

BREAKING CONNECTIONS

Lessons learned from working with and for children and young people seeking asylum during the Covid-19 pandemic

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FOREWORD

Before the pandemic many of us would have struggled to imagine a life being separated from loved ones, living with restrictions on our freedom to move about and not able to easily buy necessities. Since the spread of Covid-19 we can now understand the frustrations and despair that accompanied such a life. For young unaccompanied asylum seekers, these challenges were already a reality and have only been intensified by Covid-19, leaving them more vulnerable to mental deterioration, isolation, and uncertainty.

This report highlights key concerns for unaccompanied young people in seeking asylum during the Covid-19 pandemic including delays to asylum processes and decisions, as well as their mental health, increased vulnerability to trafficking or exploitation and the challenges of remote working. It importantly acknowledges that this legal process does not occur in a silo; the daily lives of unaccompanied asylum seekers continue and these factors are interconnected and influence one another.

The vulnerabilities of these young people are described in case studies which clearly illustrate the ways in which they are further disadvantaged for a fair hearing by changes to services because of the pandemic. Lengthier delays and difficulties being able to give instructions be it due to hunger, poor internet connection or poor mental health due to enforced isolation bring inequality. Without drop-in services, offices to provide sanctuary and resources services these challenges are paramount.

The delays have no end in sight and mean that asylum seekers (and their legal representatives) must exist in a liminal space – holding uncertainty - affecting all aspects of their lives. This precarious existence is hard enough in itself but it also has the potential to detrimentally affect their presentation in an asylum interview and undermine their credibility.

There has been a huge increase in remote practice, to preserve public health, but with a cost for those already vulnerable. Reviewing the research on using remote video technology for legal interviews suggests that it may reduce anxiety – but when conditions of good internet connection and a safe space from which to speak are met. As this report highlights these basic needs are so often not in place and digital exclusion is a reality.

There is also little known about how vulnerable applicants may be judged through video-link although in the general population the picture is one suggesting a more negative view of those appearing online. Interpreting may also be less accurate when interpreting via video-link, which is significant given how often inconsistency is cited as grounds for disbelief.

All the information shared in this report reminds us to remain alert – some challenges will be obvious such as poor internet connection, but others may be less apparent.

We cannot assume our young people are ok; they have survived a lot and may be skilled in surviving, and without encouragement may not see reason to talk about their distress or see any way out of it. Opening up these conversations can feel difficult and overwhelming for clients as well as for

practitioners. Support can be found. This report offers case examples, easy to read recommendations, and a rich list of resources - like a guiding figure in a remote world.

Reading the report will shine a light on the stark reality of young asylum seekers lives at this time but it also offers guidance, helpful resources and creative ideas to meet young people's needs whilst always keeping the young people at the heart of the work.

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INTRODUCTION

The Migrant and Refugee Children’s Legal Unit (MiCLU) is a specialist legal and policy hub based at Islington Law Centre in London. We represent young people who have been displaced by war, fleeing abuse, trafficked into the UK for exploitation and slavery, and young people separated from their families and effectively “invisible” in terms of civil and legal status because of immigration laws. Through our strategic litigation, policy reform and public legal education initiatives we drive systematic change to achieve equality and social justice for this group of young people.

In March 2019, MiCLU launched the *Breaking the Chains* project in partnership with Shpresa Programme, a user-led organisation working with the Albanian community.

Albania has a long history of clan violence, blood feuds and revenge killings, as well as political instability. Domestic violence, so-called ‘honour-based’ violence, gender-based violence and child-specific persecution are also significant issues. Albania is a source country for one of the largest groups of trafficked women and children to reach the UK’s shores and has been termed the first ‘narco state’ in Europe due to the power of Albanian organised crime gangs.

Unaccompanied asylum-seeking children from Albania, who have been trafficked or who are fleeing threats or violence, arrive in the UK each year, destitute, exhausted and traumatised yet they have little chance of securing protection because there is very little understanding of the protection needs of children and young people from Albania among decision makers at the Home Office or within the Tribunal service. The lack of protection afforded these children and young people leaves them vulnerable to return to a country where they are at risk of (re)trafficking, blood feuds and honour killings. It also leaves them at the mercy of the hostile environment in the UK, that is the array of policies and practices – unable lawfully to work, rent, open a current account at the bank, drive or freely access healthcare – designed to make life impossible for those without leave to remain.

This in turn renders them vulnerable to exploitation in the UK, as many enter into modern day slavery either to pay unscrupulous legal representatives (who assert that their case does not have sufficient merits for legal aid but who agree to represent the children or young person as a private client) or to secure some measure of safety on the streets and an income to avoid destitution.

Breaking the Chains was launched to seek to achieve better outcomes for Albanian children and young people in the asylum system while also raising awareness of their needs and experiences among others working with these children and young people. *Breaking the Chains* is founded on a child-centred approach to representation of children and young people in the asylum and immigration systems. (The full scope of what child-centred representation involves is beyond the scope of this paper.) Pre Covid-19, our approach was focused on delivering advice and representation in ways that best met young people’s needs by meeting them face to face, in places

that were comfortable for them, adapting communication to the methods that worked for each individual young person, and allowing them to set the length, frequency and nature of appointments as far as possible within the constraints of the systems they were navigating. Where necessary we were also able to accommodate the attendance of support workers from Shpresa or other agencies at appointments or at our offices if this was what our clients wanted or needed.

Much of our work centred using these techniques to establish a relationship of trust, getting to know the non-verbal signs of distress, discomfort and dissociation displayed by our young clients, and taking all steps to minimise the possibility of re-traumatisation. Significant effort was made to ensure that our office was a welcoming and comfortable space for clients, and that they had access to food and drink during appointments as we were aware that hunger was a real issue for some of our clients. All of this was key to supporting our clients to make disclosures and provide information that they had never shared before, with a view to ensuring that their protection needs were properly understood within the asylum system.

During the coronavirus pandemic in 2020-2021, we have had to change the way we have worked with children and young people in the asylum system and in doing so we have seen the adverse impact on their emotional and physical well-being of both isolation through successive lockdowns, as well as the practical need to move to remote ways of working.

This paper focuses on what we have learnt and what we want to share with other organisations seeking to support children and young people in the asylum system, whose vulnerabilities are being exposed and entrenched as a result of the global pandemic. In this paper we address the issues of delay, mental health, trafficking and re-trafficking and we look at remote working. We share our recommendations for the Home Office, local authorities, Immigration and Asylum Chamber and for legal representatives. Above all we urge everyone working with these children and young people to be alert to the catalogue of risk and trauma to which they are being exposed.

The coronavirus pandemic has changed every aspect of our personal and professional lives. For children and young people in the asylum system, it has led to isolation from friends and support networks, difficulties accessing already limited legal representation and even more uncertainty about their immigration status. We have seen that children and young people who we work with have suffered deteriorating mental health which has hindered their ability to recall information for the purpose of preparing their asylum claim, and their sense of safety. Delays, which were ever-present in the asylum system, have lengthened and this has exacerbated their feelings of insecurity and anxiety. Where unaccompanied children and young people were at risk of exploitation, this risk has been heightened against the backdrop of the pandemic and during lockdown due to the factors shared in this report.

For more than a year, the way we all live, work and communicate has been dramatically affected. The impact of Covid-19 on some of the most vulnerable children and young people in our communities has exposed pre-existing fractures in provision and has highlighted the way in which our asylum system fails those most in need of protection. Some changes developed in response to,

or accelerated by, the pandemic are likely to remain: for example, remote interviews and hybrid hearings will continue for the foreseeable future. While we are now on a road map out of the third national lockdown, at MiCLU, we believe the lessons we have learnt, from working with and for children and young people seeking asylum during the pandemic, are lessons that need to be shared and inform our practice moving forwards.

BACKGROUND OF RISK

Long before Covid-19 entered our collective consciousness, MiCLU and our partners in delivering the *Breaking the Chains* Project – Shpresa Programme and Garden Court Chambers – were acutely aware that current and former Unaccompanied Asylum-Seeking Children (‘UASC’) are a group who are at very high risk of mental health problems and vulnerabilities, as outlined by Given-Wilson, Herlihy and Hodes (2016):

‘Asylum seeking minors have heightened risk of developing mental health problems due to the stressors they have been exposed to in their home country (i.e. war, disruption to community life, witnessing deaths), in transit (i.e. sexual exploitation, separation from caregivers, illness) and upon arrival (i.e. uncertainty of refugee status, discrimination, low social support) (Derluyn & Broekaert, 2008; Fazel, Reed, Panter-Brick, & Stein, 2012). In addition a sustained lack of any parental figure further increases these young peoples’ vulnerability to mental health problems (Hodes et al., 2008). For example, one study suggests that unaccompanied minors are five times more likely to have emotional difficulties than those who are accompanied by a caregiver. (Derluyn, Broekaert, & Schuyten, 2008).’¹

Pre-Covid-19, the asylum process not only failed to recognise the trauma experienced by these children and young people² but frequently re-traumatised them, failing to learn from the extensive psychological research base. This is best described by David Neale of Garden Court Chambers:

‘While still children, they have been made to face a hostile immigration system which re-traumatises them many times over. In a typical case, traumatised young people are forced to describe the worst events in their lives over and over again through repeated interviews and hearings; treated with callousness by immigration officials; and accused of lying about their experiences. Often, the accusation of lying comes because they have muddled up dates or forgotten details and because their recollection is not wholly consistent from interview to interview. Such accusations should never be made: decades of psychological research shows that it is inherently difficult to remember temporal information (such as dates, frequencies, durations and sequences of events), proper names and peripheral details; that remembering such information is more difficult for children than adults; and that these problems are magnified in survivors of abuse and trauma who are suffering from PTSD and/or depression. Studies have shown time and time again that there are just as many inconsistencies in a true account as in a false one.’

¹ Given-Wilson, Z., Herlihy, J., & Hodes, M. (2016). Telling the story: A psychological review on assessing adolescents’ asylum claims. *Canadian Psychology/Psychologie Canadienne*, 57(4), 265–273. <https://doi.org/10.1037/cap0000077>

² At MiCLU we work with children and young people up to the age of 25. Throughout this report the term young people includes those up to the age of 25 years.

‘Yet the Home Office and most judges continue to ignore the science and continue to treat “inconsistencies” as evidence of lying. It is not an exaggeration to say that the UK asylum adjudication system is itself a form of abuse, inflicted deliberately by the state on traumatised, vulnerable and marginalised people – for no good reason whatsoever.’³

However, whatever the situation pre-Covid, the Covid-19 pandemic has exacerbated the plight of those children and young people seeking asylum in the UK.

While the pandemic has affected every area of their lives, we have identified four key areas that exacerbate the risk faced by young asylum seekers in the UK, which we will focus on in this report:

- Delays
- Mental health
- The risk of trafficking / re-trafficking
- Remote working

In relation to each of these areas, we make key recommendations to those working with them (legal representatives) and to the Home Office in order to ameliorate the risks faced by young people navigating the asylum system in the current climate. We also list some key resources at the end of this report for all those working with this vulnerable group.

³ Neale, D (16 June 2020) [In search of justice for young Albanians - #RefugeeWeek2020 | News | Garden Court Chambers | Leading Barristers located in London, UK](#)

DELAYS

i. The Policy Context

The prompt progression of applications from children in asylum, immigration and trafficking matters is likely always going to be in their best interests. Continued uncertainty as to their future in the UK impacts on all areas of their lives – psychologically, developmentally, educationally and socially.

Currently, there is no timeframe within which the Home Office are required to make decisions on asylum claims, even those of vulnerable children, however:

‘While there is no absolute time limit for the Home Office to make a decision on someone’s asylum claim, there are some clear indications of what might reasonably be expected. Paragraphs 333 and 333A of the Immigration Rules say “written notice of decisions on applications for asylum shall be given in reasonable time” and “the Secretary of State shall ensure that a decision is taken by him on each application for asylum as soon as possible”, with six months being the cut-off point after which an applicant must be informed of a delay preventing a decision. UKVI’s website also advises people seeking asylum that “your application will usually be decided within 6 months.” Paragraph 350 of the Immigration Rules talks specifically about children’s asylum claims concluding that “in view of their potential vulnerability, particular priority and care is to be given to the handling of their cases” to ensure that “the best interests of the child are a primary consideration at all times” and that “protection is granted swiftly to those who need it.’⁴

Since the Home Office ended the 6-month service standard for straightforward asylum cases in May 2019, UKVI has focused on accelerating initial unaccompanied asylum-seeking children’s decisions. However, delay continues to be a systemic issue, which has been exacerbated by the interruption to asylum application and decision-making processes during Covid-19.

In Q2 (April to June) 2019, the total number of initial decisions made in unaccompanied asylum-seeking children’s cases was 880. In Q2 2020, there were 84 decisions made, though figures have been increasing with 478 initial decisions made in Q1 (January to March) 2021.⁵ Over one year, the number of asylum applications made by unaccompanied asylum-seeking children fell by 42% from 3,530 (April 2019 to March 2020) to 2,044 (April 2020 to March 2021),⁶ but remain significant. Despite restrictions on travel, unaccompanied asylum-seeking children have continued to arrive in

⁴ Greater Manchester Immigration Aid Unit (GMIAU) (March 2021) [Wasted childhoods: the impact of COVID-19 asylum delays on children in the North West of England](#).

⁵ Home Office (Nov 2020) Immigration statistics, year ending March 2021. Table Asy_D02

⁶ Home Office (May 2021) Immigration statistics, year ending March 2021. Table Asy_D01

the UK throughout the pandemic with Kent (in August 2020⁷ and again in June 2021⁸) and Portsmouth (in Nov 2020) both refusing to take into care any further unaccompanied asylum-seeking children, and transfers to other local authorities of around 200 children having to be arranged.⁹ New challenges have arisen following Brexit: e.g. the Association of Directors of Children's Services (ADCS) believes numbers of clandestine arrivals of unaccompanied and separated children will inevitably increase with both the Dubs¹⁰ and Dublin Regulation¹¹ legal routes of entry having ended.¹²

Both continuing arrivals and delayed decision-making have led to concerns about a case logjam that is likely to continue for a considerable period of time.

ii. Advising and representing children and young people during covid – delays

At MiCLU, we have sought to take instructions and progress cases against a backdrop of delays:

- delays within the Home Office decision-making process, including the listing of interviews;
- delays in the tribunals listing hearings;
- delays in obtaining expert evidence and in being able to safely progress cases.

Delay was already a significant problem within the asylum system and particularly for cases also referred to the National Referral Mechanism (NRM)¹³ for separate consideration because the child had been trafficked or exploited in addition to the persecution suffered.

⁷ The Children's Commissioner published a policy briefing describing conditions for UASC at the Kent Intake Unit after a visit there in August 2020. <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2021/02/cco-detention-of-unaccompanied-children-arriving-in-kent-during-2020.pdf>

⁸ Puffet, N (7 June 2021) [Kent launches legal action over number of unaccompanied child migrants](#). Children & Young People Now

⁹ ADCS (21 Feb 2021) Safeguarding pressures Phase 7 report.

https://adcs.org.uk/assets/documentation//ADCS_Safeguarding_Pressures_Phase7_FINAL.pdf

¹⁰ The Dubs route refers to a transfer scheme set up in response to an amendment tabled by Lords Dubs. Section 67 of the Immigration Act 2016 committed the UK government to transfer 'a specified number' (later capped by the government at 480) of unaccompanied asylum-seeking children from Europe in order to provide them with a safe and legal passage to the UK. On [21 May 2020](#), when 480 children had been identified or transferred, the UK government announced the scheme was closed.

¹¹ The Dublin Regulation is an EU instrument for determining which participating EU Member State is responsible for assessing an individual's asylum claim. Provisions allow for the family reunion of asylum seekers in one State with family members in another State, including for unaccompanied or separated asylum-seeking children. As a result of Brexit, from 1 January 2021 the UK is no longer part of the Dublin Regulation.

¹² ADCS see note 10

¹³ The National Referral Mechanism (NRM) is the process set up by the UK Government for identifying victims of human trafficking and modern slavery to ensure they receive appropriate protection and support. Potential victims are referred to the Single Competent Authority (SCA) in the Home Office, which is responsible for considering and making a Reasonable Grounds decision (agreeing or not agreeing there is reason to suspect the child is a victim of trafficking or modern slavery), followed by a Conclusive Grounds decision (based on the balance of probabilities that the person is a victim of trafficking) on each case.

[Further information is available from ECPAT UK](#)

Responses to freedom of information requests undertaken by MiCLU indicate that Albanian children and young people face longer delays than claimants of other nationalities.¹⁴ However, Covid-19 has had a serious impact on these pre-existing delays, as follows:

- While Home Office interviews have recommenced, social distancing requirements and travel restrictions have led to a reliance on remote interviews which is expected to continue – especially for unaccompanied asylum-seeking children and young people. In our experience, while legal representatives and responsible adults are permitted to attend in person, the Home Office interviewing officer and interpreter continue to work remotely. This has presented *Breaking the Chains* staff with a very difficult dilemma and risk assessment exercise, as we know the devastating impact of lengthy delays on our clients' mental health but we also know the potential risks for our clients' safety and for the administration of justice when remote interviews are employed.
- Paragraph 333A of the Immigration Rules is not currently complied with. This rule provides that, where a decision on an application for asylum cannot be taken within six months of the date it was recorded, the Secretary of State shall either inform the applicant of the delay or, if the applicant has made a specific written request for it, provide information on the timeframe within which the decision on their application is to be expected.
- There have been significant delays in the Tribunal listing hearings. It has been impossible to predict the length of these delays, which in itself causes extreme distress to our clients.

One 18 year old had his appeal dismissed at the First-tier Tribunal in September 2019. There were clear and apparent errors of law in this decision and permission was granted for an appeal to the Upper Tribunal. The case was remitted to the First-tier Tribunal and a hearing was listed some 18 months after the original hearing. During this time, the already extremely traumatised young person has been unable to engage with any online provision, whether offered by Shpresa Programme or his therapist. He has lost weight, lost contact with everyone but his caseworker and foster mother and only leaves his bedroom to smoke in the garden. All those involved in his care are gravely concerned about his suicide risk.

His appeal was allowed at the remittal hearing but the psychological damage to this extremely vulnerable young person, a medical expert advises is unlikely to be reversible.

¹⁴ FOI requests made by MiCLU in December 2020, show that the Home Office takes consistently longer to process UASC claims than it does to process adult claims, and that on average Albanian UASC experience the slowest processing of their claims.

- Covid restrictions have also created significant obstacles to our ability to make progress in taking instructions from our clients safely and preparing their claims. It has always been necessary to work slowly and carefully, focusing on the safety of the child or young person and being mindful of their trauma. However, this is even more difficult to do on a remote basis, and this has increased the length of time it takes to establish relationships of trust and take detailed instructions safely. This work is, however, essential to vulnerable children and young people being able to explain their experiences and need for protection to the standard we know will be required to succeed in their applications. The challenges in being able to obtain this essential information has a knock-on effect as it has meant that children and young people have been invited to attend their full asylum interviews before we have been able to take their full instructions, or establish whether they are even able to provide these.
- We also face increased delays in obtaining expert medical reports, which are frequently essential to assist the decision maker, because:
 - o The experts who have particular expertise in working with traumatised children frequently also work for the NHS. They have been required to work additional hours during the pandemic or have been affected by ill health or home working in their own families and thus have had less capacity;
 - o Some experts are reluctant to undertake remote assessments with very traumatised clients, particularly if cognition and learning difficulties are to be assessed. Even when it is assessed as appropriate to undertake a remote assessment, the process of assessing a traumatised client can take longer when carried out remotely;
 - o We have had to weigh up the urgent need for an expert report against the risk of a remote psychiatric or psychological assessment. For example, on one occasion we proceeded with a remote assessment believing that further delay could not be in our client's best interests. However, the assessment had to be terminated and the young person's carer contacted, as the young person became too distressed to continue and switched off his camera part way through the assessment. Experts undertaking assessments remotely are unable to control the environment or provide the containment possible when working in person.

iii. Recommendations

To the Home Office:

- Provide a clear timeframe to asylum-seeking children and young people as to when their interview is to take place. Give legal representatives fair warning of the date of the interview – 5 days' notice is not enough, particularly where a child or young person has complex needs. At least ten working days' notice should be given, to the legal representative.

- Comply with paragraph 339A of the Immigration Rules and provide clear timescales for decision-making where this is requested.
- Provide clear explanations for delays. Where there is an unexplained pattern of greater delay for children and young people of particular nationalities, be transparent about the reasons for this. We note that Article 3 of the Refugee Convention stipulates that: *'The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.'* Therefore, the Home Office must consider the differential and potentially discriminatory impacts on asylum seekers from specific countries and/or specific nationalities.
- Where legal representatives make representations supported by medical evidence that a child or young person is not fit for interview, or that they need accommodations at the interview, that is to say that adjustments are required to meet their particular needs arising from any illness, trauma or disability, these should always be acted upon. Like all public bodies, UKVI has a legal duty under the Equality Act 2010 to make reasonable adjustments for people with protected characteristics.
- Make decisions without interviewing where an interview is not necessary. Where it is clear from the papers that a grant of asylum is merited, asylum should be granted without an interview.
- Make better use of case reviews. Home Office staff are already obliged to check 'whether the child is ready to be interviewed'¹⁵ in the UASC case review. This meeting could be opened out to include the child's legal representative and any other professionals supporting them, in order to consider this question meaningfully.

To legal representatives:

- Be familiar with Home Office policies in relation to children and young people and their asylum claims and hold the Home Office to account where policies are not followed.¹⁶
- Where appropriate, obtain early psychiatric, or other clinical input into whether a child or young person is fit to be interviewed, and whether any accommodations are needed for the interview. Be alert to the signs of PTSD and depression, especially if the child or young person has disclosed a traumatic childhood. Do not assume that they are 'fine' simply because they have not disclosed any medical problems.
- Where there is evidence that a child or young person is not fit to be interviewed, or that adjustments are required for the interview to meet their particular needs arising from any

¹⁵ Home Office Guidance (31 Dec 2020) Children's asylum claims, version 4, p.35

¹⁶ For example:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947812/children_s-asylum-claims-v4.0ext.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947800/assessing-age-asylum-instruction-v4.0ext.pdf

<https://www.gov.uk/government/publications/every-child-matters-statutory-guidance>

illness, trauma or disability, make detailed representations to the Home Office supported by medical evidence.

- Try to build a good working relationship with the child or young person's social worker or personal adviser and obtain information from them that may help you assess the child or young person's needs ahead of the interview. However, be mindful of the fact that it is the child or young person who is your client, not the social worker, and be cautious about disclosing information to the social worker – particularly if there is a disputed age assessment.
- Consider whether it is appropriate to refer the child or young person to an organisation able to provide clinical support.

MENTAL HEALTH

i. The Policy Context

The UK government acknowledges that the current restrictions on movement and the requirement to social distance as a consequence of the Coronavirus pandemic can have a negative impact on mental health and well-being on the general population:

‘During this time, you may be bored, frustrated or lonely. You may also feel low, worried, anxious, or be concerned about your health or that of those close to you. . . . Everyone reacts differently to events and changes in the way that we think, feel and behave vary between different people and over time. It’s important that you take care of your mind as well as your body and to get further support if you need it.’¹⁷

A large study undertaken by the NHS in July 2020¹⁸ found that clinically significant mental health conditions amongst children had risen by 50% compared to three years earlier, with 1 in 6 children now having a probable mental health condition. In a later report, the Children’s Commissioner notes that early NHS data “suggests that referrals to mental health services dipped early on in lockdown, but subsequently soared in early Autumn 2020. In April [2020], referrals were 34% lower than in the same month in 2019. In September [2020], they were 79% higher than in September 2019.”¹⁹ Results from England’s 2020 Mental Health of Children and Young People (MHCYP) survey found increases in a range of specific problems, including disrupted sleep, feelings of loneliness and isolation, and fear of leaving their accommodation.²⁰ A survey carried out with children in care and care leavers during the first lockdown identified high levels of anxiety and loneliness, particularly among those in semi-independent or independent accommodation.²¹

¹⁷ Public Health England (19 May 2021) Guidance for the public on the mental health and wellbeing aspects of coronavirus (COVID-19). <https://www.gov.uk/government/publications/covid-19-guidance-for-the-public-on-mental-health-and-wellbeing/guidance-for-the-public-on-the-mental-health-and-wellbeing-aspects-of-coronavirus-covid-19>

¹⁸ Vizard, T and others (22 Oct 2020) Mental health of children and young people in England, 2020. NHS Digital. https://files.digital.nhs.uk/AF/AECD6B/mhcyp_2020_rep_v2.pdf

¹⁹ Lennon, M (Jan 2021) The state of children’s mental health services 2020/21. Children’s Commissioner. <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2021/01/cco-the-state-of-childrens-mental-health-services-2020-21.pdf>

²⁰ Newlove-Delgado, T and others (May 2021) Child mental health in England before and during the COVID-19 lockdown, *The Lancet*, vol.8:5, pp.353-354. [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(20\)30570-8/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(20)30570-8/fulltext)

²¹ Croxton, L (May 2020) Young lives in lockdown: NYAS’ survey of care-experienced children and young people during Covid-19. <https://www.nyas.net/wp-content/uploads/NYAS-Coronavirus-Survey-Report-Young-Lives-in-Lockdown-May-2020.pdf>

During the pandemic, the government expected local authorities, health services, education staff and partner organisations to continue to comply with the existing statutory guidance on promoting the health and wellbeing of looked after children.²² In response to the particular type and level of needs of unaccompanied asylum-seeking children, the guidance refers practitioners on to an expert paper published by NICE²³ which, in the context of health assessments, notes:

'The circumstances of unaccompanied asylum seekers have been identified above as unusually stressful resulting from a combination of the circumstances in the country of origin, the journey to the U.K. and arrival and settlement in the U.K. and the possibility of a refusal and return to the country of origin. These are all marked by the likelihood of trauma of various kinds, separation and loss, dislocation, rupture and uncertainty. Given this, emotional wellbeing is likely to be extraordinarily challenging and the likelihood of clinically significant disorders especially post-traumatic stress disorders, depression and anxiety very high.'

The government has also published guidance aimed at helping parents and carers support children and young people's mental health and wellbeing during Covid.²⁴

While the literature on child mental illness during the pandemic is limited, early findings point to an increase in depressive and anxiety symptoms in children and adolescents.²⁵

Research on the mental health impact of lockdown in response to Covid-19 includes findings that:

*'...suicidal thoughts increased from 8% to 10% and they were highest among young adults (18-29 years), rising from 12.5% to 14%...'*²⁶

²² DfE & DHSC (March 2015) Promoting the health and wellbeing of looked after children: Statutory guidance for local authorities, clinical commissioning groups and NHS England. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/413368/Promoting_the_health_and_well-being_of_looked-after_children.pdf

²³ Simmonds, J and Merredew, F (2010?) The health needs of unaccompanied asylum-seeking children and young people. <https://www.nice.org.uk/guidance/ph28/evidence/looked-after-children-ep23-unaccompanied-asylum-seeking-children-john-simmonds-and-florence-merredew2>

²⁴ Public Health England (19 May 2021) Guidance for parents and carers on supporting children and young people's mental health and wellbeing during the coronavirus (COVID-19) pandemic. <https://www.gov.uk/government/publications/covid-19-guidance-on-supporting-children-and-young-peoples-mental-health-and-wellbeing/guidance-for-parents-and-carers-on-supporting-children-and-young-peoples-mental-health-and-wellbeing-during-the-coronavirus-covid-19-outbreak#where-to-get-further-support>

²⁵ Racine, N and others (July 2020) Child and adolescent mental illness during Covid-19: a rapid review. *Psychiatry Research* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7363598/>

²⁶ O'Connor R, Wetherall K, Cleare S, et al. Mental health and wellbeing during the covid-19 pandemic: longitudinal analyses of adults in the UK covid-19 Mental Health & Wellbeing study. *Br J Psychiatry* 2020. doi:10.1192/bjp.2020.212.

The Covid-19 pandemic is in fact associated with highly significant levels of psychological distress that, in many cases, would meet the threshold for clinical relevance.²⁷ These are findings taken from studies of the general population. Those most at risk of experiencing acute stress and depressive symptoms during the pandemic are those who have pre-existing mental or physical health conditions. In particular, having a pre-existing psychiatric condition is the strongest predictor of depressive symptoms. Prior victimization, like being bullied, has also been linked with the emotional responses of young adults during the pandemic²⁸.

While a national lockdown is challenging for the general population, it is particularly distressing for former child victims of trafficking and other asylum seekers who have a history of being confined against their will or who have experienced additional trauma. The enforced 'lockdown' can trigger memories of their exploitation, imprisonment and a period of time when they had no control over their own lives and little idea as to whether they would live or die.²⁹

We are also aware that, because of the Covid-19 pandemic, many statutory and voluntary sector services have ceased offering face to face services or are offering them less frequently. As a consequence, children and young people have not been able to access face to face support services which may have assisted them in coping. Most young people are relying on their family for mental and emotional support. Those, like our clients, who are unable to rely on family, face isolation and loneliness, which are also risk factors for poor mental health.³⁰

There is evidence that the impact of Covid-19 has already increased the risks of being (re)-trafficked for vulnerable children and young people like our clients who have been drawn into illegal working, county lines and other forms of exploitation as they seek to cope with the loneliness, isolation and mental health crisis engendered or entrenched by the pandemic.³¹

ii. Advising and representing children and young people during Covid 19 – mental health

The impact of the Covid-19 pandemic on the young people's mental health been apparent from the very outset of the pandemic:

²⁷ Xiong J, Lipsitz O, Nasri F, Lui LMW, Gill H, Phan L, Chen-Li D, Jacobucci M, Ho R, Majeed A, McIntyre RS. Impact of COVID-19 pandemic on mental health in the general population: A systematic review. *J Affect Disord.* 2020 Dec 1;277:55-64. doi: 10.1016/j.jad.2020.08.001. Epub 2020 Aug 8. PMID: 32799105; PMCID: PMC7413844.

²⁸ [Who's Most At Risk in the Covid-19 Mental Health Crisis | by Yasmin Tayag | Medium Coronavirus Blog](#)

²⁹ Baker, C (April 2020), The coronavirus crisis highlights the harmful effect of lockdown on child victims of trafficking in Britain. <https://news.trust.org/item/20200331094249-e1thv>

³⁰ [About loneliness | Mind, the mental health charity - help for mental health problems](#)

³¹ [OHCHR | COVID-19 pandemic has amplified the risks of vulnerable children to trafficking and sexual exploitation, Special Rapporteur on the sale of children tells Human Rights Council.](#)

'In the beginning, since the lockdown was announced, it just reminded me of my past experiences a lot, because it was probably kind of the same situation in self-confinement, all the time, and it really made me feel about reliving all the past, and experiences, and it really hit me hard. Because I didn't have that social environment, I was just new to the country literally 4 months, and it really was tough on me, just being stuck inside the four walls.'

18 year old male victim of trafficking, seeking asylum who arrived in the UK aged 17,
(*Breaking the Chains* focus group, March 2021)

'When lockdown become self-isolated I felt very stressed and depressed and I had a lot of nightmares. I was afraid to go out and do shopping. The situation was so confusing. All day me and my son were sitting and watching the four white walls of our room. It was so stressful thinking about everything, especially my son's health, worrying he could catch this virus. I felt so alone and depressed. I got nightmares and flashbacks. I tried to do many things to distract myself from them but the lockdown made this hard. I didn't have food a lot of the time at first. Almost nothing in my fridge.'

21 year old victim of trafficking, seeking asylum, who lives with her 5 year old son,
(*Breaking the Chains* focus group, March 2021)

'I used to go to sleep like 5 or 6 o'clock in the morning, and wake up an hour or so before the zoom started with Shpresa, and I didn't know what was going on and you know everything was at night, like thinking and over thinking, everything was going to my past and what I had gone through and that was very problem at the moment for me, and after we started counselling on Zoom... which helped us a little bit to get on track, and it really has been so hard, so hard to describe, but hopefully it is just going to stay in the past and we are just going to move forward.'

21 year old male refugee (*Breaking the Chains* focus group, March 2021)

In order to continue to provide a safe service to our clients, this has involved *Breaking the Chains* lawyers and legal caseworkers:

- Corresponding with social workers, personal advisers, GPs, mental health practitioners, Community Psychiatric Nurses (CPNs) and crisis services to secure medication, secondary mental health care and crisis interventions for suicidal and seriously ill children and young people;
- Working in very close partnership with the Shpresa Programme skilled staff-team to identify and manage risks where completing suicide is a realistic possibility for clients, or where clients are at a very grave risk of being re-trafficked;
- Securing training and support from community care lawyers to enable us to advocate quickly and secure local authority accommodation under Section 20 Children Act 1989 for homeless clients who are former relevant children;
- Undertaking training in disassociation (when clients become detached from their current reality) and using a variety of grounding techniques, to ensure that young people giving

instructions about extremely traumatic events related to trafficking experiences can do so safely, without disassociating, while we are working remotely. However there remain significant obstacles to being able to effectively support young people to ground themselves when working remotely.

Even taking into account all of the above measures, it remains necessary to undertake a risk assessment at the start of each remote appointment to consider how to make progress with the child or young person's legal case while ensuring their safety is not compromised.

One 18 year-old presented with panic attacks, including severe hyper-ventilation and disassociation. He had experienced self-confinement for many months due to a blood feud and later disclosed a violent trafficking experience which he re-lived daily through flashbacks. The *Breaking the Chains* caseworker, after undertaking a risk assessment, made the decision to stop taking instructions until appropriate safety measures were in place and an expert medical assessment could be obtained. He has been diagnosed with severe depression, severe symptoms of PTSD and severe anxiety and after a psychiatric assessment was found not to be fit for interview nor fit to give instructions.

His caseworker is commissioning a trafficking and country expert report before seeking a decision in his case on submissions only.

Another key issue – which long pre-dates Covid – is that Home Office and judicial decisions are frequently made on the basis of 'inconsistencies' in an asylum-seeker's account. Sometimes these inconsistencies are of an arguably minor and/or trivial nature, such as getting a date wrong. In this regard, it is essential for legal representatives to be aware that PTSD and depression can have a significant impact on memory and recall. Both conditions are associated with 'overgeneral memory', where the ability to remember specific events in one's past is impaired³². This problem can be even more acute for people who have suffered trauma in childhood. Children's autobiographical memories also work differently from those of adults (even in the absence of trauma) and a child or young person should not be expected to be able to remember facts, dates and specifics about events which occurred during their childhood.³³ And a history of trauma can also impact trust and inhibit disclosure.³⁴

³² J Herlihy and S Turner (2013) 'What do we know so far about emotion and refugee law?', 64 Northern Ireland Legal Quarterly 1,47–62.

³³ Z Given-Wilson, J Herlihy and M Hodes (2016) 'Telling the story: A psychological review on assessing adolescents' asylum claims,' 57 Canadian Psychology/Psychologie Canadienne 4, 265-273.

³⁴ [Vulnerability to interrogative suggestibility from negative life events. A comparison of separated asylum-seeking youth and age-matched peers - Research - Royal Holloway, University of London](#)

It has been recognised by the courts that mental health conditions can provide an explanation for inconsistencies in a person's account.³⁵ It has also been recognised that a child-sensitive application of the benefit of the doubt must be given to appellants recalling events from when they were minors or were even younger minors.³⁶

On this issue, legal representatives should familiarise themselves with the academic literature on PTSD, depression and autobiographical memory. The [Centre for the Study of Emotion and Law](#) has a collection of helpful resources. Other key resources are the UNHCR's publications '[Beyond Proof](#)' and '[The Heart of the Matter](#)' and the Helen Bamber Foundation's publication '[Bridging a Protection Gap](#)' (see the Resources section at the end of this paper).

Even apart from PTSD and depression, human memory for temporal information – such as dates, durations and sequences – is extremely poor, as is human memory for proper names and verbatim conversations. Legal representatives should be alert to this issue, particularly when drafting witness statements and preparing submissions, and should be prepared to counter Home Office arguments that rely on these kinds of inconsistencies.³⁷

iii. Recommendations

Legal representatives:

- Wherever possible, obtain early psychiatric input. It is often the case that the Legal Aid Agency is reluctant to fund medico-legal reports until the appeal stage but where you have serious concerns about a child or young person's mental health, you should fight for a report to be funded at the pre-decision stage.
- Encourage the child or young person to seek appropriate support from their GP and from counselling services and actively refer the children and young person where appropriate.
- Where the child or young person has treating clinicians, try to build a good relationship with them and seek their input as to what accommodations the child or young person might need to be able to explain their protection claim safely. However, bear in mind that a letter from a treating clinician is not a substitute for a medico-legal report – you need to secure both.
- Make a risk assessment before taking instructions from a child or young person, especially about traumatic events that may trigger PTSD flashbacks or worsen depression. The medical evidence you have obtained should inform your risk assessment. Be alert to the fact that the level of risk is likely to be different for remote and in person hearings.

³⁵ See *AM (Afghanistan)* [2017] EWCA Civ 1123 at [21(d)]; *JL (medical reports-credibility) China* [2013] UKUT 145 (IAC) at [26]-[27]; and *MN and IXU* [2020] EWCA Civ 1746 at [125]-[128]

³⁶ *KS (benefit of the doubt)* [2014] UKUT 552 (IAC) at [99]

³⁷ An especially useful article is HE Cameron (2010) 'Refugee status determinations and the limits of memory', 22 *International Journal of Refugee Law* 4, 469-511.

- If taking instructions remotely, in the event that you have assessed that there is a risk of dissociation or sudden deterioration, a safety plan should be in place and as a minimum you should (i) know exactly where the young person is; (ii) have the contact details for someone nearby who could be alerted in an emergency and (iii) agree that you will call 999/the Mental Health crisis team if the young person displays any concerning symptoms
- Where the child or young person has a trusted support person, such as a foster carer or a charity/NGO support worker, it may be helpful for this person to be present at appointments. However, do not assume that the child or young person will want this – you should always ask them.
- Take every opportunity to attend training from experienced lawyers and/or clinicians about working with mentally ill and suicidal children and young people.
- Familiarise yourself with the academic literature on PTSD, depression and autobiographical memory, and the key publications from the UNHCR and the Helen Bamber Foundation.
- Ensure that you record details of your client’s presentation, level of distress and ability to engage or provide instructions on each occasion that you attend upon them.
- Manage your client’s expectations by allowing them to understand what you can and cannot do. With little to do and reduced contact with others, your child or young person client will be focused on each step in the asylum claim and the support you have offered to provide or follow up actions agreed between you.
- Try to avoid abrupt endings to meetings, and spend a short period of time at the end of remote appointments discussing what your young client will do next, encouraging them to engage in an action or activity that will promote their wellbeing, such as phoning a friend or trusted adult, physical activity, listening to music or other creative outlet.

The Home Office:

- Home Office interviewing officers and decision makers who work on unaccompanied children’s cases should be familiar with the academic literature on PTSD, depression and autobiographical memory, and the key publications from the UNHCR and the Helen Bamber Foundation.
- Home Office interviewing officers should be alert to the difficulties of remote interviews and the greater need for attention to be paid to the potential to re-traumatise vulnerable children and young people.
- Should in all circumstances give due weight to medical evidence from an expert or treating physician and to legal representations relating to the child or young person’s vulnerabilities.

THE RISK OF TRAFFICKING / RE-TRAFFICKING

i. The Policy Background

In relation to care leavers, including former UASC, DfE guidance to local authorities for children's social care³⁸ makes it clear that they are expected to *'consider using additional government funding for discretionary payments to cover food, utilities and rent if care leavers are struggling financially'*, to *'arrange for discretionary payments to be authorised and paid at short notice if necessary'*, and continue to provide setting up home allowances to care leavers during the pandemic.

Despite this, children's organisations have reported having to provide payments *'to cover basic items including food, gas/electricity and essential household items'* as well as care leavers having to rely on food banks.³⁹ Reports from refugee support organisations have indicated that the provision of phone top ups has been a problem, with many having to provide unaccompanied asylum-seeking children with money or organise top up payments so they can continue to use their mobile phone. Although the DfE arranged a partnership with mobile network operators to help schools support disadvantaged pupils in years 3 to 13 who rely on a mobile internet connection, they only recently extended this to 16 to 19 year olds in further education.⁴⁰

In June 2020, more than twenty children's charities including ECPAT UK, Shpresa Programme and MiCLU, highlighted in a letter to the Children's Commissioner the risk of re-exploitation to vulnerable children posed by the decrease in support: *'Some young people, reliant on local authorities to provide financial support, are at increased risk of exploitation due to late payments. While late payments are never acceptable, prior to the Covid-19 pandemic, young people could raise this with former foster carers, charities or staff at school or college with relative ease and ensure a prompt response in order that their basic needs were met. During the pandemic lockdown, with most institutions physically closed, and most adults to whom the young people would normally turn to working remotely and inaccessible in-person, young people who find*

³⁸ DfE (24 May 2021) Coronavirus (COVID-19): guidance for local authorities on children's social care. <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-childrens-social-care-services/coronavirus-covid-19-guidance-for-local-authorities-on-childrens-social-care#mental-health-of-looked-after-children-and-care-leavers>

³⁹ Barnardo's/Become/Children England/The Children's Society/Coram BAAF/Just for Kids Law/NCB/NSPCC (2020) Recovery plan: children in care and care leavers. <https://www.becomecharity.org.uk/media/2357/children-in-care-and-care-leavers-recovery-plan-briefing.pdf>

⁴⁰ DfE (10 May 2021) Get help with technology during coronavirus (Covid-19). <https://www.gov.uk/guidance/get-help-with-technology-for-remote-education-during-coronavirus-covid-19>

*themselves in this financial situation have far fewer options to turn to, exposing them to actual and real risk of significant danger and exploitation.*⁴¹

ii. Advising and representing children and young people during Covid 19 – the risk of re-trafficking

A further problem which has had an impact across the project, and not just on the provision of legal advice and representation, is the risk of re-trafficking. This is an ever-present risk for children and young people who:

- Are in debt bondage;
- Are living on low incomes or are destitute;
- Have no experience of trusting adults or of adults being safe;
- Are lonely and living in one room in shared accommodation with traumatic memories and isolation;
- Have some level of learning difficulty or developmental delay and do not understand risks or how to protect themselves; and/or
- May have PTSD symptoms that dispose them to impulsive or risk-taking behaviour.

During the pandemic all those risk factors which leave children and young people vulnerable to exploitation have been exacerbated:

- Children and young people in debt bondage are further isolated and less able to access help to cope with the risk of re-trafficking;
- Looked after children and former UASC face inconsistent or no support from statutory agencies and commissioned providers. For example, at the start of the pandemic we were aware of (i) social services failing to make section 20 payments (financial subsistence) to one young person for three weeks, leaving him without any money with which to eat; (ii) accommodation providers sanctioning another young person if she left the house for more than an hour, making it impossible for her to shop at the supermarket – which was 20 minutes walk away with queues of over 30 minutes – and leaving her having to shop at local shops with hugely inflated prices so that she was unable to eat properly; and (iii) a young person with a serious mental health problem (and possibly undiagnosed learning difficulties) being unable to feed himself appropriately. Having previously been cooked for on a regular basis by his now shielding former foster carer and having accessed meals at Shpresa's drop in services twice a week, he contacted Shpresa Programme in tears as he could not shop or cook for himself and had eaten only biscuits for two days. In cases ii) and iii), Shpresa staff arranged for Shpresa volunteers to deliver food or money to the young person. They subsequently advocated for the young people in question to improve the support they received from the local authority.

⁴¹ <https://www.ein.org.uk/news/charities-concerned-impact-covid-19-lockdown-young-people-irregular-migration-status-and-young>

- Children and young people have described waking alone convinced that the perpetrators of the events that underpin their protection claim (those who trafficked, raped, assaulted or terrified them in other ways) are in their rooms with them, as they have no means of ‘managing’ flashbacks while living through the pandemic.

We hear from young people and Shpresa staff about how trafficking gangs have been quick to exploit these vulnerabilities, offering a day’s work on a building site for McDonald’s breakfasts and lunches, and a room in a house ‘where they will have company’. In the vacuum left by the absence of adequate provision from statutory services, it is unsurprising that vulnerable young people experiencing hunger and loneliness were drawn in by such ‘offers’.

Mitigating the risk of re-trafficking has been extremely challenging work, undertaken in large part by Shpresa staff working around the clock to maintain contact and be a source of stability to exceptionally vulnerable young people. It has not always been possible to mitigate this risk and ultimately we have been unsuccessful in some cases. Two young people are no longer in contact with services. Others have been re-trafficked during this period and, while they remain in contact with services, their trust in adults has been further eroded and their mental health has been severely affected.

Breaking the Chains has sought to highlight this risk at a strategic level⁴² and we also continue to address it in our individual casework with each client and by joining weekly zoom sessions - hosted and facilitated daily by Shpresa Programme for the children and young people - which were established at the very start of the pandemic to keep those children and young people safe and in contact insofar as this is possible.

‘I was like without (Shpresa Programme) them how can I go through it. We used to have Zoom session, mental health sessions with Clinton where he would help us and explain to us everything that is going on. We didn’t have great English but he really explained and tried to help us. And Teta Flutra used to call us every day and I was in very close contact with her and she used to explain to us. And after her phone call I would sleep, I would be more calm down and everything.’

16 year old girl, victim of trafficking, seeking asylum,
(*Breaking the Chains* focus group, March 2021)

All those working with children and young people who have been trafficked need to have the risk of re-trafficking at the forefront of their minds when working with their young clients, while also being aware of the risk of trafficking for those seeking asylum for other reasons.

iii. Recommendations

⁴² [Trafficked and unaccompanied children at risk of exploitation as govt reduces protection during pandemic - Migrant & Refugee Children's Legal Unit \(miclu.org\)](https://www.miclu.org/)

To the Home Office:

- If those who were victims of child trafficking have been referred into the NRM and do not have an NRM decision within 6 months, some form of leave to remain that includes permission to work and access to mainstream services should be granted until an NRM decision is made. Victims of trafficking are more susceptible to being exploited or trafficked when not able to work or when not in meaningful education.

To local authorities:

- Training on trafficking should be provided to social workers and personal advisers working with asylum-seeking children and young people.
- Social workers should be aware that their decisions – in particular decisions to discontinue accommodation and financial support for a young person over 18 – can often directly lead to a young person being trafficked and exploited. The risk of trafficking should always be factored in.
- In the case of young people brought into the country as children it is safest to presume that they are at risk of re-trafficking or exploitation until the contrary is established.
- Social workers should carry out trafficking risk assessments, taking into account the child or young person's history and the known risks. They should be proactive rather than reactive in protecting the child or young person. Where appropriate, these risk assessments should be shared with schools and colleges, and other relevant agencies.
- Where a child has serious mental health needs – identified by GP, and/or by a medico-legal report commissioned by their legal representatives – local authorities should factor this into care planning and ensure that the child's care and treatment needs are met.

REMOTE WORKING

i. The Policy framework

From 19th March 2020, face to face substantive interviews were paused by the Home Office with Asylum Operations saying: *'[W]e are exploring other ways to find the information we need to make our decisions; digitally, by telephone and by post/ email, for example. We can already interview people digitally from our offices or onsite in other location in some circumstances and are looking for support from digital colleagues to do that in a different way that doesn't involve us being in one of our offices'*.

In a letter sent from Asylum Operations in June 2020, the Home Office announced its intention to restart asylum interviews, building on the existing digital interviewing platform, while expanding the capacity and capability to conduct more remote interviews. In response to a parliamentary question, the Minister for Immigration Compliance and the Courts noted that, from 21 September 2020, face-to-face substantive interviews for adults would recommence and, from the same date, commenced remote video interviewing for unaccompanied asylum-seeking children using Home Office premises.⁴³

In August 2020, the Home Office published guidance on how it proposed to resume substantive interviews. In relation to unaccompanied asylum-seeking children, it said:

*'Due to the practical difficulties of arranging video conferencing interviews for unaccompanied children, coupled with the restrictions brought in through wider Covid-19 guidance, this resumption of interviews will not routinely include unaccompanied asylum-seeking children. In cases where it is very clearly in the best interests of the child to be interviewed without further delay, the Home Office will consider what arrangements can be made to facilitate a video conference interview as soon as practically possible. Any such request must be made in writing. We recognise that any unnecessary delay to dealing with claims from children is likely not to be in the child's best interest so we will seek to minimise the length of time before commencing face to face interviews for this cohort.'*⁴⁴

A follow-up letter dated 5 November 2020 said that, following a proof-of-concept remote interviewing exercise with UASC at the Kent Intake Unit, the Home Office contacted local authorities to ask for their agreement to work with UKVI to provide appropriate local premises to

⁴³ Philp, C (19 Nov 2020) PQ Commons Hansard. <https://questions-statements.parliament.uk/written-questions/detail/2020-10-30/109520>

⁴⁴ Home Office (6 August 2020) The resumption of substantive asylum interviews. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907588/resumption-of-interviewing-v1.0-ext.pdf

support a national roll-out of remote interviews with unaccompanied asylum-seeking children. The letter also confirmed that, in terms of the process, invite to interview letters would be sent out allowing a minimum of two weeks' notice to ensure that a responsible adult could be assigned, suitable premises booked, and the child's legal representative consulted. As of 24 May 2021, 51 local authorities have agreed with the Home Office to roll out a remote interviewing process for UASC in their area.⁴⁵

UKVI has said they are also able to offer in person interviews for UASC should they be required.

Despite the system-wide move to remote interviewing, pre-pandemic instructions on video conferencing for children remain current policy as outlined in both the *Children's Asylum Claims* guidance,⁴⁶ and *Asylum Interviews* guidance.⁴⁷ Both volumes include guidance on assessing the appropriateness of remote interviews for vulnerable applicants, which notes that interviewers should consider reasons given by the claimant for not wanting an interview to be conducted by video conferencing. *'This may include, but is not limited to, cases involving sexual orientation or gender identity, victims of torture or other trauma where recording was part of the persecution, victims of sexual violence or other forms of gender-based persecution, victims of modern slavery or claimants with mental health conditions.'*⁴⁸ In relation to children, the use of video conferencing must be in accordance with the section 55 Borders, Citizenship and Immigration Act 2009 duty on the Home Office to safeguard and promote the welfare of children.

The Tribunals also moved to a remote model of working. In March 2020, the Courts and Tribunals Judiciary published pilot practice directions meant to cover an initial six-month period. These promoted the use of a triage scheme for appeals and applications in cases where paper determinations might be possible; and a clear presumption in favour of remote hearings.⁴⁹ A Justice Committee report described this as an: *'acceleration of the digitisation of the First-tier Tribunal (Immigration and Asylum Chamber) in response to the coronavirus pandemic.'*⁵⁰

In an update published in November 2020, HMCTS claimed that both the First-Tier and Upper Tribunals had been able to manage their workload and avoid significant backlogs; and noted their intention of retaining some of the new ways of working including telephone hearings and remote

⁴⁵ Home Office (24 May 2021) Asylum Operations external stakeholder communications pack.

⁴⁶ Home Office (31 Dec 2020) [Children's asylum claims](#). Version 4.

⁴⁷ Home Office (3 June 2021) Asylum interviews. Version 8.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807031/asylum-interviews-v7.0ext.pdf

⁴⁸ Ibid, p.14

⁴⁹ Courts and Tribunals Judiciary (19 March 2020) Pilot Practice Direction: Contingency arrangements in the First-Tier Tribunal and the Upper Tribunal <https://www.judiciary.uk/wp-content/uploads/2020/03/General-Pilot-Practice-Direction-Final-For-Publication-CORRECTED-23032020-1.pdf>

⁵⁰ Justice Committee (30 July 2020) Coronavirus: Covid-19: the impact on courts. <https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/519/51902.htm>

video hearings.⁵¹ The First-Tier Tribunal plan for January to June 2021 states that it ‘*will continue listing hearings using remote hearing technology where it is possible and desirable and in the interests of justice to do so*’.⁵²

ii. **Advising and representing children and young people during Covid 19 – remote working**

Remote working has involved and continues to involve a myriad of practical problems for caseworkers. Many children and young people at the start of the pandemic had no laptops. They were thus obliged to give instructions on small, hand-held phones. Shpresa Programme fund-raised and sought donations of old laptops, while also advocating for their clients to receive laptops from education providers and local authorities. As a consequence of their efforts, in this respect, by September 2020 the majority of children and young people we are working with were provided with laptops, though some still struggle to use them.

A 19 year old with a physical disability affecting communication, a number of mental health problems and indicators of learning disabilities was given a laptop at the start of the pandemic but he cannot use it. He hates remote working, as his anxiety affects his ability to make himself understood and he has therefore only been able to give instructions when able to see his caseworker face to face. However he has a limited understanding of Covid-19 and does not always abide by the requirements to wear a mask and socially distance.

Access to a laptop and the ability to use a laptop in itself does not equate to digital access. Many children and young people live in shared accommodation or foster homes with no access to Wi-Fi. Shpresa and MiCLU have therefore paid for unlimited internet access, to ensure that young people can access legal services but this took some time to set up and requires monthly top ups to be identified and completed.

In some cases in spite of *Breaking the Chains* staff arranging for access to Wi-Fi, connections remain poor:

⁵¹ HMCTS (Nov 2020) Covid-19: overview of HMCTS recovery for Civil and Family Courts and Tribunals. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932496/HMCTS_CFT_Recovery_Plan_v2b.pdf

⁵² First-Tier Tribunal (Immigration and Asylum Chamber) User guide: January 2021 update. <https://www.judiciary.uk/wp-content/uploads/2020/06/Final-IAC-User-Guide-January-2021-1.pdf>

An 18 year old, whose error of law hearing had been heard by a Tribunal Judge, was extremely anxious about the outcome of the hearing. He attended a remote appointment with his caseworker immediately after the UT hearing, which he had not attended due to the risk of the trauma it could cause him, to attend a hearing about his case, alone in his bedroom with no support.

During this appointment the Wi-Fi connection was lost on 5 separate occasions. The young person had heard that the UT Judge had indicated that she would find against him but it then took 13 minutes to re-establish an internet connection to enable him to hear that Counsel advised it is likely there will be merits for an appeal to the Court of Appeal and that in any event a fresh claim will be possible.

Poor Wi-Fi connections result in interrupted appointments and also mean that young people giving instructions may have to repeat their telling of extremely traumatic events, as the caseworker is unable to hear some or all that they have said. It may also mean that young people turn off their video to avoid being cut off and increase the reliability of their audio connection and thus visual cues in relation to their distress or the confidentiality of the space they are in are lost.

Even when children and young people have a laptop or functioning smart phone which they are able to use, and a good Wi-Fi connection, many lack a confidential space from which to give instructions. Those who are 'lucky' enough to have their own room in shared accommodation still struggle to give instructions for the following reasons:

- Fear that someone will overhear them discussing personal issues such as their sexuality and they will be 'outed' and in some cases face retribution from their own community;
- Fear others will hear about a blood feud which has already resulted in three or four deaths such that they want no-one from the Albanian community to link them to the feud, especially when they live with other Albanians;
- Fear they will become upset and people will see that they have been crying;
- Giving instructions from their bedrooms then means that those who already struggle to sleep find their ability to sleep impacted by the room being 'full of all that stuff'.

Those who are sofa surfing or of no fixed abode often have nowhere from which they feel it is safe to give instructions.

'I was in an institution where I was living with friends in the beginning and it was so hard, and there were times when I had to leave and go outside when I wanted to speak about specific things with my solicitor, but with time and with her help and everyone's help, thank God I have a new place and it is more private. But before I was with friends and it was very

difficult. I wished offices were open. I wished to God I had a place to go and talk to my solicitor.'

23 year old young man, *Breaking the Chains* focus group, March 2021

This has particularly been the case for those clients who disappeared from care and/ or are appeals rights exhausted and/or who have lived 'underground',⁵³ usually for many years. These young people are often sleeping on friend's floors under sufferance and are instructing their caseworkers from park benches.

One young man, aged 21, was so embarrassed he could not pay his way as he was destitute, and felt such a burden to the friends whose floor he was sleeping on, he would leave the house before they got up in the morning and return after his friends had gone to sleep at night. All his initial instructions were given from the street or the park. After it became apparent that that this young person was at serious risk of completing suicide, *Breaking the Chains* staff advocated with the local authority and this former relevant child is now able to give instructions from local authority accommodation where he feels safe.

Another less apparent practical problem arising from working remotely is the inability of *Breaking the Chains* staff to identify and address other practical barriers to giving instructions e.g. cold and hunger. In the period when we were seeing clients face to face at Shpresa Programme, we would take children and young people's temperatures to identify those with a fever, in line with our Covid-19 procedures. One young person's temperature was below the norm because he had no coat. He had been giving instructions from the park and the street during winter. Others would arrive very hungry and eat all the food set out for them. Realising this, *Breaking the Chains* staff secured funding for coats for two young people and rather than buying crisps and chocolate bars, started to offer more substantive and healthier options.

Once the practical barriers to remote working have been addressed, *Breaking the Chains* caseworkers have to build or maintain relationships of trust with young people who may have never known adults they can trust, using remote technology. Some young people state clearly that they hate Zoom and have avoided giving any instructions in this manner.

⁵³ 'Underground' in this context refers to those who have disengaged from formal services and are living on the margins of society due to their fear of removal to the country that they still fear return to albeit that their asylum claim was not successful.

One child, aged 16 at the start of lockdown, struggled to engage with Shpresa or her *Breaking the Chains* caseworker using Zoom. Living with her foster carer, she suffered from panic attacks and suicidal ideation; for many months, her caseworker did not take instructions as it was not safe to do so.

She made a suicide attempt but continually instructed that she wanted to progress her case. She has been found by an expert psychiatrist not to be fit to interview and her caseworker has made representations to the Home Office that they should decide her case on submissions only.

'And I remember at the beginning I remember myself having to work with my new lawyer over Zoom, it was hard to be honest as I didn't see her. I just talked on Zoom, and it was difficult to open to her, because with the first sessions and it took some time to start to just talk and gain that trust with her.'

18 year old young person, victim of trafficking and a blood feud
(*Breaking the Chains* focus group, March 2021)

'It is totally different, in person you have a connection with the person. You talk – it's a kind of person to person physical interactions, physical connections, you start to have a relationship, suddenly, you get to know the person differently apart from Zoom – they don't see anything else apart from your face expressions, they don't know really how you feel, they can't see your movement or your body language or anything. You just keep talking and you don't know the person who it is, so you just met someone, a stranger.'

21 year old young woman
(*Breaking the Chains* focus group, March 2021)

iii: Recommendations

To the Home Office:

- Work with local authorities, legal representatives and other stakeholders to establish a set of criteria for when it is and is not appropriate to conduct a remote interview, and ensure that these criteria include space for the voice of the particular claimant involved. In the case of children, these criteria should explicitly take into account the duty under section 55 of the Borders, Citizenship and Immigration Act 2009.

To the Immigration and Asylum Chamber:

- Amend the [Joint Presidential Guidance Note No 2 of 2010 \(Child, vulnerable witness and sensitive appellant guidance\)](#) to set out clear criteria for when it is and is not appropriate to hold a remote hearing in the case of a child or vulnerable adult. To further amend the

guidance to reflect some of the recommendations in the [Equal Treatment Bench Book - February 2021 \(judiciary.uk\)](#) in order to ensure that the Immigration and Asylum Chamber is aligned to other courts like the family court.

- This should factor in the section 55 duty (in the case of children) and the need for medical input as regards a child or vulnerable adult's needs. This reflects the approach of the Court of Appeal in the (pre-Covid) case of *AM (Afghanistan)*.
- Provide training to judges and HMCTS staff on the potential risks of remote hearings for children, young people and vulnerable adults, particularly those who are homeless or insecurely housed.
- When assessing the success or appropriateness of remote hearings, to seek genuine feedback from Appellants and not just the professionals involved.

RESOURCES

Resources to support unaccompanied asylum-seeking children and young people, and practitioners, during Covid-19

Very few resources have been published to provide support to asylum seeking and refugee children and young people during the pandemic. However, those listed below provide information and, in some cases, advice and support that can assist those working with these young people.

- **Coronavirus health advice**

Information on coronavirus in 60 languages from Doctors of the World:

<https://www.doctorsoftheworld.org.uk/coronavirus-information/>

- **Asylum and immigration**

Refugee Council web page setting out changes to asylum and resettlement policy and practice in response to Covid-19:

<https://www.refugeecouncil.org.uk/latest/news/changes-to-home-office-asylum-resettlement-policy-and-practice-in-response-to-covid-19/>

Helen Bamber Foundation and Freedom from Torture recommendations to the courts and tribunals on how to safeguard vulnerable people during the Covid-19 crisis:

<http://www.helenbamber.org/wp-content/uploads/2020/05/Tribunals-courts-and-COVID-recommendations-Final.pdf>

Helen Bamber Foundation recommendations to the Home Office on protecting and safeguarding survivors of Modern Slavery who have insecure immigration status during the Covid-19 crisis:

<http://www.helenbamber.org/wp-content/uploads/2020/04/HBF-Urgent-Call-for-UK-Government-to-Protect-and-Safeguard-Survivors-of-Modern-Slavery-Final.pdf>

Helen Bamber Foundation publication on how to work with survivors of human trafficking and slavery:

<http://www.helenbamber.org/wp-content/uploads/2019/01/Trauma-Informed-Code-of-Conduct.pdf>

Helen Bamber Foundation publication 'Bridging a Protection Gap: Disability and the Refugee Convention':

<https://www.helenbamber.org/resources/reportsbriefings/bridging-protection-gap-disability-and-refugee-convention>

UNHCR publication 'The Heart of the Matter: Assessing Credibility when Children Apply for Asylum in the European Union':

<https://www.refworld.org/pdfid/55014f434.pdf>

UNHCR publication 'Beyond Proof: Credibility Assessment in EU Asylum Systems':

<https://www.unhcr.org/uk/protection/operations/51a8a08a9/full-report-beyond-proof-credibility-assessment-eu-asylum-systems.html>

- **Education**

Public Health England has published a range of resources to help schools support their students' physical health and wellbeing:

<https://campaignresources.phe.gov.uk/schools>

- **Mental health – for young people**

Mental health and wellbeing resources for young asylum-seekers and refugees:

<https://www.talkofftherecord.org/covid-19/refugee-support/>

Resources for young people during the pandemic:

<https://www.annafreud.org/coronavirus-support/support-for-young-people/>

Online resources to help improve mental wellbeing if experiencing problems with sleep, low mood, anger or anxiety, from Neurolove:

<https://neurolove.org/resources/>

- **Mental health – for parents and carers**

A Help Guide for parents and carers to help children and young people cope with traumatic events including the pandemic:

<https://www.helpguide.org/articles/ptsd-trauma/helping-children-cope-with-traumatic-stress.htm>

Royal College of Psychiatrists' webpage providing advice on the causes and symptoms of traumatic stress in children, and how to get help:

<https://www.rcpsych.ac.uk/mental-health/parents-and-young-people/information-for-parents-and-carers/traumatic-stress-in-children-for-parents-and-carers>

Royal College of Psychiatrists' webpage describing different types of mental health conditions that can affect children and young people:

<https://www.rcpsych.ac.uk/mental-health/parents-and-young-people>

Establishing a trauma-informed lawyer-client relationship, and Understanding Trauma and its Impact on Child Clients, published on the American Bar Association website

https://www.lsc-sf.org/wp-content/uploads/2015/10/Article_Establishing-a-Trauma-Informed-Lawyer-Client-Relationship.pdf

and

https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/september-2014/understanding-trauma-and-its-impact-on-child-clients/

- **Social care**

Information for children in care and care leavers from Become:

<https://becomecharity.org.uk/for-young-people/care-advice-line/coronavirus-advice/>

Social work resources during coronavirus from the British Association of Social Workers (BASW):

<https://www.basw.co.uk/covid-19/social-work-resources-during-coronavirus>

Social work gateway page listing government guidance and announcements on Covid from BASW:

<https://www.basw.co.uk/media/news/2020/mar/covid-19-guidance>

- **Working remotely with vulnerable clients**

Tips for working from home / handling distressing material or calls from Petros:

<https://petros.org.uk/wp-content/uploads/2020/05/Tips-for-working-from-home.pdf>

Guidance for therapists on working remotely with children, young people and families from the Association of Child Therapists:

<https://childpsychotherapy.org.uk/sites/default/files/civicrm/persist/contribute/files/Guidance%20on%20working%20remotely%20with%20children.%20general%20%20COVID-19.pdf>

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