access Request – an application to the Home Office for a copy of any file held by them in relation to an individual. The application is made under the Data Protection Act 1984. The Home Office sets specific documentary evidence of identity which is required in order for information to be disclosed, and provides a (non-mandatory) form on which to make the application. The fee for making this application is currently £10.

Supported under s.17 Children Act 1989 – Under s.17 of the Children Act 1989 Local Authorities have a duty to safeguard and promote the welfare of all children ‘in need’ in their area, and to promote their upbringing by their family. A child is considered to be ‘in need’ if they are unlikely to achieve or maintain a reasonable standard of health and development without services from the Local Authority. These services can include the provision of accommodation and/or financial support, depending on the needs of the child. Whatever their immigration status, no child can be excluded from s.17 support. In addition, adults who are caring for children cannot be excluded from s.17 support if such exclusion would breach their rights under the European Convention on Human Rights. Under the ECHR, Local Authorities have a power to accommodate and support families with dependent children whose immigration status leaves them without recourse to public funds, but who are unable to accommodate and support themselves without assistance. Some Local Authorities have established ‘No Recourse to Public Funds’ or NRPf teams to administer the support provided under s.17. The Immigration Act 2016 proposes significant changes to these arrangements, but those provisions are not yet in force.

Supported under s.20 Children Act 1989 – S.20 of the Children Act 1989 requires the Local Authority to provide accommodation for a child who requires accommodation where: There is no person who has parental responsibility for the child; The child is lost or abandoned; The person who has been caring for him is prevented (whether or not permanently and for whatever reason) from providing him with suitable accommodation or care; He is over 16 and his Local Authority considers his welfare is likely to be seriously prejudiced without accommodation. Children who are in the care of the Local Authority on this basis are usually referred to as ‘Looked After’ children.

T

Trafficking (in persons) – Article 3(a) of the UN’s Palermo Protocol (Protocol to Prevent, Suppress and Punish Trafficking in Persons) defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Where there trafficked person is a child, the definition requires only that the child has been moved for the purpose of exploitation, as children cannot consent to being moved, even if no force is used.

U

Unaccompanied minor or unaccompanied child – A person under 18 who is present in the United Kingdom without his parents or any other relative upon whom he is dependant. The local authority will be responsible for their care, support and accommodation, if the child’s age as being under 18 is accepted.

Unaccompanied Asylum Seeking Child (UASC)

A person under 18 who is present in the United Kingdom without his parents or any other relative upon whom he is dependant and is making a claim for asylum. Children have the same right to claim asylum that adults have, and will require consideration of the specific risk to them as a child. An unaccompanied minor whose asylum claim has been finally rejected cannot be returned to their country of origin unless the Home Office is able to establish that adequate reception arrangements are in place for their return. In practice such arrangements are rarely made at present, and unaccompanied minors who do not qualify for Refugee Status or Humanitarian Protection in their own right are usually granted Limited Leave to Remain until they are 17 1/2 years old.

Undocumented children – in this report we use this phrase to describe children and young people who are not able to access formal documentation which is sufficient to establish either their identity, or evidence of their right to remain in the UK. The phrase captures both children who have no basis of stay in the UK, and those who are British or have permission to remain, but are not in possession of documentary proof of this.

UN Convention on the Rights of the Child (UNCRC) – The United Nations Convention on the Rights of the Child (UNCRC) is a legally-binding international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities. The UNCRC consists of 54 articles that set out children’s rights and how governments should work together to make them available to all children. Since it was adopted by the United Nations in November 1989, every country in the world but one (the US) has ratified the UNCRC. The UK Government ratified it in 1991. All countries that sign up to the UNCRC are bound by international law to ensure it is implemented. This is monitored by the Committee on the Rights of the Child. Under the terms of the convention, governments are required to meet children’s basic needs and help them reach their full potential. Central to this is the acknowledgment that every child has basic fundamental rights.

V

Visas – a visa is a document by which a country grants permission to someone who is not a national of that country to enter the country, and remain in the country for a specified period of time, and under specific conditions set out in the visa. It is common parlance in many immigrant communities and amongst young people who have migrated to the UK, to describe any document which sets out their basis of stay in the UK as a ‘visa’ whether or not the document was granted prior to entry, or is in fact a residence permit issued after an application made within the country.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/201015/Staying_Put_Guidance.pdf



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