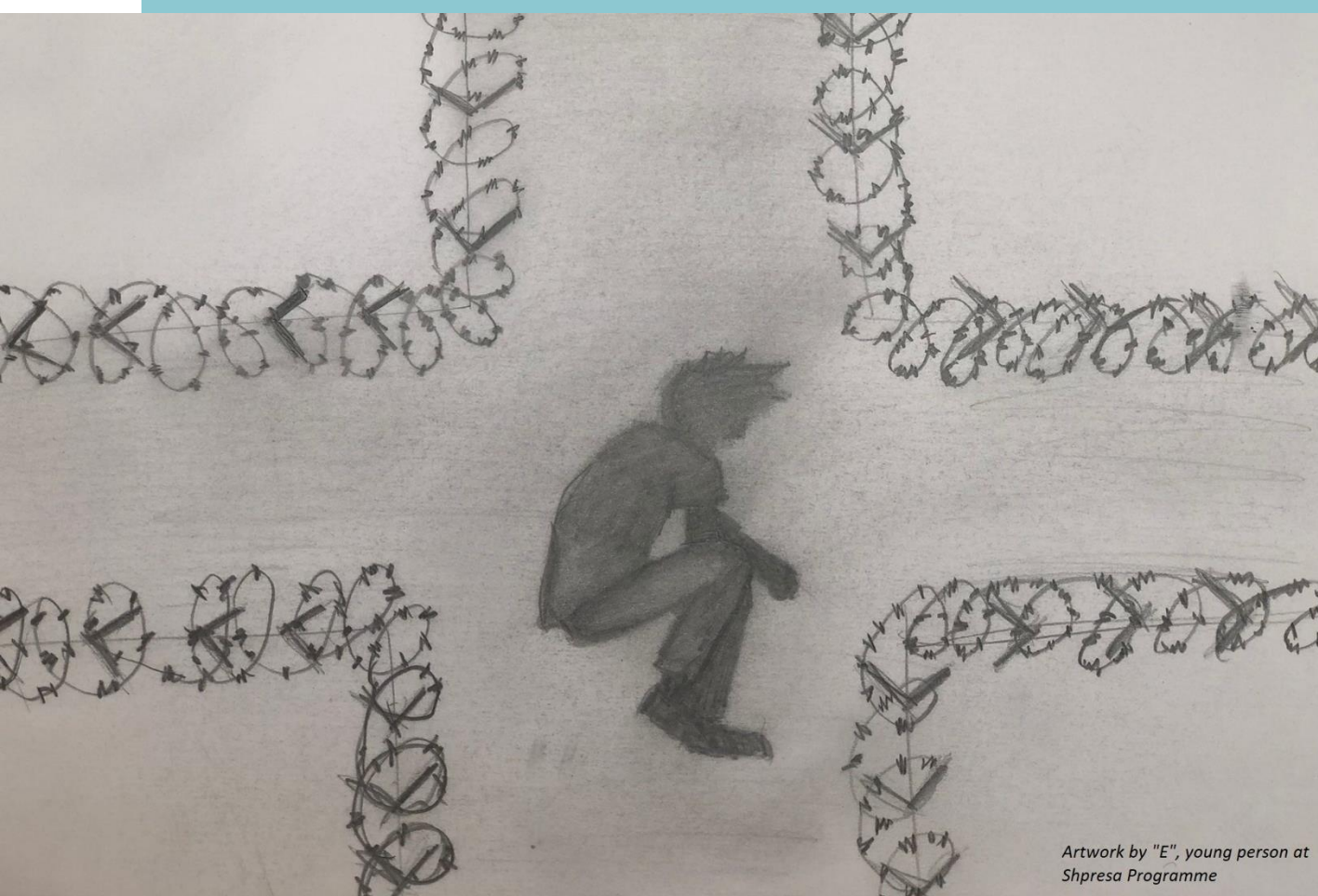


INTO THE ARMS OF TRAFFICKERS

An examination of how delays in asylum and trafficking decision-making increase the risks of trafficking for young asylum-seekers



Artwork by "E", young person at Shpresa Programme

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EXECUTIVE SUMMARY

This report looks at whether the Home Office in the administration of asylum and trafficking decisions for unaccompanied and separated children increases the risk of human trafficking, specifically by allowing lengthy delays in the decision-making processes to occur.

In 2020 there were 160 Albanian children referred to the NRM¹ as potential victims of trafficking compared with 256 in 2019 and 217 in 2018.² Albanian children are the second highest by nationality after British children in NRM referrals.

The asylum claims of 33 unaccompanied Albanian children were analysed for the days spent waiting for decisions. Seventeen of the 33 children had been referred to the NRM as potential victims of trafficking. In one of these cases a 15-year-old child victim of trafficking was made to wait over four years to get a conclusive trafficking decision, and then received an asylum decision 43 days later. In every NRM case, the asylum decision was pushed back until after a trafficking decision had been made. Long delays for asylum decisions were also experienced by children with no NRM referral, but who were equally vulnerable. In this cohort a 15-year-old was made to wait 427 days from asylum claim to interview and a further 218 days to decision.

Interviews with young Albanians seeking asylum in the UK found that young people are being kept in a desperate holding pattern for years waiting for an asylum decision, leaving them

¹ National Referral Mechanism statistics, End of Year Data Tables. 2020

² National Referral Mechanism statistics, End of Year Data Tables. 2019

unoccupied with very little money, anxious, fearful, and socially isolated. Immigration laws do not allow them to work, get apprenticeships, progress in higher education or to get a driving licence. Unable to pursue skills training or employment these vulnerable young people are deprived of both emotional and social development as they transition to adulthood. Apart from the devastating mental health issues arising from putting their lives on hold, these teenagers experience financial poverty and poverty of opportunity.

All evidence obtained for this report concludes that delays in trafficking and asylum decisions place young people at greater risk of trafficking within the UK, and specifically labour exploitation and criminal exploitation. Home Office delays are causing mental ill health, social isolation, poverty and distrust of authority. These are the same vulnerabilities that traffickers' prey upon when grooming their victims.

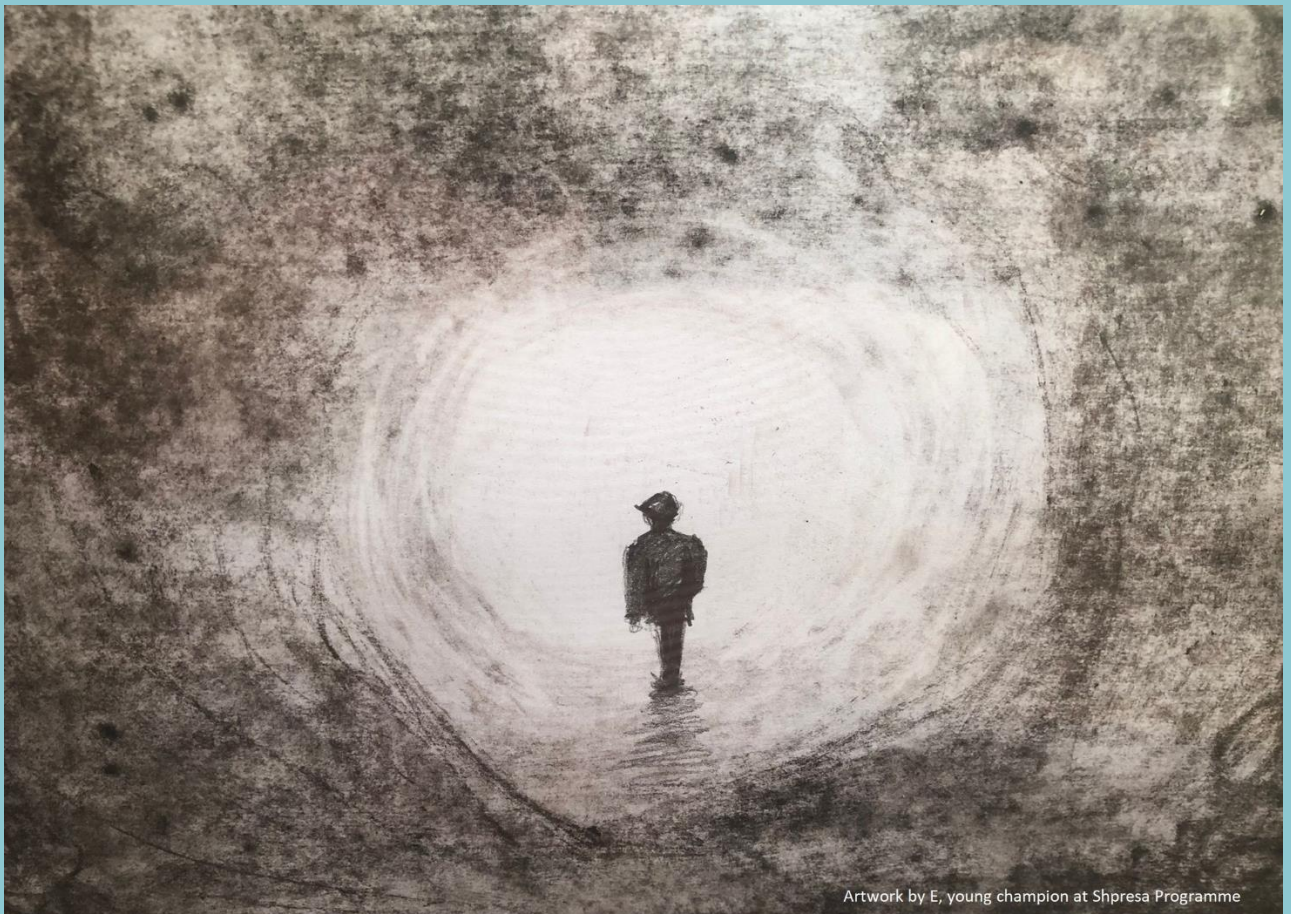
Recommendations

The evidence points to three areas for immediate improvement:

- a) Leave to remain should be granted to unaccompanied children seeking asylum as soon as their claim is made so that they are given the chance to thrive and strive in line with their peers. This will build resilience against trafficking as they transition to adulthood by offering greater stability and access to mainstream services in line with other young people.
- b) Children and young people seeking asylum should be granted permission to work, giving young people legal alternatives to the traffickers who seek to exploit their exclusion from legitimate employment and the tension between this and young people's natural desire to develop into a financially independent adulthood.
- c) Finally, it is clear from the evidence on mental health that young people are suffering significant harm and are exposed to unacceptable risk because of Home Office delays.

Decisions on protection and human rights claims and conclusive trafficking decisions should be made within six months. All actions should be informed by the best interests of the child following an agreement with key professionals involved in the child's care. Children and young people require information about the reasons for any delay, and the timeframe for resolution of this in order to plan for their own futures safely and with support from professionals.

The safety of young people is paramount, and those whose childhoods have been characterised by lack of safety and disrupted attachment to adults are particularly vulnerable. The above measures are therefore recommended as reasonable and achievable steps that must be taken to reduce the risk of re-trafficking and exploitation of asylum-seeking children and young people which is increased by the significant levels of delay in resolving their applications for asylum.



Artwork by E, young champion at Shpresa Programme

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1 INTRODUCTION

Not all unaccompanied Albanian young people will be victims of trafficking when they enter the UK. Some children arrive here in fear of their life, fleeing blood feud, domestic violence or forced marriage in Albania. However, every unaccompanied child, no matter what their circumstances in their home country, is at risk of exploitation and trafficking *after* they arrive in the UK.

This report covers two separate but related issues. The first is whether children suspected of having been trafficked to the UK become more vulnerable to being re-trafficked within the UK because of avoidable delays in the asylum and NRM processes. The second is whether Albanian children seeking asylum for other reasons such as blood feud become vulnerable to being trafficked within the UK because of long delays in getting an asylum interview or waiting excessive periods for an initial decision.

Evidence gathered for this report suggests the Home Office is impenetrable and opaque when it comes to trying to find out exactly what is causing delay in a particular case. The Home Office has been criticised in the past for its considerable administrative backlog, and no doubt the pandemic has caused further challenges, but this is only part of the story. There is a lack of transparency on the internal process that determines when individual claims are retrieved for decision or action. In the absence of any explanation or evidence provided by the Home Office to the contrary, perceptions amongst professionals involved with young Albanians that delay is by design rather than administrative backlog cannot be dismissed.

Focus group discussions held with young Albanians seeking asylum confirmed that long delays have a significant negative impact on all facets of their lives including their mental health. They had all experienced depression, stress and anxiety, compounding the effects of existing trauma. This resulted in young people being referred to NHS mental health services and prescribed medication which they didn't need when they first arrived in the UK. In one focus group of six

young Albanians, every person in the group was on prescription anti-depressants. These findings are consistent with UNHCR research in the UK, which pointed to asylum delays being a contributing factor to incidents of suicide and self-harm.³

1.1 National Referral Mechanism

The Home Office administers the Single Competent Authority (SCA) which operates the National Referral Mechanism (NRM) to ensure that victims of modern slavery are correctly identified and supported in line with the UK's international legal obligations. Potential victims are referred by authorised bodies to the SCA which gives an initial 'screening in' reasonable grounds decision within 5 days, and then makes a conclusive trafficking decision. In 2020, 10,613 potential victims of modern slavery were referred to the NRM, a similar number to 2019 and a 52% increase from 2018. In 2020, 4,946 of these referrals (47%) were for individuals who claimed they were exploited as children. The profile of child victims is changing, with UK national children being the fastest growing group in the NRM in England and Wales, in part driven by county lines activity.⁴ Albanian nationals (adults and children) make up the second largest group, after UK nationals.⁵

1.2 The inter-dependence of trafficking and asylum processes

The Home Office guidance on children's asylum claims says:

Where a child has been referred to the National Referral Mechanism (NRM) you must follow the competent authority guidance in respect of when you can take the asylum decision.⁶

³ UNHCR (2019) *Putting the child at the centre: An Analysis of the Application of the Best Interests Principle for Unaccompanied and Separated Children in the UK*. United High Commissioner for Refugees. June 2019 p44

⁴ Home Office. *Devolving Child Decision-Making Pilot Programme – General Guidance Version 1.0* Published 14 June 2021

⁵ NRM Statistics End of Year Summary 2020 [www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2020]

⁶ Home Office. *Children's asylum claims*. Version 3. Published for Home Office staff on 15 August 2019

Despite rhetoric that the asylum and NRM procedures should be independent of one another, for asylum seeking children generally, and Albanian children specifically, they appear to be mutually dependent on one another. The NRM decision maker depends upon the information obtained by means of the asylum interview; the asylum decision maker relies on the Single Competent Authority (SCA) decision in order to determine whether there are trafficking related protection needs.

When an immigration officer conducts the first welfare screening, and they also identify that the young person is potentially a victim of trafficking, they then act as First Responder for the referral to the NRM. They should complete the referral with enough information that the SCA can make the initial reasonable grounds decision and assist with information for the conclusive trafficking decision. Typically, the First Responder has the lead responsibility to make enquiries of other agencies supporting the child. If the referral is poorly prepared or inconclusive, the SCA may make a negative decision or wait for the information to be forwarded. In the absence of any other trafficking evidence being made available by the immigration officer, the asylum interview becomes the *de facto* trafficking interview for children. Evidence gathered for this report suggests that trafficking decisions for children can get delayed many months because seemingly the SCA is waiting for an asylum interview record in the absence of any other information being made available.

In summary, the Single Competent Authority and asylum decision making - two Home Office functions which should be independent of one another and structurally compatible - are now inter-dependent, causing long delays to trafficking identification and deciding asylum claims. These are delays that often push critical decisions until after the child has turned 17.5 years and potentially 'aged out' of the care system. The effect this has on traumatised young people is profound. Home Office delays cause mental ill health, social isolation, poverty, and distrust of authority. These are the vulnerabilities that traffickers' prey upon. All evidence examined suggests that Home Office delays are causing young people to be at greater risk of trafficking *within* the UK, and specifically of labour exploitation and criminal exploitation.

As at November 30th 2020 the Single Competent Authority was comprised of: Home Office Staff: 225 (181 full time and 44 part time); and Agency Staff: three (all full time).⁷ According to a parliamentary answer by the Home Office Minister in December 2020, over 350 new staff were to join the Home Office to work in the SCA before March 2021 to increase the capacity to make Conclusive Grounds decisions and this would bring down decision-making timescales for victims.⁸ The Home Office say the decrease in the number of conclusive decisions made in 2021 so far is due to resource pressures within the SCA and a subsequent reduction in capacity as the SCA trains new staff.⁹ However, the administrative backlog and potential new staffing does not explain why Albanian children as a cohort appear to wait far longer for a trafficking decision than other groups within the NRM cycle.

The Home Office Single Competent Authority made 3,086 reasonable grounds decisions in quarter 2 of 2021. Of those decisions, 89% (2,745) were positive. By contrast, in the same quarter, the SCA made only 500 conclusive grounds decisions, compared to 402 in the previous quarter and 832 in the same quarter of the previous year.

1.3 Average number of days to make a conclusive trafficking decision

In 2020, the average number of days to wait for a conclusive trafficking decision was 339, and before the pandemic in 2019 it was 345. In 2018 it was 356 days.¹⁰ The following data is taken

⁷ House of Lords Written Answer HL 10798 10.12.20

⁸ House of Lords Written Answer HL 10797 10.12.20

⁹ NRM Q2 2021. [www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2021-april-to-june/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2021-april-to-june]

¹⁰ Home Office Modern Slavery 2020 data tables. Table 30

[www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2020]

from the Home Office Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2020 data tables.¹¹ It is not disaggregated by age or nationality.

		Median	Mean
2019		345	456
	Q1	306	427
	Q2	266	419
	Q3	536	523
	Q4	424	488
2020		339	468
	Q1	302	457
	Q2	322	431
	Q3	344	444
	Q4	430	530

Average number of days taken to make conclusive grounds decisions, for decisions made each quarter:
Home Office: Modern Slavery: National Referral Mechanism and Duty to Notify Statistics. Data Table 3

1.4 Changes to the NRM – June 2021

In June 2021, after much criticism, the Home Office launched a pilot programme to devolve decision making on trafficking identification decisions. The decisions made in the pilot programme will be taken by local multi-agency partners, rather than by a Home Office SCA decision-maker. However, this pilot has significant limitations and does not involve decisions for the thousands of children, now also young adults referred to the NRM before June 2021. Any child or young person referred to the NRM as a potential victim of trafficking prior to this date,

¹¹ [www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2020]

where a conclusive case is pending will continue to have their case dealt with by the Home Office Single Competent Authority.¹² The anticipated pilot scheme is only open to children who are more than 100 days away from their 18th birthday where the safeguarding responsibility falls to one of the local authorities in the pilot.¹³ Children who are within 100 days of their 18th birthday at the time of referral will continue to have decisions made by the Home Office SCA.

The aim of the Pilot Programme is to take conclusive trafficking decisions within 90 days. Pilot Programme guidance issued by the Home Office in August 2021 states: *‘If the Pilot Site cannot make a Conclusive Grounds decision within 45 days on the evidence available, they should schedule a second meeting no later than 45 days after the meeting at which the Reasonable Grounds decision was made and consider what evidence will be needed to take the Conclusive Grounds decision.’*¹⁴

This same target has not been applied to the Home Office SCA in the most recent update to Modern Slavery statutory guidance which says: *“where possible, the SCA should seek to make a decision about a child victim before the individual reaches the age of 18, but should not do so at the expense of the child’s best interests, for example, if the SCA requires more information and this will not be available until after the child turns 18.”*¹⁵ Whilst in principle the language of best interests seems fair, it leaves it solely up to the SCA, essentially a Home Office official, to determine what is in the best interest of that young person. There are no published guidance

¹² Home Office. *Modern Slavery: Statutory Guidance for England and Wales* (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland. Version 2.3 Published June 2021.

¹³ Cardiff Council, Glasgow City Council, Hull City Council, London Borough of Barking and Dagenham, London Borough of Islington (Joint with London Borough of Camden), Newport City Council (Joint with Torfaen, Blaenau Gwent, Monmouth, and Caerphilly), North Lincolnshire Council (Joint with North East Lincolnshire Council), North Yorkshire County Council (Joint with City of York), Royal Borough of Kensington and Chelsea (Joint with Westminster City Council), Solihull Council.

¹⁴ Guidance: *Decision making guidance for pilot sites in England and Wales* (accessible version) Updated 5 August 2021 [www.gov.uk/government/publications/piloting-devolving-decision-making-for-child-victims-of-modern-slavery/decision-making-guidance-for-pilot-sites-in-england-and-wales-accessible-version].

¹⁵ Home Office. *Modern Slavery: Statutory Guidance for England and Wales* (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland. Version 2.4 §14.79

notes on how ‘best interests’ are to be assessed¹⁶ in this context. However, the Home Office statutory guidance *Every Child Matters*¹⁷ should also apply. This acknowledges the risks to children and the need for proper safeguarding and inter-agency cooperation. Anecdotally, children’s advocates claim the best interests clause is being misused to create an artificial delay in NRM decisions until closer to the child’s 18th birthday.¹⁸

The statutory guidance on timescales for adult victims now appears much looser than previous iterations of modern slavery guidance:

*14.77 There is no target to make a Conclusive Grounds decision within a specific timeframe. A decision can only be made fairly and reasonably once sufficient information has been made available to the SCA for it to complete the decision. When the SCA has received sufficient information for it to complete a decision it should seek to do so as soon as possible but only once a minimum of 45-calendar days of the Recovery Period have passed, unless the SCA has received a Request to delay the decision.*¹⁹

1.5 Nationality and Borders Bill

At the time of writing the New Immigration Plan and Nationality and Borders Bill is moving through the parliamentary stages. It includes proposals to change the NRM, reducing the number of days in the recovery period from 45 to 30 days, and a further reduction in support and protection for victims. In a letter to the Secretary of State for the Home Department, Independent Anti-Slavery Commissioner, Dame Sarah Thornton said: “*I remain concerned that*

¹⁶ See Annex III for Best Interest Determination.

¹⁷ *Every Child Matters: Change For Children*. Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children Issued under section 55 of the Borders, Citizenship and Immigration Act 2009 November 2009. [www.gov.uk/government/publications/every-child-matters-statutory-guidance].

¹⁸ Key stakeholder interviews.

¹⁹ Home Office. Modern Slavery: Statutory Guidance for England and Wales.

plans will make the identification of victims of modern slavery harder and will create additional vulnerabilities.” Dame Sara also highlighted the lack of detail on provisions for children and that the reforms must put children’s rights and protections first and decisions taken with their best interests as a priority.²⁰

1.6 European Convention on Human Rights (Article 4 and Article 8)

This report argues that by allowing delays to occur, the Home Office has not addressed relevant concerns relating to encouragement, facilitation or tolerance of trafficking (*Rantsev v Cyprus* (2010) 51 EHRR 1 §284) as required by Article 4 of the European Convention on Human Rights. This report asserts that delays in asylum and trafficking decisions for children and young people are in breach of Article 8, the right to private life where private life covers the right to develop personal identity, forge friendships and other relationships and the right to participate in essential economic, social, cultural and leisure activities.

1.7 UN Convention on the Rights of the Child

Regardless of their circumstances, all unaccompanied and separated children should be treated in line with the rights and entitlements set out in the United Nations Convention on the Rights of the Child (CRC)²¹, and other human rights instruments. As children temporarily or permanently deprived of their family and support network, they are entitled to special protection and assistance.²²

²⁰ *Dame Sara Responds to the Nationality and Borders Bill*. Press Statement 07.09.21 Office of the Independent Anti-Slavery Commissioner. [<http://www.antislaverycommissioner.co.uk/news-insights/dame-sara-responds-to-the-nationality-and-borders-bill/>]

²¹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: www.refworld.org/docid/3ae6b38f0.html

²² See Art. 20 of the UN General Assembly, Convention on the Rights of the Child.

Article 3, paragraph 1 of the CRC establishes the *“obligation to ensure that the child's best interests are appropriately integrated and consistently applied in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children.”*²³

²³ General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).
[https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf]

2. METHOD

The findings in this report are based on a literature review, case analysis, focus groups with Albanian young people seeking asylum in the UK and interviews with key professionals.

i) Literature review

The purpose of this review was to compare published research, official statistics, commentary, and government policy, against the findings from case analysis and the views of young people.

ii) Case Analysis

The immigration case records of 33 unaccompanied Albanian children were analysed for evidence of the time taken between key events in their immigration pathway.²⁴ The anonymised case details were provided by the Migrant and Refugee Children's Legal Unit (MiCLU) based at Islington Law Centre.²⁵ The anonymised data contained only the dates of key Home Office events, age at claim, gender, and the stated reason for claiming asylum. No personal histories of children were shared.

iii) Focus Groups with Young People

Three focus group sessions were held in February 2021 engaging with a total of 16 Albanian young people. The sessions were held remotely due to the Covid-19 pandemic. The focus groups were organised and supported by the organisation Shpresa Programme²⁶. Shpresa Programme (Shpresa) works to enable and promote the integration with dignity of the Albanian Speaking

²⁴ See case data tables in Annex II.

²⁵ Cases selected represent the entirety of the case cohort for which data was available at that time. It was a random sample in as far as they were all referred to MiCLU [<https://www.miclu.org>] by Shpresa Programme [<https://www.shpresaprogramme.org>].

²⁶ <https://www.shpresaprogramme.org>

Community in the UK, including Albanian children and young people seeking asylum in the UK. A separate companion document has been compiled to capture the input given directly by young people.²⁷

iv) Discussions with key professionals

Discussions with key professionals were held between November 2020 and February 2021. Due to the pandemic all discussions were held remotely over Zoom link. All professionals interviewed have direct experience in working with Albanian young people in legal practice, social work, mental health and mentoring support. The views of key professionals have been highlighted where relevant in this document.

²⁷ Christine Beddoe. *Into the Arms of Traffickers Companion Guide - Voices of the Young People*. October 2021.

3. SUMMARY FINDINGS

- Irrespective of the age at claim, there were a significant number of immigration decisions delayed until after the age of 17 years and 6 months.
- Younger children can experience longer delays than older children.
- Albanian children claiming asylum who are referred to the NRM by the Home Office at the point of asylum intake (welfare interview) experience above average delays waiting for an NRM decision when compared to the Home Office's own statistics on NRM waiting time.
- In every case where a child was referred to the NRM as a potential victim of trafficking, the asylum decision was pushed back until after the NRM decision had concluded, leaving the young person exposed to 'aging out' of care before receiving an immigration decision.
- Due to delays beyond 17.5 years a significant number of children - both NRM and non NRM - were no longer eligible for child protection support and then proceeded to appeal the decision post 18 years when the 'best interests' provisions in law were no longer applicable.
- Professionals interviewed in social work, immigration law, mental health and Albanian community outreach all agreed that young Albanians are at exceptionally high risk of being trafficked within the UK, even if they were not trafficked to the UK. The young Albanians interviewed agreed with this and had experienced either their friends or themselves being groomed and exploited while in care waiting for asylum claims to be resolved. They expressed deep anger and frustration at the Home Office for leaving children so vulnerable.

3.3 Case analysis

All 33 children in the main data set were unaccompanied children, separated from family at the time of claim. The data includes 2 females and 31 males, which approximately reflects the general position of young Albanian arrivals to the UK within the previous two years. The age at claim ranges from 11 years to 17 years and the year of claim ranges from 2012 to 2019. The case data was separated into two groups for analysis – (a) children referred into the NRM as a potential victim of trafficking (17 children) and (b) children where the need for protection and basis of claim was due to blood feud, sexuality or domestic violence (16 children).

(i) NRM referral

Of the 17 Albanian children referred to the NRM, 15 received a positive reasonable grounds decision and the case stayed within the NRM. In the 10 cases where the NRM had concluded only five received a positive conclusive grounds decision. At the research cut-off date on 28th February 2021, five NRM decisions were still pending. The ten cases that had concluded NRM were analysed to assess the waiting time between NRM Reasonable Grounds and Conclusive Grounds decision. The research showed that nine out of 17 Albanian children referred to the NRM waited over 600 days for a conclusive NRM decision, with five young people waiting over 2 years for their trafficking decision. The table below shows the days waited alongside the Home Office published data for average time taken to make a conclusive decision.²⁸ In all but one case (Neg CG), the waiting time for Albanian young people was higher than the Home Office recorded average.

²⁸ Home Office Modern Slavery 2020 Data tables. Table 30
[www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2020]

Age of child at NRM referral	Year of Conclusive Grounds	Positive or Negative CG	Days waited between RG and CG	NRM average (mean) waiting time in days
16	2014	N	217	177
15	2015	N	105	167
15	2017	N	838	354
15	2018	N	632	481
15	2018	P	684	481
17	2019	P	690	456
16	2019	P	821	456
16	2019	P	598	456
15	2020	P	1630	468
14	Undated	N	-	-

In the NRM referred group,²⁹ only four children received an immigration decision before turning 17.5 years; six received a decision when they were 17.5 -19 years; and three received a decision at age 20 or over. In every case the immigration decision was made after the NRM decision had concluded.

(ii) No NRM Referral

Of the 16 children where there was no NRM referral³⁰ six children received an immigration decision before turning 17 years and 6 months; seven received a decision when they were 17.5 – 18 years of age; and one young person received a decision at age 20. At the research cut-off date there were two cases still waiting for an initial decision. On average this cohort waited less time for a decision compared to the children referred to the NRM but they still experienced

²⁹ (1 x 11 year old, 9x 15 year old, 4 x 16 year old, 3 x 17 year old)

³⁰ (2 x 14 year old, 4 x 15 year old, 5 x 16 years old, 5 x 17 years old)

unexplained and lengthy delays in obtaining interviews and decisions. In one case a 16-year-old waited 194 days from asylum claim to asylum interview, and then a further 603 days after that for the initial asylum decision: a total of 797 days or 2 years and 2 months from claim to decision. A 15-year-old waited 427 days for an initial interview, and a further 218 days for a decision: a total of 1 year and 9 months. Seven of the 14 non-trafficking cases which had concluded at the research cut-off point were over 17.5 years of age at the time of initial asylum decision. Five of the 14 cases in which asylum decisions had been made were certified as 'clearly unfounded' (35%). A certified refusal of an asylum claim removes their right to appeal the decision from within the UK.

iii) Both NRM and no NRM

Case analysis showed that even before the pandemic, Albanian children and young people were having to wait exceptionally long periods between asylum claim and asylum interview. In the 23 cases where an asylum interview had taken place the average waiting time was 207 days between claim and interview. Within that group, the cases referred to the NRM experienced on average a longer waiting time for interview (219 days) than those cases not referred to the NRM (192 days). It was clear that the majority of NRM decisions were made only after an asylum interview was conducted.

At the research cut-off point on 28 February 2021, six of the 33 cases had not received an immigration decision, including one young person whose initial claim was made in 2017, two in 2018 and one in February 2019. All four cases had been referred to the NRM.

4. LEGAL CONTEXT

4.1 International law

The Council of Europe Convention on Action against Trafficking in Human Beings ('ECAT') is a key international convention that protects the rights of trafficking victims. The UK signed ECAT in March 2007 and ratified it in December 2008. ECAT came into force on 1 April 2009. It states at the outset that respect for victims' rights and protection of victims are "paramount objectives" of the convention.

Article 4 defines 'trafficking' for the purpose of ECAT:

a) Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of slavery, servitude or the removal of organs.

b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article.

Article 10 obliges member-states to lay down an identification process which “*duly takes into account the special situation*” of women and child victims and, in appropriate cases, issue residence permits to identified victims.

Article 13 introduces a “Recovery and Reflection Period” which addresses the position of victims who are the beneficiary of a positive “Reasonable Grounds” decision. The period provided “*shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities,*” the minimum being 30 days. In addition, a potential victim with a Reasonable Grounds decision is entitled to assistance under Article 12 ECAT which is necessary for their physical, psychological and social recovery.

Article 14 provides for residence permits, where a person is the beneficiary of a positive “Conclusive Grounds” decision. This is given effect in the UK via the Home Office’s policy, ‘*Discretionary leave considerations for victims of modern slavery*’³¹. Article 14(2) of ECAT provides that for child victims, their best interests will be an important consideration in the issuing and renewal of such residence permits.

In *EOG v SSHD* [2020] EWHC 3310 (Admin) (currently on appeal to the Court of Appeal), Mostyn J observed at [10]:

Although it is not stated explicitly, it is obvious that an underlying principle of ECAT and its Explanatory Report is that the preliminary reasonable grounds decision should be taken very quickly. This imperative of expedition is reflected in the Main Guidance paras 7.2, 14.48 and 14.57 where it is stated that a reasonable grounds decision should be made within five working days “wherever possible.”

³¹ Available at:

[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941844/dl-for-victims-of-modern-slavery-v4.0ext.pdf]

In addition to ECAT, Article 4 ECHR provides (in so far as is material for present purposes):

1. *No one shall be held in slavery or servitude.*
2. *No one shall be required to perform forced or compulsory labour...*

Article 4 ECHR, like Articles 2 and 3 ECHR, is an unqualified right, and non-derogable. In *Rantsev v Cyprus and Russia* (App no 25965/04) [2010] 51 EHRR 1, the European Court of Human Rights held that Article 4 imposes certain positive obligations in respect of trafficking:

- The obligation to put in place an appropriate legislative and administrative framework to penalise trafficking;
- The obligation to take operational measures to protect victims, or potential victims, of trafficking, where the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual has been, or was at real and immediate risk of being, trafficked or exploited;
- The obligation to investigate situations of potential trafficking.

In *TDT v SSHD* [2018] EWCA Civ 1395, the Court of Appeal considered the Article 4 ECHR obligation to take operational measures to protect. The threshold for 'credible suspicion' is a low one, per Underhill LJ at [38] of *TDT*:

The Strasbourg phrase "credible suspicion" has a slightly odd ring, but the broad sense is clear enough. It corresponds, as I have said, to the concept of "reasonable grounds for suspicion" found in the Convention and the Guidance and represents a relatively low threshold. As Burnett LJ observed in para. 35 of his judgment in, quoted above, the Court "is drawing a distinction between mere allegations and those with sufficient foundation to call for an investigation" – or, here, to call for the taking of protective measures. Mr Buttler noted that in CN v United Kingdom (2013) 56 EHRR 24 the Strasbourg

court regarded the credible suspicion threshold as having been crossed in a case where the putative victim's account of having been trafficked was "not inherently implausible."

The Court held that the credible suspicion may be met where the state knows, or ought to know, that a potential victim falls into a class known to be particularly vulnerable to being trafficked in the UK. The weight to be given to generic evidence of that kind in any particular case will depend on the strength of the association alleged and the reliability of the evidence supporting it.

4.2 UN Protocol (the Palermo Protocol)

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime was adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000. The protocol contains the internationally accepted definition of human trafficking³² which has been adopted by the majority of countries around the world. The protocol provides a shared legal basis for laws investigating and prosecuting trafficking offences in different countries. The UK ratified the Protocol in 2006 (Albania ratified it in 2002).

³² (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

The Protocol calls on State Parties to consider implementing measures for the physical, psychological and social recovery of victims, through the provision of appropriate housing, counselling and information, medical and material assistance, as well as employment and opportunities for education and training. Equally important, the UN Protocol invites State Parties to consider measures that permit migrant victims of trafficking in persons to remain in the country of detection, either temporarily or permanently.³³

Article 6, paragraph 4 says State Parties shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

Article 9, paragraph 4 calls on State Parties to address the structural factors that increase vulnerabilities to trafficking, such as poverty, underdevelopment and a lack of equal opportunity – including economic, gender, sexual orientation and/ or ethnic inequalities. This call has become particularly relevant now, as the international community prepares for the imminent global recession triggered by the COVID-19 pandemic. (UNODC p23)

4.3 Domestic law

The UK gives effect to its legal obligations under ECAT through the establishment of the **National Referral Mechanism** ('NRM') and the publication of statutory guidance, pursuant to section 49 of the Modern Slavery Act 2015.

At the time of writing, the relevant statutory guidance is set out in '*Modern Slavery: Statutory Guidance for England and Wales (under s.49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland*' (v 2.4).³⁴ Although ECAT has not been directly

³³ UNODC Global Report on Trafficking in Persons 2020. United Nations Office on Drugs and Crime. Published Feb, 2021. p23.

³⁴ Available at: www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims

incorporated into UK domestic law, it has been held by the Court that where government policy fails to apply or give effect to ECAT, it will be justiciable: see *PK (Ghana) v SSHD* [2018] EWCA Civ 98 and *MS (Pakistan) v SSHD* [2020] EWHC 3310 (Admin).

The Home Office is the designated '**Single Competent Authority**' (or 'SCA') responsible for the identification of potential victims and victims of trafficking. It is assisted through the creation of the NRM, which designates a number of statutory and voluntary organisations as 'First Responders,' who are authorised to make NRM referrals to the SCA when they encounter a potential victim.³⁵

When a person is referred into the NRM, the SCA undertakes a two-stage process:

- First, the **Reasonable Grounds** stage: are there reasonable grounds to suspect that the person is a *potential* victim of trafficking? This a filter stage. The test applied is a low threshold, described in the statutory guidance as 'I suspect but cannot prove'.³⁶³⁷
- Second, the **Conclusive Grounds** stage: if there were reasonable grounds, the SCA goes on to consider whether the person is, on the balance of probabilities, is the person a victim of trafficking? In practice, this is met where the SCA considers that it is more likely than not that the person has been trafficked. The SCA does not need to be certain³⁸.

In terms of timescales, the statutory guidance provides that:

- For a **Reasonable Grounds** decision, the expectation is that the SCA will make a decision within five working days, where possible of the NRM referral being received.³⁹ If it is

³⁵ Statutory Guidance at 4.5-4.9

³⁶ Statutory Guidance at 14.49-14.50

³⁷ Due to change in Cl.48 of the Nationality and Borders Bill from a consideration that they *may* be a victim to that they *are* a victim.

³⁸ Statutory Guidance at 14.83-14.85

³⁹ Statutory Guidance at 14.48

decided that there are reasonable grounds to accept the person as a potential victim of trafficking, the SCA must also notify the person concerned of the decision, and of their entitlement to a 45-day reflection and recovery period whilst a Conclusive Grounds decision is made on their case;

- If a positive **Reasonable Grounds** decision is made, then the case proceeds to the **Conclusive Grounds** stage. The statutory guidance provides that there is ‘no target to make a Conclusive Grounds decision within a specific timeframe. A decision can only be made fairly, and reasonably once sufficient information has been made available to the SCA for it to complete the decision. When the SCA has received sufficient information for it to complete a decision it should seek to do so as soon as possible but only once a minimum of 45-calendar days of the Recovery Period have passed, unless the SCA has received a Request to delay the decision. The 45-day period begins when the SCA makes a positive Reasonable Grounds decision.’⁴⁰
- The statutory guidance envisages a process of ‘ongoing case review.’ It provides that ‘review dates should be set to monitor the case,’ so that a Conclusive Grounds decision can be made as soon as possible.⁴¹
- If a negative decision is made, at either stage, then the potential victim can request reconsideration,⁴² where it is apparent that the decision fails to apply the statutory guidance, or if there is additional evidence available. Alternatively, they can issue a claim for judicial review, challenging the SCA’s decision. There is no right of appeal against a negative decision. Where a negative decision is challenged by way of judicial review, there is no specific timeframe for resolution, but the Court may make interim decisions or urgently manage the claim if it is justified in the circumstances.

In respect of **timescales for child victims**, the statutory guidance provides:

⁴⁰ Statutory Guidance at 14.77

⁴¹ Statutory Guidance at 14.242-14.244

⁴² Statutory Guidance at 14.220-14.235

*As in cases involving an adult, for all cases **where the potential victim is currently a child, a NRM decision should be made as soon as possible after at least 45 calendar days of the Recovery Period have passed, providing there is sufficient information to make the decision and it is in the child's best interest to make the decision at that time.***

Where possible, the SCA should seek to make a decision about a child victim before the individual reaches the age of 18, but should not do so at the expense of the child's best interests, for example, if the SCA requires more information and this will not be available until after the child turns 18.

*As in cases involving an adult, if the child is subject to criminal proceedings, **the SCA should consider the child's case as a matter of urgency and inform all interested parties as soon as the decision is made.** However, a decision should only be made where there is sufficient information available to the SCA to do so and only once a minimum of 45 calendar days of the Recovery Period have passed.⁴³ [Emphasis added]*

The issue of delay in decision-making by the SCA has been the subject of litigation in the UK Courts, most recently in *EOG v SSHD* [2020] EWHC 3310 (Admin) which is currently on appeal to the Court of Appeal. Mostyn J sitting in the High Court held:

*13. It is implicit in the terms of ECAT that the conclusive grounds decision should be taken in a reasonable time. In *R (O) v SSHD* [2019] EWHC 148 (Admin) Garnham J at [67] stated: "... **decisions must be taken in a reasonable time. What is reasonable, however, will turn on the nature of the power being exercised, the effect of exercising, and failing to exercise, the power, and all the circumstances of the case.***

4.4 Children's best interests

⁴³ Statutory Guidance at 14.78-14.80

The UK signed the UN Convention on the Rights of the Child on 19 April 1990, and it came into force on 15 January 1992. It provides, in so far as is relevant:

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

And for asylum-seeking children approaching adulthood, the UN Committee on the Rights of the Child recommends that: *"States should provide adequate follow-up, support and transition measures for children as they approach 18 years of age, particularly those leaving a care context,*

including by ensuring access to long-term regular migration status and reasonable opportunities for completing education, access to decent jobs and integrating into the society they live in.”⁴⁴

Parliament has, by enacting section 55 of the Borders, Citizenship and Immigration Act 2009 required the Tribunals (and SSHD) to treat the best interests of the child as 'a primary consideration'.⁴⁵ Section 55 provides:

55. Duty regarding the welfare of children

(1) The Secretary of State must make arrangements for ensuring that—

(a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and

(b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.

In *R (Project for the Registration of Children as British Citizens) v SSHD* [2021] EWCA Civ 193, the following principles were succinctly summarised by David Richards LJ at [70]:

70. There was no dispute before us as to the propositions established by those authorities which for present purposes may be summarised as follows:

*i) **Section 55** was enacted to give effect in domestic law, as regards immigration and nationality, to the UK's international obligations under article 3 of the 1989 United Nations Convention on the Rights of the Child (UNCRC). The UK is a party to the UNCRC and in 2008 withdrew its reservation in respect of nationality and*

⁴⁴ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and General Comment No. 23 (2017) of the Committee on the Rights of the Child on International Migration: States parties' obligations in particular with respect to countries of transit and destination, para.3. [www.refworld.org/docid/5a12942a2b.html]

⁴⁵ In *ZH (Tanzania) v SSHD* [2011] UKSC 4 per Lady Hale at §23 and Lord Kerr at §46 explained that s 55 is the domestic legal expression of the duty in art 3(1) UNCRC applied in the immigration context.

immigration matters. Article 3 provides that: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". **Although section 55 uses different language, it is conventional and convenient to refer to a duty under section 55 as being to have regard, as a primary consideration, to the best interests of the child.**

ii) **The duty is imposed on the Secretary of State. She is bound by it, save to the extent (if any) that primary legislation qualifies it; we were not referred to any qualifying legislation.**

iii) **The duty applies not only to the making of decisions in individual cases but also to the function of making subordinate legislation and rules (such as the Immigration Rules) and giving guidance.** The fact that subordinate legislation or rules are subject to the affirmative vote of either or both Houses of Parliament does not qualify the Secretary of State's statutory duty under section 55.

iv) **The best interests of the child are a primary consideration, not the primary consideration, still less the paramount consideration or a trump card.** This does, however, mean that no other consideration is inherently more significant than the best interests of the child. The question to be addressed, **if the best interests point to one conclusion, is whether the force of other considerations outweigh it.**

(v) This in turns means that **Secretary of State must identify and consider the best interests of the child or, in a case such as the present, of children more generally and must weigh those interests against countervailing considerations.**

[Emphasis added]

The Statutory Guidance – Every Child Matters recognises:

Section 55 of the Borders, Citizenship and Immigration Act 2009 (the 2009 Act) therefore places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK.

This includes a duty to make decisions that **are timely and that do not put on hold a child's growth or personal development:**

6. This guidance is issued under section 55 (3) and 55 (5) which requires any person exercising immigration, asylum, nationality and customs functions to have regard to the guidance given to them for the purpose by the Secretary of State. This means they must take this guidance into account and, if they decide to depart from it, have clear reasons for doing so. [...]

2.20. There should also be recognition that children cannot put on hold their growth or personal development until a potentially lengthy application process is resolved. Every effort must therefore be made to achieve timely decisions for them. (Emphasis added)

5. FACTORS THAT MAKE CHILDREN AND YOUNG PEOPLE VULNERABLE TO TRAFFICKING

5.1 Vulnerability

In their 2012 issue paper '*Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons*'⁴⁶ UNODC assert that vulnerability is best assessed on a case-by-case basis, taking into consideration the personal, situational or circumstantial situation of the alleged victim. Personal vulnerability for instance, may relate to a person's physical or mental disability. Situational vulnerability may relate to a person being irregularly in a foreign country in which he or she is socially or linguistically isolated. Circumstantial vulnerability may relate to a person's unemployment or economic destitution. Such vulnerabilities can be pre-existing and can also be created by the trafficker. Pre-existing vulnerability may relate (but not be limited) to poverty; mental or physical disability; youth or old age; gender; pregnancy; culture; language; belief; family situation or irregular status. Created vulnerability may relate (but not be limited) to social, cultural or linguistic isolation; irregular status; or dependency cultivated through drug addiction or a romantic or emotional attachment or through the use of cultural or religious rituals or practices.⁴⁷

Understanding what constitutes an *abuse of a position of vulnerability* is fundamental to establishing whether a young person has been trafficked. It occurs when an individual's personal,

⁴⁶ UNODC (2012) *Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons* [www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf]

⁴⁷ UNODC (2012) Guidance Note on 'abuse of a position of vulnerability' as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her.

The Children's Commissioner for England identified that children who have multiple interlinked vulnerabilities - both at the individual level (such as mental health needs) and the family level (such as neglect) - are at greater risk of exploitation. Further research by the Commissioner published in February 2021 concluded that *"The risk to the child escalates further when there is a poor institutional response, for example if a child is refused mental health treatment or if they are excluded from school"*.⁴⁸

Failure to regularise trafficked children's immigration status can increase children's vulnerability to further exploitation and abuse; particularly as they transition into adulthood (ECPAT UK, 2020, p38).

UNODC's 2020 global report on trafficking in persons identified that during the recruitment phase, traffickers employ deception through fake job advertisements or direct contact with victims pretending they want friendship. Victims are typically exposed to more coercive and often violent situations as they move on to be exploited.⁴⁹ The vulnerability that traffickers exploit relates to the higher level of risk that persons in economic need are ready to take. UNODC suggests that those in economic need may be more likely to take risks and the marginal gain potentially derived from the prospective job opportunity significantly outweighs the cost of inaction.⁵⁰ The presence of multiple layers of structural disadvantage may aggravate a situation of economic need, increasing a person's vulnerability to trafficking, even when poverty is not extreme. In these cases, a much higher level of economic security is needed to reduce susceptibility to trafficking. UNODC conclude that broad cultural acceptance of the participation

⁴⁸ Dempsey, M (2021) *Still Not Safe: The public health response to youth violence*. Children's Commissioner for England.

⁴⁹ UNODC Global Report on Trafficking in Persons 2020. United Nations Office on Drugs and Crime. Published Feb, 2021.

⁵⁰ UNODC Feb 2021 p70.

of children in the labour market can serve as a fertile ground for traffickers seeking children to exploit in labour activities. It is easier to exploit children in areas where communities are accustomed to sending children to work than in communities where child labour is generally not an acceptable practice. In such settings, child trafficking victims may be hidden in plain sight.⁵¹

5.2 Poverty and unemployment

The young people who contributed to this report said that their small weekly allowance of around £35 per week⁵² must cover many basic living costs, including food, toiletries, hygiene products, and phone top ups. It often left them without money and unable to participate in educational excursions, to buy clothes or to join with social activities. It limited their ability to travel to specialist support services and mental health support which may be out of their local area.

Children and those who do not yet have a legal right to remain in the UK are prohibited from work, including part-time jobs and access to apprenticeships. This leaves children and young people open to being exploited by “cash in hand” employers, who are looking to take advantage of their vulnerability to obtain cheap labour, by offering them work for less than the minimum wage and without providing access to employment rights and entitlements.⁵³

According to the UN Office on Drugs and Crime Global Report on Trafficking, people in economic need, those with poor mental health, undocumented migrants, and children in dysfunctional families are among those who are particularly vulnerable to traffickers. Their desperation to find

⁵¹ UNODC Feb 2021 p83.

⁵² Rates vary according to local authority arrangements.

⁵³ Yarrow, E (2019) *A Refugee And Then...* Participatory Assessment of the Reception and Early Integration of Unaccompanied Refugee Children in the UK. UN High Commission For Refugees. UNHCR § 6.2.

or retain employment, their fear of being repatriated or their health circumstances make them more vulnerable to recruitment and exploitation.⁵⁴

As Yarrow observes: “Whilst significant numbers of children go missing within the first 48 hours of being placed in care, other children may engage enthusiastically with support services when first taken into care. As time passes, however, and fears grow about the outcome of their asylum claims, social workers often notice a deterioration in children’s mental health and level of engagement. They may become increasingly distant and disillusioned, before disappearing from their placement. One social worker explained:

It’s the asylum process and length of time it takes. There’s the honeymoon period – young people are engaged, they are enthusiastic, relieved, feeling safe. They have a regular diet, they are building trust with a key link. Everything goes great for several months. Then after six months, they are learning more about their options. They are not hearing from the Home Office and the frustration starts. They can’t get to college. They can’t get a flat. They realise it’s going to be years – this might be the status quo for a long, long time. Resentment builds.[...] They are not wanting to be as open – not wanting to engage as much. And then all the strong bridges you’ve built, it ebbs away, almost to a crisis point. Some turn a corner, others decide to leave. Social worker, Scotland⁵⁵

5.3 Social exclusion

In 2016 an internal report for Croydon Council on the situation of Albanian children in their care asked stakeholders for their views on the dangers of exploitation and trafficking. The responses

⁵⁴ UNODC, Global Report on Trafficking in Persons 2020 p18 [<https://www.unodc.org/unodc/en/data-and-analysis/glotip.html>]

⁵⁵ Yarrow (2019) § 6.3

indicated a high level of concern for Albanian children being exploited before they had received a resolution of their immigration status in the UK:

Exploitation by gangs – this is a risk even before they have been refused asylum or become destitute. Many young people in semi-independent accommodation have little experience of caring for themselves and making healthy and safe life choices.

Some of the gangs specifically target unaccompanied asylum seeking children and those who have already been trafficked or are survivors of violence and abuse may have very low self-esteem and extremely limited capacity to protect themselves.

The young people have a risk of exploitation due to their regular missing / unauthorised incidents. The young people can be exploited and used as drug runners⁵⁶

The research for this report found that Albanian children seeking asylum were often not in full-time education and were frequently only provided with part-time ESOL⁵⁷ college courses. These children are then placed in a holding pattern in part-time courses waiting for an immigration decision which can take years, leaving them unoccupied with very little money and feeling isolated. Young Albanians interviewed in focus groups for this report said they had been told they can only access entry level education and not go on to higher education or apprenticeships because of their immigration status. The unfairness, the waste of talent, the demoralising impact, and sheer confusion about why any country would exclude young people from achieving education or employment prospects was profound in their contribution to this research. In Yarrow's research she found that some professionals, including social workers, appeared to

⁵⁶ *Working With Albanian Young People*. The report from a survey undertaken by Tim Sugden. IRO August 2016. L.B Croydon.

⁵⁷ English for speakers of other Languages – language learning courses.

believe that access to courses beyond ESOL is prohibited for asylum-seeking children who have not yet been granted any leave to remain in the UK and commented *“as well as holding children back and restricting their educational potential, limiting USAC’s access to courses beyond ESOL impedes their ability to interact and mix with local peers; diluting the integration benefits of being enrolled in a UK education institution.”* (Yarrow §51)

This view is entirely consistent with the views expressed by young Albanians for this research and the professionals supporting them. They are marginalised and socially isolated by not having access to higher education, apprenticeships, or employment while they are waiting for their asylum claim to be settled. They also don’t have access to level 3+ Further Education (FE) courses which have a significant work-based training element which, paired with the prohibition on legal working, leads many colleges and/or the employer partner not to enrol asylum seekers. Of note was the young people’s sophisticated understanding of how this would disadvantage them for many years to come.

5.4 Turning 18 and aging-out of care

In Yarrow’s report on the UK for UNHCR she states that if a child turns 18 years old by the time of their asylum interview, child specific procedural safeguards no longer exist. For those who are finally granted refugee status after a lengthy delay, there is a risk of undermining their ability to successfully integrate in the UK. This can be due to a range of factors, including the insecurity and uncertainty experienced awaiting a critical decision and the inability to take full advantage of educational and other opportunities in the interim.⁵⁸

This is a point that has been raised repeatedly in research. The Refugee and Migrant Children’s Consortium commented that it has been widely recognised that granting leave to children with

⁵⁸ UNHCR (2019) *Putting the child at the centre: An Analysis of the Application of the Best Interests Principle for Unaccompanied and Separated Children in the UK*. United High Commissioner for Refugees. June 2019.

a cut-off point of 18 or 17 ½ undermines the ability of the child, and the local authority supporting that child, to make long term plans for their future, and can have significant negative mental health implications for the child.⁵⁹ Significant stress and anxiety are associated with immigration processes coinciding with transitions at 18 years. Mental health difficulties impact all other aspects of young people's lives including sleeping and eating patterns, educational pathways, relationships with friends and significant others, and their ability to function on a daily basis.⁶⁰

Unlike British national or settled children, unaccompanied and separated children are required to access both the children's social care system and the immigration and asylum system, which have distinct objectives, timeframes and funding arrangements. The immigration, asylum and care planning systems are not aligned and this can undermine the application of the best interests principle.⁶¹ Services for older children seem particularly affected and there is evidence that the quality of service provision can sharply decline as they become care leavers at 18.⁶² No child in care should have their belongings packed for them and be told unawares that they must move that day.⁶³ However there is evidence that this does happen; a key stakeholder interviewed for this research said social workers were often misinformed. In one case of a young Albanian care leaver they had supported: *"They were evicted on their 18th birthday. The social worker said that the immigration matter was closed, and the young person was kicked out on that day."*⁶⁴

⁵⁹ Refugee & Migrant Children's Consortium *Best interests leave for unaccompanied migrant children Briefing paper*. Jan, 2020.

⁶⁰ Chase, E. (2017) *Health and wellbeing*, Becoming Adult Research Brief no. 5, London: UCL www.becomingadult.net

⁶¹ UNHCR (2019) *Putting the child at the centre: An Analysis of the Application of the Best Interests Principle for Unaccompanied and Separated Children in the UK*. United High Commissioner for Refugees. June 2019 p8.

⁶² Sigona, N., Chase, E., Humphris, R. (2017) *Protecting the 'best interests' of the child in transition to adulthood*, Becoming Adult Research Brief no. 3, London: UCL www.becomingadult.net

⁶³ *Careless: Helping to improve council services to children in care* (2020) Local Government & Social Care Ombudsman. December 2020.

⁶⁴ Key stakeholder interviewed February 2021.

Transition to adulthood is often a turbulent time: transitions are no longer always sequential – leaving school, work, relationship, setting up home, parenthood. Young people can become adult in one area but not in others. For many young people, their transition to adulthood can be extended and delayed until they are emotionally and financially ready and they have the qualifications they need and aspire to, so that they have the opportunity to achieve their economic potential. Young people in care, and especially those awaiting an asylum decision, do not have the same choices.⁶⁵

5.5 Depriving emotional and social development

Albanian young people and the professionals working with them have spoken of the ways in which prejudicial attitudes towards Albanians in the UK shape how the young people are treated within the asylum system.⁶⁶ The young Albanians interviewed for this research have waited years for an initial immigration decision and are living in constant fear of what will happen if they are forcibly returned to Albania. They see other young people getting a resolution to their immigration situation and moving on, even though they may have claimed around the same time or after. Most of the young people interviewed in focus groups had turned 18 years or older while waiting for Home Office decisions, and without the right to work they described their lives being on ‘pause’. Unable to progress in education or obtain apprenticeships or employment, they are deprived of both emotional and social development. They have missed out on the rights of passage into adulthood and learning skills by working part-time and getting a driving licence.

Apart from the devastating mental health issues arising from putting their lives on hold, these teenagers face stigma and isolation. They face financial poverty and poverty of opportunity. These are all indicators of a high risk of trafficking.

⁶⁵ The Children Act 1989 guidance and regulations Volume 3: planning transition to adulthood for care leavers. Publication date: October 2010; Implementation date: 1 April 2011; Revision date: January 2015
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397649/CA1989_Transitions_guidance.pdf]

⁶⁶ Alsop, R (2020) Breaking the Chains Project Interim Evaluation Report.

5.6 Right to work as a measure to prevent (re)trafficking

The European Group of Experts on Trafficking (GRETA) point out that access to employment may reduce the isolation of some asylum seekers and enable them to support themselves. This may also reduce the likelihood of accepting offers of informal employment, which may in fact be recruitment for exploitation. GRETA considers that asylum seekers, and trafficked persons amongst asylum seekers, should be allowed effective access to the labour market.⁶⁷ GRETA's position here is that access to the labour market can reduce the risk of being trafficked.

Professionals and young people contributing to this report all said the same thing, that access to employment is a measure to prevent exploitation and trafficking within the UK.

5.7 Bank accounts

In 2020, the organisation Stop the Traffick documented how survivors of trafficking and modern slavery are often excluded from opening a bank account by a range of barriers. They say it is empowering for survivors to have a bank account, card and statements with their name on. Being officially recognised by a financial institution is a positive form of recognition for survivors who might have had their identification documents stolen by traffickers. It provides the ability for survivors to receive payments that they may not have been able to receive otherwise, such as bursaries and removes the reliance on third parties. They also identified a risk of re-exploitation associated with depriving survivors of a bank account:

Survivors may hand cash to a friend or relative to look after or provide someone else's bank details to an employer or for payments such as Universal Credit. This often leads to complications and undermines the survivor's financial

⁶⁷ 10th General Report on GRETA's Activities covering the period from 1 January to 31 December 2020
GRETA: Group of Experts on Action against Trafficking in Human Beings. Council of Europe. April, 2021.

*independence, heightening the risk of re-exploitation. Taking control away from a survivor who has been exploited is highly damaging and potentially detrimental to the survivor's recovery.*⁶⁸

Young Albanians who contributed to this report expressed frustration at the extreme difficulties in getting a bank account. Having a bank account is both a symbolic issue about gaining independence, being in control and being trusted, and also a practical issue to provide basic financial security for financial transactions such as bursaries and a means of identity when you don't have a utility bill.

5.8 Depression, Trauma and Disrupted Attachment

There is good reason to believe that pre-trafficking mental health problems can increase a person's vulnerability to trafficking. As Altun et al state, *"poor mental health may... increase vulnerability to trafficking, due to factors directly associated with poor mental health, such as reduced decision-making capacity or understanding and increased dependence on others."*⁶⁹ In a historical cohort study of trafficked people in contact with secondary mental health services in South London, Oram et al stated *"poor mental health might contribute to vulnerability to trafficking, including through social marginalisation and economic insecurity. In addition to documenting a high prevalence of childhood and adulthood abuse among trafficked people with severe mental illness, we found evidence of a continued vulnerability to abuse after escaping exploitation..."*⁷⁰ In the specific context of Albania, stakeholders interviewed by Hynes et al cited mental health issues as a factor increasing vulnerability to trafficking.⁷¹

⁶⁸ STOP THE TRAFFIC (2020) Survivor Bank Accounts Report
[www.stopthetraffik.org/survivorbankaccounts/]

⁶⁹ Altun, Sukran, et al. *Mental health and human trafficking: responding to survivors' needs*. *BJPsych international* 14.1 (2017): 21-23.

⁷⁰ Oram, Siân, et al. *Characteristics of trafficked adults and children with severe mental illness: a historical cohort study*. *The Lancet Psychiatry* 2.12 (2015): 1084-1091.

⁷¹ Hynes, P et al (2019) *Between Two Fires: Understanding Vulnerabilities and the Support Needs of People from Albania, Viet Nam and Nigeria who have experienced Human Trafficking into the UK*. University of Bedfordshire and IOM.

There is specific evidence that disrupted childhood attachments increase vulnerability to trafficking. An American study, Patterson et al, found that survivors of childhood sex trafficking *“typically have insecure attachment, expressed need for belongingness, and love/attention,”* and that conflict with family and/or breakup of the household (such as by being taken into care) were risk factors. Patterson et al stated that traffickers *“served as an unhealthy and maladaptive version of what is referred to in the attachment literature as a ‘secure base’”* and that trafficking survivors *“often lack a secure base”*.⁷² Along similar lines, a qualitative study of American survivors of child sex trafficking by Cecchet and Thoburn found that vulnerability to sex trafficking was *“strongly connected to early childhood experiences as well as... deep longing for love and acceptance”* and that a *“desire to feel loved”* was cited by survivors as a reason for recruitment into the sex trade.⁷³ A review of 27 studies from 2010 to 2017 by Franchino-Olsen found that risk factors for commercial sexual exploitation of children included (inter alia) prior childhood abuse, compromised parenting and caregiver strain, conflict with parents, running away or being thrown away, negative mental health or negative view of self, and child protection involvement.⁷⁴

In a study of child trafficking survivors receiving treatment at the South London and Maudsley NHS Trust, Ottisova et al, similarly noted that *“Notes for a very high proportion of children recorded the absence of one or both parents prior to exploitation.”*⁷⁵ Similarly, a review by Wood in the British Medical Journal found *“Children who have experienced child abuse, forms of*

⁷² Hargreaves-Cormany, Holly A., and Terri D. Patterson. *Characteristics of survivors of juvenile sex trafficking: Implications for treatment and intervention initiatives*. *Aggression and violent behavior* 30 (2016): 32-39.

⁷³ Cecchet, Stacy J., and John Thoburn. *The psychological experience of child and adolescent sex trafficking in the United States: Trauma and resilience in survivors*. *Psychological trauma: theory, research, practice, and policy* 6.5 (2014): 482.

⁷⁴ Franchino-Olsen, Hannabeth. *Vulnerabilities relevant for commercial sexual exploitation of children/domestic minor sex trafficking: A systematic review of risk factors*. *Trauma, Violence, & Abuse* 22.1 (2021): 99-111.

⁷⁵ Ottisova L, Smith P, Shetty H, Stahl D, Downs J, Oram S (2018) *Psychological consequences of child trafficking: An historical cohort study of trafficked children in contact with secondary mental health services*. *PLoS ONE* 13(3): e0192321.

violence, familial dysfunction, relational loss and removal into foster care represent a disproportionate percentage of trafficked children. Children in these circumstances have often been exposed to significant relational trauma leading to complex attachment difficulties and a sense of worthlessness and shame.”⁷⁶

There is, therefore, a substantial amount of evidence that disrupted attachments, such as those arising from the loss of parents/caregivers and/or early trauma, may make children and young people more vulnerable to trafficking. Unaccompanied asylum-seeking children and young people have often experienced disrupted attachments. As Given-Wilson et al state, *“Early separation from parents or caregivers may affect young people’s ‘attachment system’ - a set of self-protective strategies which become activated in the presence of threat, and include increasing proximity to attachment figures... Some asylum seeking youth may have experienced disrupted attachments due to early parental separations or loss related to war and organised violence. Consequently their ability to trust, or relate to others, may be severely impaired.”⁷⁷*

Against this backdrop, factors that worsen unaccompanied asylum-seeking children and young people’s mental health, and/or that impair their ability to recover from past traumas, trust others and form secure relationships, should be understood as increasing their vulnerability to trafficking.

Given the evidence that poor mental health increases the vulnerability of children and young people to trafficking and exploitation, it is necessary to consider the extent to which delay in considering an asylum or trafficking claim affects the extent to which mental health treatment can promote recovery and mitigate that risk or vulnerability.

⁷⁶ Wood LCN. *Child modern slavery, trafficking and health: a practical review of factors contributing to children's vulnerability and the potential impacts of severe exploitation on health*. *BMJ Paediatr Open*. 2020;4(1):e000327. Published 2020 Jun 1. doi:10.1136/bmjpo-2018-000327

⁷⁷ 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.

In relation to impairment of recovery from existing mental health conditions, it is essential to note the extent to which insecurity and instability in relation to immigration matters may interfere with the prospects of rehabilitation or recovery within a reasonable timeframe or at all. The evidence suggests that the stress and insecurity of the asylum process may hamper recovery from mental health problems. For instance, a Norwegian study showed that asylum-seekers admitted to psychiatric facilities had much higher rates of PTSD than recognised refugees,⁷⁸ and an Irish study showed that asylum-seekers were significantly more likely than refugees to report symptoms of PTSD and depression or anxiety, and that post-migration stressors were the most significant risk factor for self-reported PTSD and depression/anxiety symptoms. There was a strong relationship between residence status and levels of post-migration stressors.⁷⁹ A 2008 overview of the literature notes that asylum-seekers' psychological health is affected by the 'seven Ds': discrimination, detention, dispersal, destitution, denial of healthcare, delayed decisions, and denial of the right to work.⁸⁰

Significantly, a Dutch study showed that the duration of the asylum procedure was an important risk factor for psychiatric disorder. When comparing groups of Iraqi asylum-seekers who had resided, respectively, less than six months and more than two years in the Netherlands, the overall prevalence of psychiatric disorders was 42% in the first group and 66.2% in the second. The prevalence rates of anxiety, depressive, and somatoform disorders were significantly higher in the second group, although the rate of PTSD did not differ.⁸¹

Similarly, an Australian position paper about the "legacy caseload" – asylum-seekers in Australia who faced long delays in the determination of their claim and were eligible only for temporary

⁷⁸ Valentina C. Iversen & Gunnar Morken (2004) *Differences in acute psychiatric admissions between asylum seekers and refugees*, *Nordic Journal of Psychiatry*, 58:6, 465-470

⁷⁹ Toar M, O'Brien KK, Fahey T. *Comparison of self-reported health & healthcare utilisation between asylum seekers and refugees: an observational study*. *BMC Public Health* 2009; 9:214.

⁸⁰ McColl, Helen, Kwame McKenzie, and Kamaldeep Bhui. *Mental healthcare of asylum-seekers and refugees*. *Advances in Psychiatric Treatment* 14.6 (2008): 452-459.

⁸¹ Laban, C. J. Gernaat, H. B., Komproe, I. H., et al (2004) *Impact of a long-term asylum procedure on the prevalence of psychiatric disorders in Iraqi asylum-seekers in the Netherlands*. *Journal of Nervous and Mental Diseases*, 192, 843–851

visas, even if their claims succeeded – identified that many asylum-seekers were suffering from “lethal hopelessness”, being at “advanced stages of feeling mentally trapped, figuratively boxed in, and especially hopeless and helpless”.⁸² An Australian study showed that, after controlling for background factors, refugees with insecure visas had significantly greater PTSD symptoms, depression symptoms, thoughts of being better off dead and suicidal intent compared to those with secure visas.⁸³

5.9 Risk of suicide and self harm

Unaccompanied asylum-seeking children are also vulnerable to suicide. A study of unaccompanied asylum-seeking children and young people in Sweden found that their rate of suicide was eight times higher than the general youth population.⁸⁴ In 2021 a coalition of UK charities raised the alarm after a charity working with young people, the Da’aro Youth Project, identified 11 deaths by suicide of unaccompanied teenage asylum-seekers.⁸⁵ There is some evidence that the asylum process is a stressor that increases the risk of suicide. In a study of suicides among asylum-seekers in the Netherlands, suicide death was higher in male asylum-seekers than in the general male population of the Netherlands (though the same was not seen in female asylum-seekers), and the asylum procedure was the most frequently reported stressor for hospital-treated suicidal behaviour.⁸⁶

⁸² Procter, Nicholas G., et al. *Lethal hopelessness: Understanding and responding to asylum seeker distress and mental deterioration. International Journal of Mental Health Nursing* 27.1 (2018): 448-454.

⁸³ Nickerson, Angela, et al. *The association between visa insecurity and mental health, disability and social engagement in refugees living in Australia. European journal of psychotraumatology* 10.1 (2019): 1688129.

⁸⁴ Mittendorfer-Rutz, Ellenor, Ana Hagström, and Anna-Clara Hollander. *High suicide rates among unaccompanied minors/youth seeking asylum in Sweden. Crisis* (2019).

⁸⁵ The Guardian. *Charities raise alarm over suicides of young asylum seekers in UK.* 19 July 2021

⁸⁶ Goosen, S., Kunst, A.E., Stronks, K. et al. *Suicide death and hospital-treated suicidal behaviour in asylum seekers in the Netherlands: a national registry-based study. BMC Public Health* 11, 484 (2011).

The evidence, therefore, strongly suggests that the insecurity of an unresolved asylum case, and the concomitant lack of secure immigration status, is a risk factor for psychiatric disorder and hampers recovery from existing psychiatric disorders. It may also increase the risk of suicide.

Evidence indicates that unaccompanied children have lower levels of contact with mental health services despite a high prevalence of mental health problems within this population⁸⁷ and in particular a high prevalence of Post Traumatic Stress Disorder ('PTSD') resulting from traumatic experiences in childhood. Despite this, separated children are less likely than accompanied refugee children to receive evidence-based interventions for specific mental health needs⁸⁸. Given the already lower likelihood of unaccompanied children accessing treatment, any further adverse impact on their prospects of accessing and/or being able to benefit from treatment has the potential to extend their vulnerability.

The NICE guidelines (2018) recommend trauma-focused therapy such as cognitive behavioural therapy for the treatment of PTSD. However, it is not recommended to be conducted with individuals for whom there is a possibility that the events that the traumatic memories relate to could re-occur. As such, a prolonged delay in reaching a decision that does not allow a child or young person to have confidence that they will not re-experience the traumatic events that led to their poor mental health is likely to prevent the child from being able to benefit from evidence-based recommended treatment.

Without treatment, the prognosis for recovery from PTSD is poor. Research has found that PTSD, particularly when related to childhood traumas, has a chronic course and does not remit

⁸⁷ Bean, T. M., Eurelings-Bontekoe, E., Mooijaart, A., & Spinhoven, P. (2006). *Factors associated with mental health service need and utilization among unaccompanied refugee adolescents*. *Adm Policy Ment Health*, 33(3), 342-355. doi:10.1007/s10488-006-0046-2;
 Sanchez-Cao, E., Kramer, T., & Hodes, M. (2013). *Psychological distress and mental health service contact of unaccompanied asylum-seeking children*. *Child Care Health Dev*, 39(5), 651-659. doi:10.1111/j.1365-2214.2012.01406.x

⁸⁸ Mitra, R., & Hodes, M. (2019). *Prevention of psychological distress and promotion of resilience amongst unaccompanied refugee minors in resettlement countries*. *Child Care Health Dev*, 45(2), 198-215. doi:10.1111/cch.12640

spontaneously⁸⁹ (Kessler et al, 1995; Kolassa et al, 2010; Chapman et al, 2011). As such, Guidelines⁹⁰ for clinical psychologists working with unaccompanied asylum-seeking children highlight the importance of access to trauma-focused interventions. However, this is contingent on it being appropriate by reference to the child's immigration status as set out above.

As such it is clear that delay in resolving asylum claims made by children and young people not only causes deterioration in their mental health, but also has the potential to hamper access to treatment and therefore recovery. This then prolongs the child's vulnerability to re-trafficking for which poor mental health is an additional risk factor.

⁸⁹ Kessler, R., Sonnega, A., Bromet, E., Hughes, M., Nelson, C. (1995) *Posttraumatic Stress Disorder in the National Comorbidity Survey*. *Arch Gen Psychiatry*. 1995;52(12):1048–1060. doi:10.1001
 Kolassa, I., Ertl, V., Eckart, C., Elbert, T. (2010) *Spontaneous Remission From PTSD Depends on the Number of Traumatic Event Types Experienced*. *Psychological Trauma Theory Research Practice and Policy* 2(3)
 Chapman, C., Mills, K., Slade, A. McFarlane, C. Bryant, R., Creamer, M., Silove, D. & Teeson, M. (2011) *Remission from post-traumatic stress disorder in the general population*. *Psychological Medicine*, 42(8), 1695-1703.doi:10.1017/S0033291711002856

⁹⁰ [Guidelines-for-working-with-UAM-1.pdf \(acpuk.org.uk\)](https://www.acpuk.org.uk/Guidelines-for-working-with-UAM-1.pdf)

6. PREVALENCE OF TRAFFICKING AND RE-TRAFFICKING

6.1 The trafficking and re-trafficking of Albanian children within the UK

In 2020 there were 160 Albanian children referred to the NRM⁹¹, compared with 256 in 2019 and 217 in 2018.⁹² Albanian children are the second highest by nationality after British children in NRM referrals.

In 2018 the University of Bedfordshire published the results of their research on the trafficking of children from Albania.⁹³ This was elaborated further in their research report collaboration with IOM *‘Between Two Fires’: Understanding Vulnerabilities and the Support Needs of People from Albania, Viet Nam and Nigeria who have experienced Human Trafficking into the UK.*⁹⁴ Using the IOM ‘Determinants of Vulnerability’ model, the researchers mapped the five categories of vulnerability for Albanian children. These are: (a) Individual, (b) Household and Family, (c) Community, (d) Structural, and (e) Situational. Within each of these five levels there are different risk and protective factors. The risk factors were those that increase vulnerability –

⁹¹ National Referral Mechanism statistics, End of Year Data Tables 2020. Table 6 [<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2020>]

⁹² National Referral Mechanism statistics, End of Year Data Tables. Table 6 2019 [<https://www.gov.uk/government/statistics/national-referral-mechanism-statistics-uk-end-of-year-summary-2019>]

⁹³ Hynes, P et al (2018) *‘Vulnerability’ To Human Trafficking: A Study Of Viet Nam, Albania, Nigeria And The UK Report of Shared Learning Event held in Tirana, Albania: 24-26 October 2017* [<https://www.beds.ac.uk/trafficking/albania/>]

⁹⁴ Hynes, P et al (2019) *Between Two Fires: Understanding Vulnerabilities and the Support Needs of People from Albania, Viet Nam and Nigeria who have experienced Human Trafficking into the UK* University of Bedfordshire and IOM [<https://www.beds.ac.uk/trafficking>]

or create space for vulnerabilities to emerge. The protective factors were those which build resilience against vulnerability. In the Albanian context special mention was made of poverty, other economic factors, low levels of education, mental health issues, forced marriage arrangements and limited options for safe and legal migration, each contributing to increased vulnerability.⁹⁵

In 2019 Asylos and the ARC Foundation published an extensive country of origin information (COI) report on Albania specifically relating to trafficked boys and young men.⁹⁶ The researchers interviewed professionals in the UK and in Albania and identified the vulnerabilities and risks specific to young Albanian males, including a general agreement that both Albanian males and females presented with a high risk of re-trafficking (pp181-186). The Home Office Country Policy Information Note on human trafficking for Albania (CPIN) published in February 2021⁹⁷ incorporates elements of the Asylos report.

In 2020 GRETA, *the Group of Experts on Action against Trafficking in Human Beings* of the Council of Europe gave their third evaluation report on Albania.⁹⁸ Also in 2020 ECPAT International published an updated Country report on child sexual exploitation and trafficking from Albania⁹⁹; and OSCE published *A Typology Of Child Trafficking Cases In Albania*.¹⁰⁰

6.2 Re-trafficking within the UK

⁹⁵ Hynes et al (2018).

⁹⁶ Asylos (2019) *Albania: Trafficked boys and young men*. ASYLOS & Asylum Research Centre [<https://www.asylos.eu/albania-report>]

⁹⁷ Country Policy and Information Note Albania: Human trafficking Version 10.0 February 2021 [www.gov.uk/government/publications/albania-country-policy-and-information-notes]

⁹⁸ Council of Europe (2020) *Evaluation Report Albania: Group of Experts on Action against Trafficking in Human Beings Access to justice and effective remedies for victims of trafficking in human beings*. GRETA Third evaluation round. Publication: 15 December 2020. [<https://www.coe.int/en/web/portal/-/greta-albania-makes-progress-in-tackling-human-trafficking-but-should-do-more>]

⁹⁹ ECPAT International. (2020). *ECPAT Country Overview: Albania*. Bangkok: ECPAT International

¹⁰⁰ Mcquade, A; Rexha, J; Trimi A (2020) *A Typology Of Child Trafficking Cases In Albania*. Organization for Security and Co-operation in Europe. (OSCE).

Knowledge about Albanian child trafficking patterns has been developing over the last five years, although there is still a paucity of detail on what happens to Albanian young people in local authority care who are trafficked within the UK, for labour, sexual or criminal exploitation. This could be because when found working illegally or caught up in criminality they are treated as offenders rather than investigated as victims. Another possible reason is the systemic failure of the Home Office to seek out and record separately the incidents of re-trafficking in the UK. The Home Office CPIN on human trafficking for Albania¹⁰¹ falls short of the standard of detail required to fully understand the vulnerability and trafficking experiences of young Albanians already in UK waiting for a resolution to their immigration status.

The UK government does not have a specific or targeted strategy to prevent the re-trafficking of children and young people who were trafficked to the UK, who become known to authorities but are subsequently re-trafficked for exploitation within the UK. Ministerial answers to parliamentary questions say the support provided by entering the NRM process deals with the prevention of re-trafficking.¹⁰² The underlying assumption that just by being 'in care' mitigates risk of re-trafficking is strongly refuted by evidence from organisations such as ECPAT UK and Missing People who have reported extensively on children and young people going missing from local authority care, presumed re-trafficked.¹⁰³ These organisations conclude that inadequate protection arrangements, poor accommodation while waiting for decisions, feelings of isolation, not being believed, and lack of trust with professionals all contributed to a greater risk of going missing back into the arms of traffickers.¹⁰⁴ The local authority care response was insufficient to prevent the pull of traffickers and therefore it could not mitigate the harmful effects of delay.

6.3 Child labour exploitation in UK

¹⁰¹ *Country Policy and Information Note Albania: Human trafficking*. Version 10.0 February 2021 [www.gov.uk/government/publications/albania-country-policy-and-information-notes]

¹⁰² House of Lords Written Answer HL Deb 22 February 2021 cW.

¹⁰³ ECPAT UK and Missing People; *Heading Back to Harm: a study on trafficked and unaccompanied children going missing from care in the UK* (2016); *Still in Harms' Way: An update report on trafficked and unaccompanied children going missing from care in the UK* (2018)

¹⁰⁴ ECPAT UK and Missing People

There is no distinct government strategy to eliminate child labour exploitation within the UK. The government's Modern Slavery strategy has not been updated since 2014.¹⁰⁵ The Modern Slavery statutory guidance, and local authority safeguarding guidance for migrant children is largely focussed on addressing the indicators of trafficking that occurred before the child arrived in the UK – and not how to identify indicators of vulnerability and trafficking while they are in care waiting for a resolution of their immigration status in the UK.

Child labour exploitation in the UK, and by extension those young people who turn 18 while being exploited, has not had much attention in policy outside of criminal exploitation such as cannabis farms and county lines related criminality or the use of children for benefit fraud, theft and pickpocketing.¹⁰⁶ However, interviews for this report suggest that children and young people that get stuck waiting years in limbo for asylum decisions are being lured into poorly paid exploitative work, exposing them to hazardous conditions and threats of violence. Their willingness to take risks with their own safety is affected by their increased hopelessness, financial poverty, mental ill health and being worn down by months and years waiting for decisions in their case.

6.4 Criminal exploitation in UK

Although there is improving data on children groomed into 'County Lines' criminal exploitation¹⁰⁷, much of it has been driven by cases of British national or resident children, yet NRM data suggests a high number of cases of Albanian trafficking referrals are linked to criminal exploitation. In 2020, out of a total of 160 referrals of Albanian children to the NRM there were 37 referrals solely for criminal exploitation, with a further 40 referrals where both criminal and

¹⁰⁵ www.gov.uk/government/publications/modern-slavery-strategy

¹⁰⁶ See for example Metropolitan Operation Golf [<https://www.europol.europa.eu/activities-services/europol-in-action/operations/operation-golf>]

¹⁰⁷ See National Crime Agency [<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/drug-trafficking/county-lines>]

labour exploitation were present. Around 30-40 cases were referred where labour exploitation was suspected or known, and less frequently reported was sexual exploitation (18).¹⁰⁸

6.5 Escalation of risk in 2020-21 because of Covid 19 lockdown arrangements

In their third briefing on *Covid-19, Vulnerability and the Safeguarding of Criminally Exploited Children*, the Nottingham University Rights Lab stated that *“The ongoing effects of the pandemic continue to fuel concerns over exposure to online harms and grooming while young people are confined to their homes.”*¹⁰⁹ They reported the increased movement of drugs on the roads is contributing to more young people being exploited through car theft; as well as an increase in the number of injuries treated in A&E as a result of road traffic accidents, police car chases and vehicles being used as weapons by perpetrators. The report links the changing trends in criminality during the pandemic to the escalation of risk to young people, particularly vulnerable young people in the care system:

We've continued to see incredibly high levels of suicide attempts. What has increased with that is the reason for those suicide attempts being online exploitation and males and females being asked to send explicit photos”.
This, it was asserted, had become more common in some County Lines, where the harbouring of indecent images was being used by the network as part of their coercive repertoire to exert control over young people.

¹⁰⁸ Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK 2020 [https://www.gov.uk/government/collections/national-referral-mechanism-statistics]

¹⁰⁹ *Covid-19, Vulnerability and the Safeguarding of Criminally Exploited Children*, Third research briefing, June 2021. University of Nottingham [www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/june/covid-19-vulnerability-and-the-safeguarding-of-criminally-exploited-children.pdf]

As well as online grooming and harm, perpetration-induced trauma and the feeling of being trapped in their exploitation were increasingly reported by young people in A&E as a reason for their deteriorating mental health.¹¹⁰

Research for the Children's Commissioner for England report *Still Not Safe* was conducted prior to the pandemic but additional comments were made by the Commissioner in her foreword to the report which address updated knowledge about how gangs are grooming children:

These gangs act like sophisticated and entrepreneurial businesses, and as we have seen many businesses adapt their models to capitalise on the pandemic, so too have criminal gangs. This research was undertaken before the pandemic, which is only likely to have increased vulnerability further. During the current lockdown, police report that away from the watchful eyes of teachers, bored and lonely children are increasingly at risk in parks and takeaways, with predators waiting to pounce. During the course of the pandemic, it has also been reported that gangs have adapted to avoid detection, recruiting local children as runners and using taxis, often booked via apps, or hire vehicles. Children exploited locally are recruited by peers or using end-to-end encrypted mass-market social media apps. While not a new phenomenon, it is one that, like remote working in our lives, has been accelerated during the pandemic.¹¹¹

The findings in research with young Albanians for this report identified isolation during the pandemic as a heightened risk factor to both trafficking and mental health issues. This is consistent with the findings of the Helen Bamber Foundation in their call to government to safeguard survivors of trafficking and modern slavery with insecure immigration status:

¹¹⁰ Covid-19, *Vulnerability and the Safeguarding of Criminally Exploited Children*, Third research briefing, June 2021. University of Nottingham

¹¹¹ Dempsey, M (2021) *Still Not Safe: The public health response to youth violence*. Children's Commissioner for England

The risks faced by survivors of Modern Slavery – which are a serious concern at any time – are compounded by the Covid-19 public health crisis. This particularly applies to those who have insecure immigration status, who are without leave to remain in the UK or have been granted short terms of leave to remain (1 year or less). Isolation, poverty and poor housing conditions, underlying health conditions, lack of access to appropriate care and essential services and experiences of marginalisation all contribute to survivors being unable to manage this crisis and to defend themselves effectively against Covid-19. Many survivors live in fear of threats and reprisals from traffickers and can face the risks of re-trafficking and other crimes being committed against them, particularly at times of crisis or increased vulnerability.¹¹²

¹¹² *THE COVID-19 PUBLIC HEALTH CRISIS: Urgent call for the UK Government to protect and safeguard survivors of Modern Slavery who have insecure immigration status.* Helen Bamber Foundation [HBF-Urgent-Call-for-UK-Government-to-Protect-and-Safeguard-Survivors-of-Modern-Slavery-Final.pdf (helenbamber.org)]

7. THE IMPACT OF DELAY ON TRAFFICKING AND RETRAFFICKING

Delays by the Home Office in making decisions for unaccompanied children seeking asylum have been criticised by children’s advocates over many years.¹¹³ It was raised by the Association of Directors of Children’s Services [ADCS] in their 2018 thematic report on Unaccompanied Asylum Seeking Children and Refugee Children:¹¹⁴

Immigration issues, include delays in Home Office decision making for 15+ age group, impacts upon a young person feeling settled. Responding local authorities felt that asylum application decisions were taking far too long – sometimes two to three years after the initial screening, creating deep anxieties for the young people concerned.” [2016, ADCS p25]

“Delays in Home Office making immigration decisions are contributing to the extension of unnecessary costs but also delaying the time it takes for young people to settle and engage in UK life. [ADCS, 2016 p32]

In 2020, ADCS and the Local Government Association [LGA] once again raised the issue in a joint response to government.¹¹⁵ They point out the negative impact of Home Office delays upon young people who transition to 18 years without a decision and call for resolution of their immigration status in the UK to be made before 18 and prior to them becoming a ‘care leaver.’

¹¹³ See especially - *Systemic Delays in the Processing of the Claims for Asylum made in the UK By Unaccompanied Asylum Seeking Children (UASC)*: Elder Rahimi Solicitors, March 2018 [Research funded by the Strategic Legal Fund]

¹¹⁴ ADCS. *Safeguarding Pressures Phase 5: Unaccompanied Asylum Seeking and Refugee Children*. Nov 2016. https://adcs.org.uk/assets/documentation/ADCS_UASC_Report_Final_FOR_PUBLICATION.pdf

¹¹⁵ ADCS and LGA: *Response to National Transfer Scheme consultation questionnaire*. October 2020.

The asylum decision-making process may result in an unaccompanied child approaching the age of 18 without a final asylum decision, with all that means for the impacts on children's wellbeing and the risk of going missing. Children should be given clarity on their status as soon as possible and before the age of 18 when they become care leavers, as it is very important that they know if their future will be in the UK or not. [ADCS & LGA, 2020]

Quick and accurate decision making is vital. Getting an asylum decision granting leave to remain is problematic and fraught with delay. Some councils report delays of two years before care leavers have their status confirmed. [ADCS & LGA, 2020]

A key function of a child's care plan is to ensure there is a long-term plan for their upbringing. This is known as permanency planning, and it identifies which option is most likely to meet the needs and wishes of the child. The definition of permanence planning was extended to incorporate where the child will live, and any harm they have suffered or are likely to suffer (the Children and Social Work Act 2017).¹¹⁶

However, pathway planning for children who are waiting months and years in a holding pattern for an immigration decision is fraught with difficulty – this comes at a time in their adolescence when education and social development is so important for their future life chances, including employment and relationships. For unaccompanied children awaiting an asylum decision the government has advised social workers that they must do 'triple pathway planning' based on the three possible outcomes of their immigration claim. In a 2019 letter to the Children's Commissioner for England, the Home Secretary said:

¹¹⁶ *Careless: Helping to improve council services to children in care* (2020) Local Government and Social Care Ombudsman. December 2020

*...we committed to sharing good practice resources for social workers and personal advisers on “triple pathway planning” to prepare unaccompanied children for all possible eventualities when they cease to be looked after children at the age of 18. We understand that this can be a period of uncertainty for the young person, as it is linked to their asylum decision. However, we also recognise that planning with three potential outcomes in mind can be challenging for social workers and personal advisers...*¹¹⁷

In the tenth GRETA report, the Group of Experts on Trafficking state that:

92. It is important that States ensure structural compatibility between the asylum process and the assistance and protection framework for trafficked persons. There can be confusion as to the relationship between the asylum determination process and identification procedures for victims of trafficking. It is important that there is a possibility for identification and asylum procedures to be conducted in parallel. Complementary procedures can ensure that trafficked persons are entitled to specific rights as victims of trafficking whilst seeking asylum.

149. It is crucial to the safety of vulnerable asylum seekers that those who have been trafficked or who are at risk are effectively identified and provided with the support, assistance and protection to which they are entitled under not only the Council of Europe Anti-Trafficking Convention but also the wider human rights regime. Therefore, it is important to ensure structural compatibility between the asylum process and the assistance and protection framework for trafficked persons. Victims of trafficking, who are also seeking asylum, must be provided with specialised support measures according to the standards of Article 12 of the Convention.

¹¹⁷ Home Office - letter to Anne Longfield. Children’s Commissioner for England dated 07.01.19 [data.parliament.uk/DepositedPapers/Files/DEP2019-0058/Letter_to_Anne_Longfield.pdf]

7.1 Delays in NRM and the impact on Asylum Decisions

The Home Office guidance on children's asylum claims says:

*Where a child has been referred to the National Referral Mechanism (NRM) you must follow the competent authority guidance in respect of when you can take the asylum decision.*¹¹⁸

The Statutory Guidance for NRM decisions says:

The SCA may receive a request to delay making a Conclusive Grounds decision; for example, until an interested party can submit further information they deem relevant to a case. [14.81]

*The SCA must consider the circumstances of the request, whether the additional information is required for the decision, and as such whether it is appropriate to keep the individual in the Recovery Period rather than proceeding with a decision. The SCA must inform the victim of the outcome of the request to delay and provide reasons if the request is refused. [14.82]*¹¹⁹

The interpretation of the guidance by Home Office officials appears to be that asylum decisions must wait until the trafficking decision has been concluded. Everything pivots on whether the NRM Single Competent Authority judges there to be enough information to make a final trafficking decision. This is highly subjective and can vary between nationalities and which authority submits the NRM referral.

¹¹⁸ Home Office. *Children's asylum claims*. Version 3. Published for Home Office staff on 15 August 2019

¹¹⁹ *Modern Slavery: Statutory Guidance for England and Wales* (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland Version 2.4 Oct 2021

The case analysis for this report demonstrates that NRM conclusive decisions for Albanian children are frequently delayed by years, for no documented reason. Any claims of administrative backlog in the NRM simply don't add up when compared to the Home Office's own statistics for average days taken to make a conclusive decision.

Research published by the Anti-Trafficking Monitoring Group in 2018 drew attention to a common experience with vulnerable young people awaiting an NRM and Asylum decision. They point out that these two significant Home Office decisions are often delayed together, and then both decisions arrive around the age of 18 or over:

Research and litigation has highlighted that many young people can wait for well over a year, sometimes two years, and become adults before receiving a decision on their asylum cases. Participants noted that there are consistently similar delays to the NRM, with asylum decisions often seeming to be further delayed by the NRM process. Often, both decisions arrive once the individual has turned 18. This high degree of uncertainty and the stress of this transition period can be very challenging for these young people. As a young person interviewed for this research stated:

"You never know when you will get your decision. They don't believe you and you just have to keep going back. You just can't move on or do anything until they decide. I felt so depressed." Young man from ECPAT UK youth group, August 2018.¹²⁰

Yarrow's research for UNHCR identified the same concern about the delays caused to the asylum process as a result of a referral to the NRM as the former will not be decided until the latter is resolved, and both processes can take years before a decision is made. Furthermore, the assessment identified a lack of transparency in the NRM process and a failure to engage

¹²⁰ Anti-Trafficking Monitoring Group (2018) *Before the Harm is Done Examining the UK's response to the prevention of trafficking* [<https://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>]

with social workers and young people about the progress of investigations and decision making.¹²¹

In their 2020 child trafficking “Snapshot” report, ECPAT UK pointed out that any significant reform to the [NRM] system has been rejected by the Home Office or considered out of scope. Important recommendations such as to set deadlines for decision making were refused.¹²² They highlight that *“a shocking 76% of all child referrals into the NRM in 2019 were still waiting for a final, ‘conclusive grounds’ decision from the Home Office as to whether they were confirmed as a victim of trafficking by the end of the year.”* [ECPAT UK, 2020, p25]

ECPAT UK pointed out that *“Huge delays for children seeking asylum have been identified, which adds to their continued sense of being in limbo and lacking stability.”* [ECPAT UK 2020, p109] *“These delays can be compounded further if the child is waiting for both an asylum determination and an NRM decision.”* [ECPAT UK 2020, p3]

In 2018 the Parliamentary Public Accounts Committee [PAC] said of NRM delays that *“The NRM process is inefficient and potential victims are caught up in the system for a long time, while waiting for a decision. For two-thirds of those referred in 2016–17, the government took longer than 90 days to make a conclusive grounds decision. The Department acknowledged that the decision-making process “is too long at the moment, particularly in relation to non-EEA nationals”.*¹²³ The Committee went further:

The average length of time for an adult conclusive grounds decision was 134 days in 2016. The Department said it had not set targets because the focus had been on making sure decisions were robust, with decision-makers given however long they needed to gather evidence and make the correct judgement.

¹²¹ Yarrow (2019) § 6.3

¹²² ECPAT UK. (2020) *Child trafficking in the UK 2020: A snapshot.*

[<https://www.ecpat.org.uk/Pages/Category/child-trafficking-and-modern-slavery-research>]

¹²³ Public Accounts Committee (2018) *Reducing modern slavery* published 2nd May 2018. §18 [<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/886/88602.htm>]

However, it added that, from listening to stakeholders and victims, it had learned that the uncertainty is “deeply unhelpful and damaging.” In addition, many victims make asylum claims and, as the Department cannot take a negative decision on an asylum claim while a person is being considered under the NRM, delays in the NRM risk slowing down asylum claims. The Department told us that it plans to put in place a target through the reformed NRM, but it could not yet say what the target would be. The Department said that the new digital NRM system will enable it to handle casework in a much more sophisticated way as it will be able to flag when cases go over a target. It told us that, as a result of the digitisation process, “There will be a much better system to enable those cases to be processed quickly.” [PAC 2018 19]

In 2014 senior official Jeremy Oppenheim was tasked by the Home Secretary to review the NRM. The review received many complaints of delays in NRM decisions. Seven years on, the numerous NRM reforms and reviews have not resulted in major improvements and delays for Albanian children have become longer - the 2014 Oppenheim Review stated that:

We have heard from those supporting victims that any delay in decisions can exacerbate a sense of confusion and fear about their future and impede them making a recovery. It should be possible in most cases, if evidence is made available by all parties involved, for a decision to be made in around 30 days. This would provide a benefit to the victim (who would not be kept anxiously waiting) and could be supported by a longer time post decision for moving to the next phase of their lives. [Oppenheim 2014. §7.2.6]

7.2 Mental health impact of delays in asylum and NRM decisions

A study of asylum-seeking unaccompanied children in Belgium found that half of the children showed signs of post-traumatic stress disorder (PTSD), and, importantly, that the PTSD seemed

to worsen rather than to recede over time.¹²⁴ Mental health specialists Hughes and Katona conclude that the asylum process causes distress with protracted periods of uncertainty.¹²⁵ UNHCR and UNICEF concluded that the ‘time factor’ for processing decisions would seem to be of urgent concern given that extending the time for processing appears to introduce stressors while worsening pre-existing vulnerabilities.¹²⁶

In participatory research with children seeking asylum in the UK, Yarrow identified the correlation between delays in decision making and vulnerability to labour exploitation:

*Delays in decision making about children’s asylum claims, as well as poor quality decision making (for example, where a child’s claim was initially rejected when it should have been accepted), lack of access to full time education (including a range of appropriate, including vocational, courses) or funding for education opportunities beyond 19 years for refugee youth who are not yet ready for work or university, and lack of support and opportunity for young people to find legal forms of employment, were all identified as factors that make unaccompanied children especially vulnerable to labour exploitation.*¹²⁷

In 2018 Elder Rahimi solicitors published critical research on *Systemic Delays In The Processing Of The Claims For Asylum Made In The UK By Unaccompanied Asylum Seeking Children (UASC)*. The aim of the Elder Rahimi report was to investigate the incidence and impact of delay in the

¹²⁴ Vervliet, M. (2013). *The trajectories of unaccompanied refugee minors: Aspirations, agency and psychosocial well-being* quoted in UNHCR (2014) *Safe & Sound: What States Can Do To Ensure Respect For The Best Interests Of Unaccompanied And Separated Children In Europe*. UNHCR & UNICEF [<https://www.refworld.org/pdfid/5423da264.pdf>]

¹²⁵ Hughes, P and Katona, C. *Refugees, Asylum and Mental Health in the UK* in Ikko, G., & Bouras, N. (Eds.). (2021). *Mind, State and Society: Social History of Psychiatry and Mental Health in Britain 1960–2010*. Cambridge: Cambridge University Press.

¹²⁶ UNHCR (2014) *Safe & Sound: What States Can Do To Ensure Respect For The Best Interests Of Unaccompanied And Separated Children In Europe*. UNHCR & UNICEF [<https://www.refworld.org/pdfid/5423da264.pdf>] p39

¹²⁷ Yarrow (2019)

asylum system on unaccompanied asylum-seeking children, providing evidence that despite the theoretical legal protections designed to ensure that claims are handled with due diligence, in practice these are not routinely applied. The report concludes that:

The overwhelming evidence obtained from interviews with young people and professionals working with them was that delay in the processing of the claim was having a significantly negative impact on their mental health. It is evident that delay can compound the effects of trauma and the asylum process on children and young people. The asylum process is itself inherently traumatising, yet the additional uncertainty at what is a critical time in a young person's development is adding to this. Importantly the lack of clear, consistent and reliable information about the causes of delay is leading to young people relying on rumours or speculating as to why their case is delayed; The seeming disparity whereby individuals who arrived at a similar time are treated very differently is having a negative impact on young persons' relationships with their peers and those advising them.

In the Elder Rahimi research all but one of the children's cases had experienced a total delay of over 18 months. Six cases had experienced a total delay of more than two years from arrival. Participants were asked about what effect the delay had or was having on their lives. The vast majority mentioned that it had caused them significant stress and anxiety. Many mentioned they were having difficulty sleeping and that this had had a knock-on effect on their daily activities.¹²⁸ As far back as 2013 the parliamentary *Joint Committee on Human Rights* held an Inquiry into the Human Rights of unaccompanied migrant children and young people in the UK. The JCHR findings included evidence on the detrimental impact of Home Office delays in children's asylum decisions. Evidence was sought from a range of specialist organisations:

¹²⁸ Elder Rahimi (2018) p15

112. The Children's Society also thought that the uncertainty and instability of discretionary leave hampered the transition into adulthood, particularly in the pathway planning process (...). Barnardo's agreed, stating that the grant of discretionary leave could leave young people "anxious and de-motivated" as they feared losing the way of life and ties they had built in the United Kingdom. It thought that trafficked young people were particularly vulnerable to such effects. Delays were also of concern. Jim Wade, a Senior Research Fellow at York University, noted that he had found that 80% of young people in one study were waiting for a final status determination; the uncertainty, he said, led to children living "with a foreshortened sense of the future". Witnesses drew attention to the impact of such uncertainty on children's development.¹²⁹

The JCHR concluded that:

118. The current decision-making framework is clearly unsatisfactory. The widespread granting of discretionary leave to remain, with further determinations delayed until just before adulthood, serves administrative convenience more than the best interests of children. We are particularly concerned because it appears that asylum claims are not being properly considered because of the availability of discretionary leave. Making decisions in this manner requires children to relive earlier traumas, punctuates children's formative years with uncertainty, and inhibits access to services and to the labour market in the future. This uncertainty is only worsened by slow processes and limited appeal rights for those with leave of less than 12 months.¹³⁰ [Author update note: a grant of leave for less than 12 months no longer prevents the recipient from appealing refusal of the protection or human rights claim.]

¹²⁹ JCHR (2013)

¹³⁰ JCHR (2013)

In 2017, the Independent Chief Inspector of Borders and Immigration Review considered the emerging evidence of lengthy delays for children from the registration of asylum claim to substantive interview, in some cases up to two years:

One concern raised by the literature is that of delays between registration and substantive interview. The Law Centre's Network research, covering a sample of 60 children who had claimed asylum between December 2013 and December 2014, recorded that in 23 cases the substantive interview took place in between 2 – 4 months from initial registration of claim. However, in some cases there were delays of over a year due in some cases to the child's circumstances but in some cases, due to Home Office errors such as failing to notify parties or issues with interpreters. In a few cases, there were delays of 18 months – 2 years and in one case a delay of 3 years and 5 months. Lengthy delays do not appear to be the norm though this needs careful monitoring following the rise in numbers of UASC since mid 2015 and the commencement of the National Transfer regime. Substantial delays are clearly not in the child's best interests as "uncertainty over their immigration status causes extreme anxiety and distress for young people."¹³¹

'The Home Office...system is a traumatising system and...we [have to] keep people at bay...and that's prolonged to the point where that actually is a traumatising process...with [the young people], when they were going to go to see the Home Office for their interview, their trauma levels were sky-high...if you think about previous trauma and not being [secure], having to flee...and

¹³¹ Matthews 2017 quoting Chase. E et al, *The emotional wellbeing of unaccompanied young people seeking asylum in the UK*, (2008), Thomas Coram Research Unit, British Association for Adoption and Fostering - page 5

*that sense of not having a place of safety... it's all linked. A trauma response is all about not being believed and not being understood.'*¹³²

Long delays in securing interviews and asylum decisions for children past their seventeenth birthday has a visible knock-on effect with local authority social work provision causing the withdrawal of support at a time when the young person is highly vulnerable and in distress. The Association of Directors of Children's Services [ADCS] & the Local Government Authority [LGA] report that the time taken by the Home Office to regularise a young person's right to remain means that the council unnecessarily incurs costs due to delays in the decision-making system.¹³³ Significantly, if a child turns 18 years old by the time of their interview, child specific procedural safeguards no longer exist. They (the young person) must attend the asylum interview on their own without a solicitor or responsible adult present.¹³⁴ Research from The Children's Society concluded: *"Immigration and asylum processes are creating long-term mental health distress for unaccompanied young people – this is made worse when young people are not able to access legal advice and representation"*.¹³⁵

¹³² Interview with Mental Health Professional - The Children's Society (2018) *Distress signals: Unaccompanied young people's struggle for mental health care*. page 39.

[<https://www.childrenssociety.org.uk/sites/default/files/2020-10/distress-signals-report.pdf>

¹³³ ADCS and LGA: Response to National Transfer Scheme consultation questionnaire. October 2020. [https://adcs.org.uk/assets/documentation/ADCS_LGA_NTS_Consultation_response.pdf]

¹³⁴ UNHCR (2019) *Putting the child at the centre: An Analysis of the Application of the Best Interests Principle for Unaccompanied and Separated Children in the UK*. United High Commissioner for Refugees. June 2019 p44

¹³⁵ The Children's Society (2018) *Distress signals: Unaccompanied young people's struggle for mental health care* [<https://www.childrenssociety.org.uk/sites/default/files/2020-10/distress-signals-report.pdf>] p72.

8. CONCLUSION

In their response to the government's New Plan for Immigration, the Association of Directors of Children's Services (ADCS) say that *"Late and delayed immigration and asylum decision-making is not in the best interests of children and young people. Not having a decision as a child approaches the age of adulthood (18) can be a factor in young people going missing from their placement, which in turn puts those young people at heightened risk of exploitation."*¹³⁶

This research was undertaken to examine whether Home Office delays in reaching trafficking and asylum decisions increase the risk to young Albanians of being trafficked and exploited. If so, what are the specific areas of risk and harm and how could they be mitigated, if at all? All evidence examined drew the same conclusion, that trafficking risks are elevated while waiting for a resolution of immigration status in the UK. As the wait goes on, the risks increase, and the protective factors fall away. The Home Office does not address this sufficiently in their guidance on child asylum claims or in Modern Slavery statutory guidance. The question arises whether this creates a tolerance within the asylum system of the risk to trafficking and re-trafficking.¹³⁷

Being 'in care' is not enough to mitigate the push and pull factors of modern slavery for children and vulnerable young adults waiting for decisions to be made. Being in the NRM is no longer a protective factor for children. Case analysis demonstrated that Albanian children referred to the NRM as potential victims of trafficking are having to wait longer than the average referral to receive a conclusive trafficking decision. There has been no explanation of why this should be the case. Asylum decisions are then only taken after the conclusion of trafficking decision. The Albanian children seeking asylum who were not referred to the NRM were equally caught in

¹³⁶ ADCS response to the Government's New Plan for Immigration – Policy Statement. April 2021. [<https://adcs.org.uk/safeguarding/article/governments-new-plan-for-immigration-policy-statement-adcs-response>]

¹³⁷ See *Rantsev v. Cyprus and Russia*, no. 25965/04, ECHR 2010 § 284

limbo waiting extremely long periods for asylum decisions with no explanation of the reasons for the delay.

As this report shows it is impossible to separate the harmful impact of waiting for an asylum decision from risks to their safety as they transition to adulthood. Of grave concern is the direct relationship between delays in decisions, deterioration in mental health and the increased risk of suicide. The months and years waiting in limbo can lead to poverty and poverty of opportunity. It can destabilise relationships, destroy their sense of self-worth, and erode trust in authority. These are the same vulnerabilities that traffickers prey upon when they target their young victims.

The safety of young people is paramount. The evidence points to three areas for immediate improvement. The first is that early leave to remain is granted to unaccompanied children seeking asylum so they are given a level chance to thrive and strive. This will build resilience against trafficking as they transition to adulthood. The second is that they should be granted permission to work, giving young people legal alternatives to the traffickers who seize upon their dreams of a better life. Finally, it is clear from the evidence on mental health that young people are suffering unimaginable harm and are exposed to unacceptable risk because of Home Office delays. Decisions on protection and human rights claims and conclusive trafficking decisions should be made within six months. All actions should be informed by the best interests of the child following an agreement with key professionals involved in the child's care. This is what safety looks like.

The recommendations made in this report are:

- a/ Leave to remain should be granted to unaccompanied child asylum seekers straightaway rather than waiting until they have been refused asylum;
- b/ Asylum seekers should have permission to work in non-shortage occupations pending resolution of their asylum claims; and

c/ Decisions on protection and human rights claims and conclusive grounds decisions should be made within six months of the claim or the referral to the NRM being made. If a decision cannot be made within that timescale, the decision maker should provide particularised reasons for not being able to do so and a new timescale for making the decision. All actions taken should be informed by the best interests of the child following an agreement with key professionals involved in the child's care.

ANNEX I – ALBANIA: COUNTRY CONTEXT

The Republic of Albania has a population of almost 3 million, 676,100 of whom are under the age of 19. In 2018, it was estimated that 29.6% of Albanian children were at risk of poverty. In 2019, figures on children's enrolment in education highlighted a significant number of children not enrolled in education, 2% of boys were not enrolled in primary education nor 6% of girls, and 17% of boys and 18% of girls were not enrolled in upper secondary education.¹³⁸

Surveys taken in Albania have found that of 5,371 children between the ages of 2-14 years old, 48%, had been subject to at least one form of psychological or physical aggression in the previous month. The societal and cultural tolerance of violence desensitises community members towards cases of violence against children, and hinders adequate steps and actions in identifying, reporting, preventing, and protecting children from violence in general as well as sexual exploitation.¹³⁹

Patriarchal traditions such as gender identities and roles, patriarchal authority, adherence to an honour and-shame system and customs of hierarchal ordering within the family have long shaped violence against women and girls in Albania, and are important to consider when analysing child sexual exploitation. However, this is not to say that boys in Albania are not also victims of child sexual exploitation. Research has found that in patriarchal societies, boys may not report sexual exploitation, as they believe it emasculates them and therefore they blame themselves for not living up to societal expectations. It's expected that numbers of boy victims in Albania are underreported.¹⁴⁰

¹³⁸ ECPAT International (2020) *ECPAT Country Overview: Albania*. Bangkok: ECPAT International.

¹³⁹ ECPAT International (2020)

¹⁴⁰ ECPAT International (2020).

Traffickers commonly force children to beg or perform other types of compelled labour, such as selling small items. Traffickers exploit Albanian children, mainly from the Romani and Balkan-Egyptian communities, for seasonal work and forced begging. Isolated reports stated that traffickers exploit children through forced labour in cannabis fields in Albania, and some traffickers are likely involved in drug trafficking. Traffickers exploit Albanian victims in sex trafficking in countries across Europe, particularly Kosovo, Greece, Italy, Belgium, Germany, Switzerland, North Macedonia, Norway, the Netherlands, and the UK. Albanian migrants who seek employment in Western Europe are vulnerable to exploitation in forced labour and forced criminality, particularly in the UK.¹⁴¹

Research has demonstrated that children living in street situations are at risk of sexual exploitation or may in fact be there because they are escaping exploitation or abuse at home. In 2018, it was estimated that over 2,500 children in Albania were begging and living on the street. In a study of Albanian boys and men that were victims of trafficking, interviewees reported that boys would be trafficked and exploited for sexual purposes at the same time as being exploited for begging, highlighting the interconnectedness of the issue.¹⁴²

ECPAT Albania estimated that in 2018 there were over 5,000 Albanian children that were victims of international trafficking.¹⁴³ A trend identified in multiple reports highlights the involvement of victims' families in children's trafficking in Albania. In a 2018 EUROPOL study, it was highlighted that criminal groups would traffic both boys and girls into the EU for sexual exploitation, and that in most of these cases, the victim's families were involved in the process to different extents – sometimes involving their children knowingly, at other times, being unaware of the risk of exploitation behind people-smuggling operations. Experts in Albania concur that families are manipulated by traffickers, believing their children will have better opportunities in EU countries rather than in Albania.¹⁴⁴

¹⁴¹ US State Department. 2021 *Trafficking in Persons Report Albania*

¹⁴² ECPAT International (2020).

¹⁴³ ECPAT International (2020).

¹⁴⁴ ECPAT International (2020).

In an Albanian study of 45 cases of potential victims of child trafficking – 31 girls and 14 boys¹⁴⁵ - the researchers identified that the extremely poor socio-economic situation of the families was recognised by child protection workers as a push factor in all the petty crime/ begging cases. That children are rendered into such circumstances by adults who are meant to protect them could be viewed as a considerable betrayal of the child's trust. Further, life on the streets exposes children to the acquaintance of adults who may exploit them further.¹⁴⁶

Elements of threat, force, and violence were more prominent in the reports concerning the cases of girls trafficked for sexual exploitation and less explicit in the cases of boys in forced begging. However, the lack of clear indicators of threat and force is likely due to the lack of proactive investigations rather than non-existence.¹⁴⁷

¹⁴⁵ Mcquade, A; Rexha, J; Trimi A (2020) *A Typology Of Child Trafficking Cases In Albania*. Organization for Security and Co-operation in Europe. (OSCE) July 2020

¹⁴⁶ Mcquade, A; Rexha, J; Trimi A (2020) *A Typology Of Child Trafficking Cases In Albania*. Organization for Security and Co-operation in Europe. (OSCE) July 2020

¹⁴⁷ Mcquade, A; Rexha, J; Trimi A (2020) *A Typology Of Child Trafficking Cases In Albania*. Organization for Security and Co-operation in Europe. (OSCE) July 2020

ANNEX II – CASE TABLES

Table 1: Cases referred to the NRM as potential victims of trafficking that had received a positive Reasonable Grounds – Albanian Males

Age at Claim	Number of days from Asylum claim to Interview	Number of days from NRM RG to CG	Number of days from Asylum Claim to Decision
11	332	191 to end Feb	494 to end Feb
15	82	1630	1673
15	58	632	798
15	131	105	485
15	184	685	841
15	187	838	954
15	Still waiting 865 to end Feb	Still waiting 872 to end Feb	Still waiting at end Feb
15	206		349
16	104	217	220
16	129	821	1021
16	163	598	624
17	161	690	1444
17	250	983	Still waiting

Table 2: Cases referred to the NRM as potential victims of trafficking that had received a positive Reasonable Grounds – Albanian Females

Age at Claim	Number of days from Asylum claim to Interview	Number of days from NRM RG to CG	Number of days from Asylum Claim to Decision
15	Still waiting at end Feb 2021 for interview (730 days)	Positive RG in March 2019 and still waiting at end Feb 2021 for CG	Still waiting at end Feb - 724 days
17	123	Neg RG	611

Table 3: Albanian Males where basis of claim involving blood feud, sexuality or domestic violence (no NRM) (total = 16)

Age at Claim	Number of days from Claim to Interview	Number of days from Interview to Decision	Number of days from Asylum Claim to Decision
14	424 to end Feb		
14	280	215	
15	224	196	420
15	427	218	645
15	88 ¹⁴⁸	118	206
15	62	99	161
16	135	40	175
16	166	246	412
16	194	603	797
16	231	141	372
16	189	56	245

¹⁴⁸ Estimate, exact date unknown

17	101	94	195
17	109	130	239
17	252	150	402
17	148	17	165
17	500 days to end Feb		

Table 4: *The NRM conclusive grounds decision and Immigration decision*

Of the 17 cases referred to the NRM, as at 28 February 2021, five are still waiting for a decision, and two were refused at the reasonable grounds stage. In the 10 remaining cases that continued to an NRM conclusive grounds decision, six cases received an immigration decision within three months of receiving the conclusive grounds trafficking decision (60%), and 30% within four weeks of the NRM decision.

Time between NRM CG and Asylum decision	
< 1 month	3 cases
1 – 3 months	3 cases
3 – 6 months	2 cases
6-12 months	1 case
12 months +	1 case

ANNEX III – BEST INTERESTS OF THE CHILD

Article 3(1) of the CRC gives every child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her. Known as the best interests principle, it broadly describes the well-being of a child and this concept is both a key principle of the Convention and a separate article. The CRC applies to all children without discrimination so that they are able to attain the full and effective enjoyment of all rights recognised in the CRC. The Committee on the Rights of the Child *General Comment No. 14* defines the best interests of the child as a threefold principle:

- A substantive right: the right of the child to have his or her best interests assessed and taken as a primary consideration.
- A legal principle: meaning that if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen.
- A rule of procedure: whenever a decision is made that will affect a specific child, group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child concerned.

The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child. The Committee has already pointed out that “*an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention.*” It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the “child's best interests” and no right could be compromised by a negative interpretation of the child's best interests.

United Kingdom

The United Nations Committee on the Rights of the Child last reviewed the UK's progress in 2016. The UK govt report is now due in Jan 2022, and the UN Committee's Concluding Observations will be published in Sept 2022. In 2016 the UN Committee on the Rights of the Child was critical that the UK still does not place best interests as a primary consideration in all legislative and policy decisions affecting children, especially children in care and asylum seeking children:

*The Committee regrets that the right of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters and judicial decisions affecting children, especially in the area of alternative care, child welfare, immigration, asylum and refugee status, criminal justice and in the armed forces. Furthermore, in some overseas territories, there is no legal provision to guarantee this right.*¹⁴⁹

In December 2020 the Children's Commissioners of the United Kingdom of Great Britain and Northern Ireland (UK) published their report to inform the United Nations Committee on the Rights of the Child's in their next periodic review of the UK.¹⁵⁰ Its key findings include significant areas of concern and highlight the lack of coherent, consistent, transparent, and systematic, disaggregated data collection concerning children across all jurisdictions, making it difficult to monitor and measure children's needs and assess the fulfilment of their rights:

¹⁴⁹ Para 26 of the Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland published in July 2016

¹⁵⁰ Report of the Children's Commissioners of the United Kingdom of Great Britain and Northern Ireland (UK) to the United Nations Committee on the Rights of the Child Examination of the Sixth and Seventh Periodic Reports of the United Kingdom of Great Britain and Northern Ireland. December 2020 [www.childrenscommissioner.gov.uk/report/report-to-the-united-nations-committee-on-the-rights-of-the-child/]

The UK ratified the UNCRC in 1991. Despite the recommendations of the UN Committee on the Rights of the Child (Committee), the UNCRC has not been incorporated into domestic legislation and remains nonjusticiable in UK courts. Despite the Committee's recommendations, the UK has not ratified the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. [p2]

The UK government does not prioritise children's rights or voices in policy or legislative processes. There is a lack, inconsistent or incorrect use of, and/or poor quality of Child Rights Impact Assessments (CRIA) in all jurisdictions. There is limited involvement of children and child rights training. CRIAs are often undertaken retrospectively, meaning any assessed negative impact cannot be addressed in advance. The quality of some CRIAs is concerning, often with no analysis of available options, no justification of selected options, no mitigation measures, and their impact on ministerial decisions is unclear. [p4]

The European Union (EU) Withdrawal Agreement Act removes the EU Charter of Fundamental Rights from UK law, weakening legal protections for children. It contains rights with no direct equivalent in UK law, including for a child's best interests to be a primary consideration in all actions taken by a public or private institution, a freestanding right to non-discrimination and the right to human dignity. It provides more powerful accountability mechanisms than are available elsewhere in UK law and its progressive framing allows for the rights to reflect social change and be interpreted in light of current culture and practice. In the absence of UNCRC incorporation, the Charter remains the one legal document where there is focused and specific recognition of children's rights. [p45]

Best Interest Assessment (BIA) v Best Interest Determination (BID)

The concepts of best interests assessment (BIA) and best interests determination (BID) can be understood as part of the same process, which starts in principle as soon as an unaccompanied or separated child is discovered and ends when the child has obtained a durable solution to her or his situation of separation and of displacement from country of origin or place of habitual residence.

The best interests assessment (BIA) describes a simple, ongoing procedure for making decisions about what immediate actions are in an individual child's best interests, e.g. protection and care interventions. BIAs can take place at various points whenever an action is planned or taken which may affect the child. They involve interviews or consultations with the child, as well as additional information gathering as needed, by professionals with the required expertise, knowledge and skills in child protection and, as appropriate, the weighing of elements of the child's circumstances. (UNHCR 2014 p19)

The best interests determination (BID) describes a more formal procedure for making significant decisions that will have a fundamental impact on a child's future development. As with BIAs, they involve interviews and consultations with the child by qualified professionals, but due to the magnitude of the decision, BIDs require in-depth information accumulated in the course of the best interests process about the child, and involve higher degrees of scrutiny and independence. The assessment of what would be in the child's best interests is thus a prerequisite for making a decision of import with or in relation to the child. (UNHCR 2014)

The CRC General Comment No. 14, para. 20 indicates that not every action taken by a State needs to incorporate a full and formal process of assessing and determining the best interests of the child. However, where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures is appropriate. This is understood to imply that the greater the impact a decision will have on the child and the child's future development, the greater the procedural safeguards that need to be put in place when making that decision. There is thus a progression in the level or number of safeguards put in place. A BIA would be conducted in decisions of less far-reaching consequences for the child, whereas more important decisions

would need to be more formally considered with strict procedural safeguards, amounting to a best interests determination, or BID. (UNHCR 2014 p20)

ANNEX IV - EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

Article 4. Prohibition of slavery and forced labour:¹⁵¹

1. *No one shall be held in slavery or servitude.*
2. *No one shall be required to perform forced or compulsory labour.*
3. *For the purpose of this article the term 'forced or compulsory labour' shall not include:*
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;*
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
 - (d) any work or service which forms part of normal civic obligations*

The object and purpose of the Convention, as an instrument for the protection of individual human beings, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective. (*Rantsev v. Cyprus and Russia*, §§ 273-275).¹⁵²

¹⁵¹ www.echr.coe.int/documents/convention_eng.pdf

¹⁵² *Principles of Interpretation* - Guide on Article 4 of the European Convention on Human Rights. Council of Europe/European Court of Human Rights. Latest update published 31.12.20 [https://www.echr.coe.int/documents/guide_art_4_eng.pdf]

The Council of Europe *Principles of Interpretation* point out that the Convention is a living instrument which must be interpreted in the light of present-day conditions, and that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies (*Siliadin v. France*, § 121; *Stummer v. Austria* [GC], § 118).¹⁵³

In *Rantsev v. Cyprus and Russia* the Court found that Article 4 requires the immigration rules of member States to address concerns relating to the encouragement, facilitation or tolerance of trafficking (*Rantsev* § 284).¹⁵⁴

From the perspective of Article 4, the concept of human trafficking relates to both national and transnational trafficking in human beings, irrespective of whether or not it is connected with organised crime (§§ 296 and 303).¹⁵⁵

Article 8– Right to respect for private and family life:

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

¹⁵³ *Principles of Interpretation* - Guide on Article 4 of the European Convention on Human Rights. © Council of Europe/European Court of Human Rights. Latest update published 31.12.20 [https://www.echr.coe.int/documents/guide_art_4_eng.pdf]

¹⁵⁴ *Rantsev v. Cyprus and Russia*, no. 25965/04, ECHR 2010 § 284 [http://hudoc.echr.coe.int/eng?i=001-96549]

¹⁵⁵ *Specific context of Human Trafficking*- Guide on Article 4 of the European Convention on Human Rights. Council of Europe/European Court of Human Rights. Latest update published 31.12.20 [https://www.echr.coe.int/documents/guide_art_4_eng.pdf]

protection of health or morals, or for the protection of the rights and freedoms of others.

The notion of private life is not limited to an “inner circle” in which the individual may live his own personal life as he chooses and exclude the outside world. Article 8 protects the right to personal development, whether in terms of personality or of personal autonomy, which is an important principle underlying the interpretation of the Article 8 guarantees. It encompasses the right for each individual to approach others in order to establish and develop relationships with them and with the outside world, that is, the right to a “private social life”.¹⁵⁶

In respect of children, who are particularly vulnerable, the measures applied by the State to protect them against acts of violence falling within the scope of Article 8 must also be effective. This should include reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge and effective deterrence against such serious breaches of personal integrity. Such measures must be aimed at ensuring respect for human dignity and protecting the best interests of the child.¹⁵⁷

Article 8 protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world.¹⁵⁸

With regard to the positive obligations that Member States have in respect of vulnerable individuals suffering from mental illness, the European Court of Human Rights has affirmed that mental health must also be regarded as a crucial part of private life associated with the aspect

¹⁵⁶ II A 1 *Applicability* § 68 - Guide on Article 8 of the European Convention on Human Rights. Council of Europe/European Court of Human Rights. Last updated 31.08.2020
[https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf]

¹⁵⁷ II B 1 *Victims of Violence* § 94 - Guide on Article 8 of the European Convention on Human Rights. Council of Europe/European Court of Human Rights. Last updated 31.08.2020
[https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf]

¹⁵⁸ II D 1 *Right to personal development and autonomy* §231 Guide on Article 8 of the European Convention on Human Rights. Council of Europe/European Court of Human Rights. Last updated 31.08.2020
[https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf]

of moral integrity. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life (*Bensaid v. the United Kingdom*, § 47).¹⁵⁹

¹⁵⁹ *Mental Illness*. Guide on Article 8 of the European Convention on Human Rights. Council of Europe/European Court of Human Rights. Last updated 31.08.2020
[https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf]

ANNEX V - EDUCATIONAL ENTITLEMENTS

Local authorities are required to promote educational achievement as an integral part of their duty to safeguard and promote the welfare of the children they look after. This means that the authority must give particular attention to the educational implications of any decision about the welfare of those children. This duty applies to all children looked after by the responsible authority, wherever they are placed. Strategic planning and day to day processes throughout the local authority should demonstrate robust procedures to monitor educational progress and a culture of proactive commitment to secure the highest educational outcomes for all looked after children.¹⁶⁰

The responsible local authority should make sure that every child they look after has an effective and high-quality personal education plan (PEP) which forms the education component of the child's overall care plan. The PEP is a record of the child's education and training. It should describe what needs to happen for a looked after child to help him/her to fulfil his/her full potential and reflect (though does not need to duplicate) any existing education plans such as a statement of special educational needs.

Statutory guidance on promoting the education of looked-after and previously looked-after children was last updated in 2018.¹⁶¹ It affirms that the local authority should ensure robust procedures are in place to monitor educational progress. This includes securing a culture of commitment to promoting the highest possible educational outcomes for unaccompanied children or child victims of modern slavery. An unaccompanied child looked after by a local authority is entitled to the same local authority support as any other looked-after child: to have

¹⁶⁰ The Children Act 1989 guidance and regulations Volume 2: Care planning, placement and case review June 2015

¹⁶¹ <https://www.gov.uk/government/publications/promoting-the-education-of-looked-after-children>

a safe and stable placement; to receive the care that they need to thrive; and the support they need to fulfil their educational and other outcomes. (DfE 2018 13-15)

ANNEX VI - THE CHILDREN AND SOCIAL WORK ACT 2017

The Children and Social Work Act 2017 adds a new provision to the Children Act 1989, extending the entitlement to a Personal Advisor (PA) beyond the age of 21 to all care leavers up to 25 years old, whether or not they are in education or training. Local authorities now have a responsibility to make the offer of a PA at least once a year to care leavers, and for them to carry out a needs assessment and to prepare a pathway plan for the care leaver.

The Act introduces Corporate Parenting Principles which are intended to change local authority culture so that all staff and departments consider the impact of their work on children and young people for whom the local authority is the corporate parent, as well as on those under 25 who were previously in the care of a local authority.

The Corporate Parenting Principles state that English local authorities (including county, district, borough and combined authorities) must 'have regard to the need' to take certain actions in their work for children in care and care leavers. These are:

- (a) to act in the best interests, and promote the physical and mental health and well-being, of those children and young people;*
- (b) to encourage those children and young people to express their views, wishes and feelings;*
- (c) to take into account the views, wishes and feelings of those children and young people;*
- (d) to help those children and young people gain access to, and make the best use of, services provided by the local authority and its relevant partners;*
- (e) to promote high aspirations, and seek to secure the best outcomes, for those children and young people;*

(f) for those children and young people to be safe, and for stability in their home lives, relationships and education or work;

(g) to prepare those children and young people for adulthood and independent living.¹⁶²

¹⁶² Children England. Children and Social Work Act 2017. Briefing note.
[<https://www.childrenengland.org.uk/children-and-social-work-act-2017>]

ANNEX VII – STATUTORY GUIDANCE: CARE OF UNACCOMPANIED MIGRANT CHILDREN AND CHILD VICTIMS OF MODERN SLAVERY (2017)

Statutory guidance was published by the Department of Education in November 2017 and issued under section 7 of the Local Authority Social Services Act 1970.¹⁶³ It requires local authorities, in exercising their social services functions, to act under the general guidance of the Secretary of State. Although the guidance is addressed to Chief Executives, Directors of Children’s Services and Lead Members for Children’s Services, there are a significant number of professionals who it has relevance for, including Home Office immigration staff.

Case Review

The Statutory Guidance reflects the importance of timely collaboration and working together, especially in the Case Review event established by the Home Office Asylum procedures¹⁶⁴ for unaccompanied children seeking asylum:

22. Social workers will be approached by the Home Office to participate in a case review, which is intended to explain the asylum process, ensure the child has immigration legal representation, check progress in completing the Statement of Evidence Form (SEF) and confirm that the child is ready to be

¹⁶³ *Care of unaccompanied migrant children and child victims of modern slavery. Statutory guidance for local authorities.* November 2017.

[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656429/UASC_Statutory_Guidance_2017.pdf]

¹⁶⁴ Processing children's asylum claims. Home Office last updated 31 December 2020.

[www.gov.uk/government/publications/processing-an-asylum-application-from-a-child-instruction]

interviewed. The review will normally consist of a telephone call or conference call. Social workers will also be asked to complete the Current Circumstances Form – Part 1. This provides an opportunity for the social worker to offer information they believe the Home Office should take into account before a decision is taken on the child’s asylum claim. In some cases, a social worker may be asked to complete the Current Circumstances Form – Part 2. These forms are normally used where a child has been refused asylum and the Home Office is considering returning the child to their home country. This form provides the social worker with an opportunity to contribute any information that may be relevant about the child and the proposed return to their home country.

23. The Home Office is under a duty to take account of the need to safeguard and promote the welfare of children in carrying out its asylum functions. These processes are therefore intended to create opportunities for those working with unaccompanied children to be able to provide information about the child, which may be relevant to their asylum decision.¹⁶⁵

The case review should take place before the substantive asylum interview. The Law Centre’s Network research suggests that “*this was not a first event but a ‘non-event’*” which rarely took place.¹⁶⁶ The meeting (between immigration officer and social worker) should happen at a reasonable time before the substantive asylum interview and guidance states that its purpose is to explain the asylum process and family tracing process, ensure the child has legal representation, check on SEF progress, and reiterate the purpose of the Current Circumstances Form. The HO decision-making team then sends a form called “Current Circumstance Form Part 1” to the child’s social worker to be returned one week prior to the substantive asylum interview,

¹⁶⁵ www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children

¹⁶⁶ Matthews (2017) p38

giving information that the HO should take into account before a decision on the asylum claim is made.¹⁶⁷

¹⁶⁷ UNHCR (2019) *Putting the child at the centre: An Analysis of the Application of the Best Interests Principle for Unaccompanied and Separated Children in the UK*. United High Commissioner for Refugees. June 2019 p25

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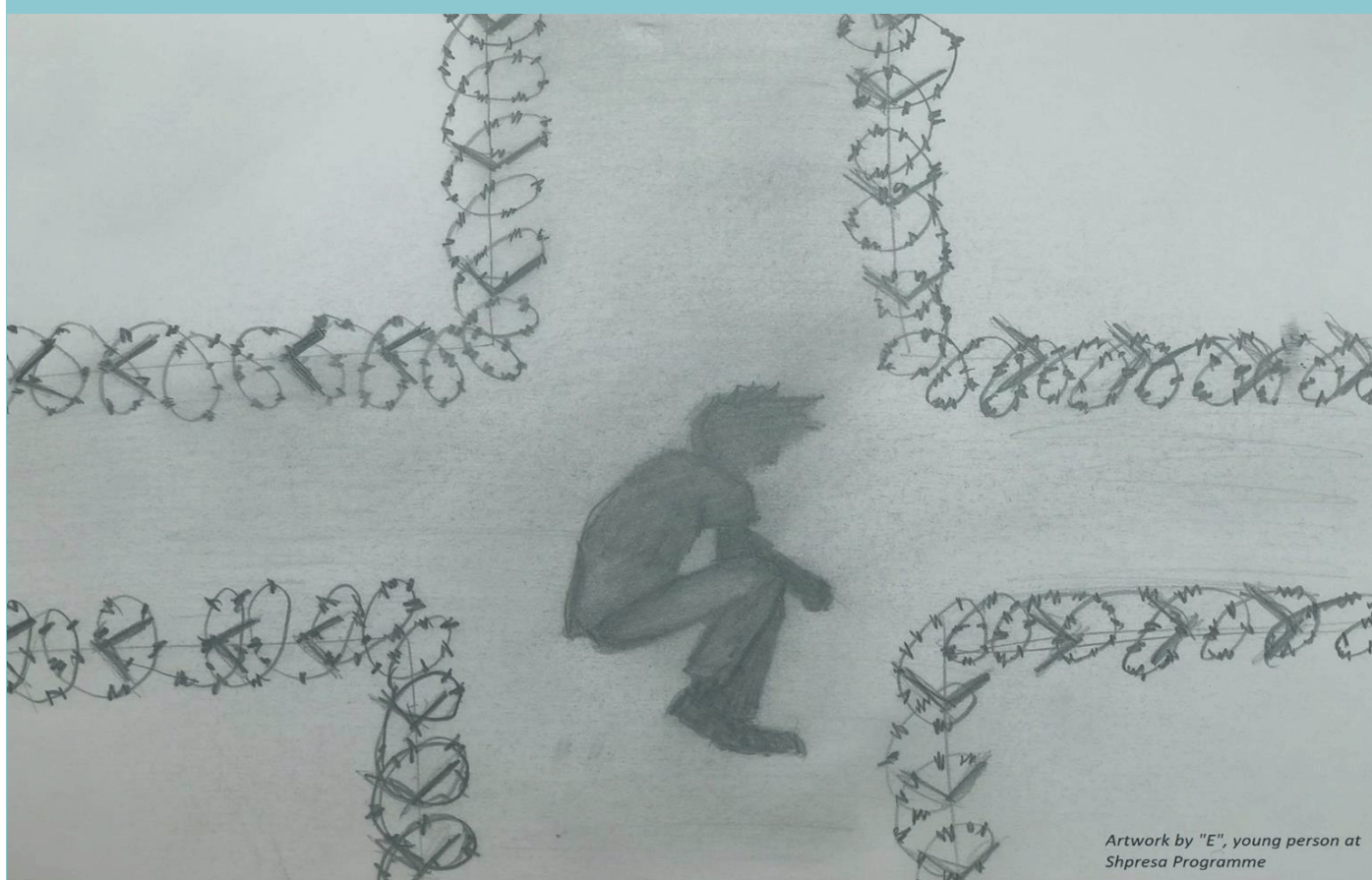
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Artwork by "E", young person at Shpresa Programme