

# *Precarious Citizenship: Unseen, Settled and Alone— The Legal and Protection Needs of ‘Undocumented’ children and young people in England and Wales*

## Executive Summary



### Background

The report summarized below was produced by the PROTECT team, a group of children's rights lawyers from MiCLU and Islington Law Centre who came together to help lone and 'undocumented' children and young people (CYP) to live safer, fuller and more secure lives in a country they call home, and to disseminate learning to help the work of those responsible for supporting them.

### What does 'undocumented' mean?

'Undocumented' children and young people are unable to show any evidence to prove that they are British or otherwise allowed to lawfully remain in the UK. Many consider the UK their only home, having been born or spent the majority of their lives here. They may not have, or may not have ever seen, their passport, birth certificate, residence permit, visa, immigration status document, or they have documents such as these that have not been endorsed by the British government. In

2012 it was estimated that there are approximately 120,000 such CYP living in the UK.<sup>1</sup>

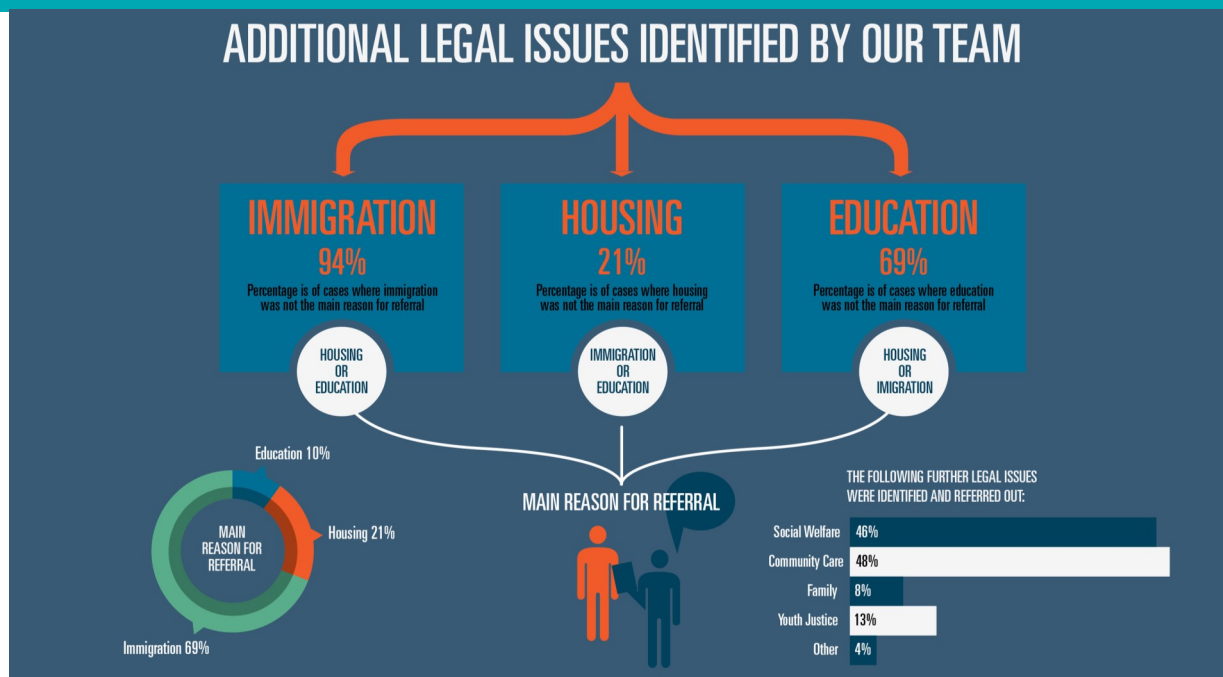
Those who find themselves separated from their families – through force, loss or family breakdown – face a further challenge: they must address their immigration status and the raft of legal, welfare and protection issues that arise from it without the support of an adult.

### Project Remit and Approach

Anticipating changes to legal aid provision that would remove funding for immigration cases from April 2013, the PROTECT team accepted referrals of CYP who would soon be 'out of scope' and unable to access free legal support. By carrying out specialist interventions to regularise their status and resolve the other legal, welfare and protection issues they faced, the team hoped to increase understanding of and raise awareness about the existence and needs of this group, improve service delivery and influence policy and law.

<sup>1</sup>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/>





The team supported and represented 52 CYP between July 2012 and October 2016. We prioritised referrals from organisations with experience in working with migrant children in order to assess the extent to which they were able to correctly diagnose the legal issues involved. After taking a referral, the team conducted an initial needs assessment, liaised with other supporting agencies, and reviewed the casework and advice of any previous legal representatives. Throughout their representations, the team collected quantitative and qualitative data and met regularly to discuss their findings and the development of cases. Finally, semi-structured interviews were conducted with the CYP to collect their experiences of the support they had received and their views of the impact it had had on their lives.

### Key Findings

#### *The vulnerability of lone, undocumented CYP:*

Many in the cohort had been through or were going through harmful, stressful or traumatic experiences and/or had been subject to exploitation or abuse. The psychological effects of these experiences affected all areas of their lives, including their ability to engage with the multiple, interrelated socio-legal issues they were facing. Without qualified specialist representation their wellbeing would have been seriously jeopardised.

#### *Identifying legal needs:*

Many of the legal needs of this group go unnoticed until a dramatic life change or 'watershed' moment. A limited understanding of their status or laws relevant to their situation makes it very difficult for them to know what their legal needs are. Despite this, legal and non-legal professionals are over reliant on CYP to self-identify their needs.

In particular, trafficking and international protection claims tended to go unnoticed by non-specialists, as periods of long residence, or CYP who 'appeared' British masked the real experiences of the CYP concerned. This prevented CYP from accessing legal aid for which they were eligible.

#### *Welfare, housing, education and other service Provision:*

A lack of documentation meant that CYP were often unable to access relevant services to protect and promote their welfare even where they had an entitlement. Support agencies were unfamiliar with undocumented status and unclear on their obligations to this group, leading to 'gatekeeping' of services.

#### *The Immigration and Asylum Legal System:*

Routes to regularisation are overly complicated, bureaucratic, expensive, and not child-friendly, in some

cases requiring expensive and time-consuming repeat applications.

The length and conditions of leave to remain granted by the immigration authorities did not safeguard the wellbeing or future development of CYP whose lives clearly lay in the UK. Similarly, the length and conditions of leave granted to young parents of British children did not make the best interests of those British children a primary consideration.

The current immigration process fails to acknowledge this group as immigration applicants in their own right, often tying their leave to remain to adults and/or family members. In this way, the system fails to address the implications of family or relationship breakdown upon CYP whose right to remain may depend on or be linked to another's.

## Case Studies

Throughout the report, the real stories of the CYP concerned are given in the form of case studies. These add depth and detail to the findings, testifying to the diversity of the cohort, the complexity of their support needs, and the multiple systemic problems that have

shaped their lives. 3 representative cases are given below:

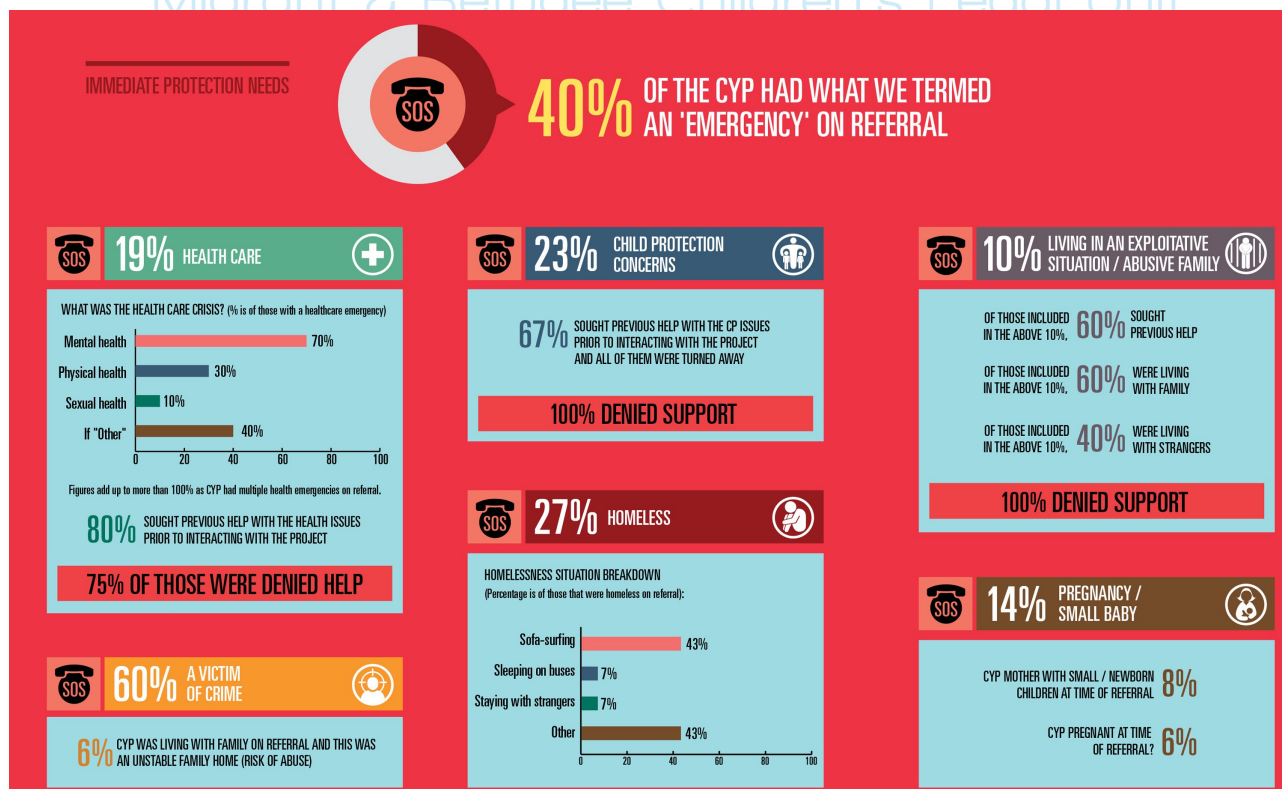
### Case Study: Steve

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.

### Case Study: Taahira

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

### Case Study: Dilshad

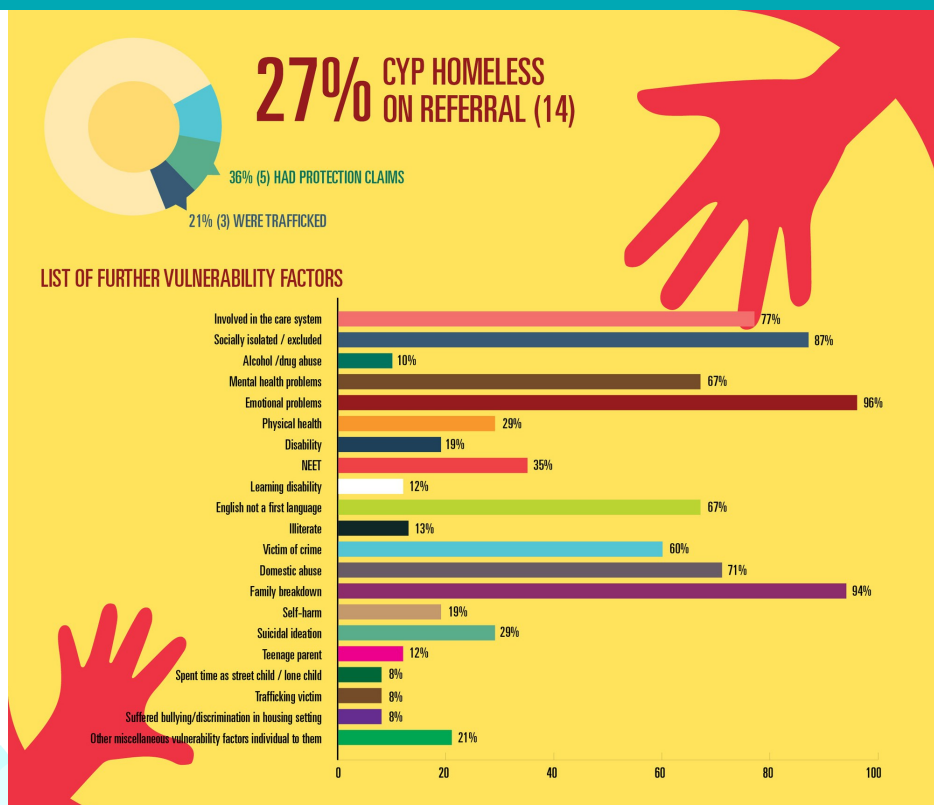
Dilshad's foster mother Carol contacted our project team prior to his 18th birthday. Carol had cared for him since he was 10 years old. She was panicked and confused. Dilshad was doing extremely well at college and predicted to achieve high results in his 'A' levels but she was advised by the local authority 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.

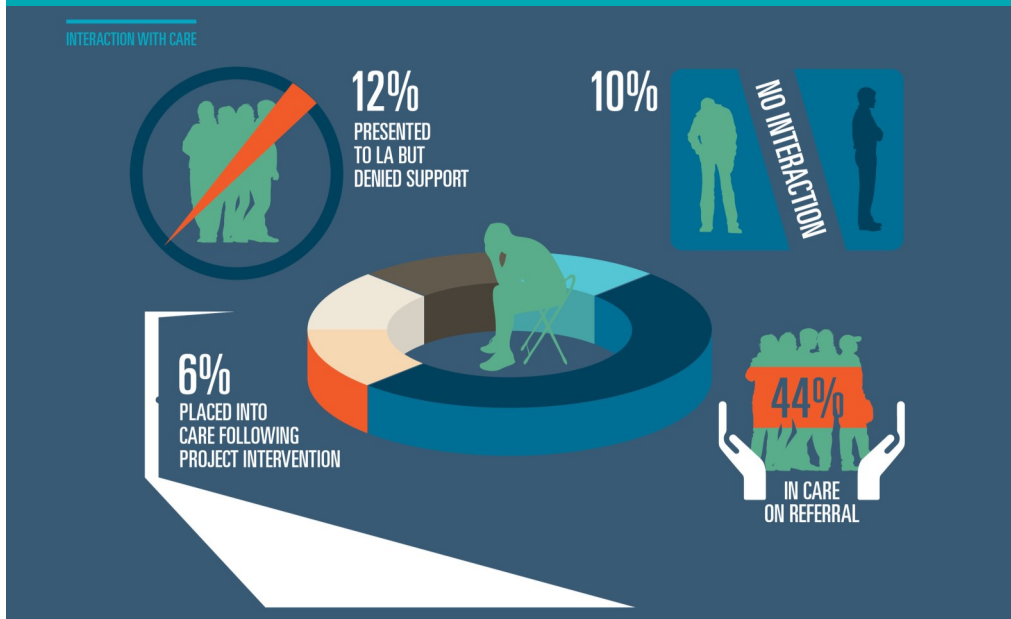
### Recommendations

*We recommend that the UK government:*

- Includes specific reference to undocumented CYP in the forthcoming revision of its statutory guidance on the care of unaccompanied and
- 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
- Works in conjunction with local authorities, the association of Directors of Children's Services (ADCS), the Local Government Association (LGA), the Royal Colleges, the National Association of Independent reviewing Officers (NAIRO) and others to develop resources and deliver training to give non-immigration workers a basic understanding of the immigration system and processes
- Revises both its statutory safeguarding guidance and Family and Friends Care guidance 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







seeking and refugee children and young people

- Monitors and reviews the impact the Schedule 12 Immigration Act 2016 changes have had on those who previously would have been eligible for leaving care support
- Ensures undocumented CYP retain the right to access and continue education and

separated migrant CYP, to include undocumented CYP

training opportunities

*We recommend that the Home Office:*

- Updates and promotes the statutory guidance on private fostering to make sure local authorities are clear about their duty to ensure privately fostered children are safe and their best interests are being met
- Places a duty on local authorities to ensure a child's access to legal advice and representation as part of their corporate parenting responsibilities
- Brings immigration cases involving looked after children and care leavers back into scope of legal aid, and makes sure legal aid is available to all unaccompanied and separated migrant children
- 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
- 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
- Develops a transition to adulthood plan for unaccompanied migrant children, including undocumented CYP, as part of its forthcoming safeguarding strategy for unaccompanied asylum-
- 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
- Introduces 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.
- 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
- Increase the use of Indefinite Leave to Remain when it is in the CYP's best interests—this will avoid the need for repeated renewal applications, and will help lead to a durable solution for that CYP
- For undocumented parents of British children:
  - Apply an automatic fee waiver for those who are in receipt of public benefits
  - Introduce a 5 year default leave to remain for parents of British CYP

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

*We recommend that the Law Society:*

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

### Conclusion

Undocumented and separated CYP are subject to multiple, mutually reinforcing vulnerabilities. They are slipping through cracks that are not covered by the asylum system, mainstream welfare services or existing children's legislation. Effective legal representation for undocumented CYP can provide the difference between successful and unsuccessful outcomes, but such representation is increasingly inaccessible.

Our case outcomes demonstrate the extent to which access to holistic legal services significantly enhances the CYP's prospects of addressing their needs and regularising their status. As a result of the project team's interventions, 86% of the total cohort moved on from undocumented status, 72% saw an improvement in

education, employment or training, 83% of those who were homeless were housed within 2 days, and 87% accessed social welfare provision. Legally informed mediation and advocacy services can also assist undocumented CYP to help identify the variety of their legal needs and help them to navigate 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.

*You can read the report in full at: <http://miclu.org/precarious-citizenship-new-report/>*

### Who are we?

The Migrant and Refugee Children's Legal Unit (MiCLU) is a specialist legal and policy hub based at Islington Law Centre. Through research, casework, strategic litigation, campaigning and legal education initiatives we aim to promote equality and social justice for children and young people who are affected by immigration and asylum legal proceedings.

