

**Office of the Children's Commissioner**

**"What's going to happen  
tomorrow?"**

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**Unaccompanied children refused  
asylum**

**April 2014**

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## About the Office of the Children's Commissioner

The Office of the Children's Commissioner (OCC) is a national public sector organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. We promote and protect children's rights in accordance with the United Nations Convention on the Rights of the Child and, as appropriate, other human rights legislation and conventions.

We do this by listening to what children and young people say about things that affect them and encouraging adults making decisions to take their views and interests into account.

We publish evidence, including that which we collect directly from children and young people, bringing matters that affect their rights to the attention of Parliament, the media, children and young people themselves, and society at large. We also provide advice on children's rights to policy-makers, practitioners and others.

The post of Children's Commissioner for England was established by the Children Act 2004. The Act makes us responsible for working on behalf of all children in England and in particular, those whose voices are least likely to be heard. It says we must speak for wider groups of children on the issues that are not-devolved to regional Governments. These include immigration, for the whole of the UK, and youth justice, for England and Wales.

The Children and Families Act 2014 changed the Children's Commissioner's remit and role. It provided the legal mandate for the Commissioner and those who work in support of her remit at the Office of the Children's Commissioner to promote and protect children's rights. In particular, we are expected to focus on the rights of children within the new section 8A of the Children Act 2004, or other groups of children whom we consider are at particular risk of having their rights infringed. This includes those who are in or leaving care or living away from home, and those receiving social care services. The Bill also allows us to provide advice and assistance to and to represent these children.

## **Our vision**

A society where children and young people's rights are realised, where their views shape decisions made about their lives and they respect the rights of others.

## **Our mission**

We will promote and protect the rights of children in England. We will do this by involving children and young people in our work and ensuring their voices are heard. We will use our statutory powers to undertake inquiries, and our position to engage, advise and influence those making decisions that affect children and young people.

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### **Adrian Matthews**

Principal Policy Adviser (Asylum and Immigration)  
Office of the Children's Commissioner  
April 2014

## Foreword by the Children's Commissioner

During 2012 I was approached by the Director of Children's Services from a local authority asking whether I could open a discussion with officials in the Home Office and Department for Education about the numbers of former unaccompanied asylum seeking children in their leaving care service. These were not asylum seekers who had been recognised as refugees but were young people who had arrived as unaccompanied children and had been unsuccessful in their asylum claim. They had been granted only limited permission to stay while they remained children, on the grounds that there were no adequate reception arrangements for them to be returned to. I was told most no longer received grant funding from the Home Office because they had exhausted their asylum claim, had turned 18, and therefore were expected to leave the UK. Only small numbers of these young people were actually being removed or were returning of their own volition.

In the UK, the number of unaccompanied asylum seeking children and young people is small. It has been shrinking year on year. This reduction in numbers has resulted in a shift in the nature of the population, leaving greater numbers of over 18's in the UK than unaccompanied children being cared for by local authorities. It is timely that my Office should have focused some of its work during 2013–14 on the situation of these older young people.

My statutory remit under the 2004 Children Act allows me to consider the situation of young people up to 21 if they have been in the care system. The Children and Families Act 2014 which amends that 2004 legislation and strengthens my role and remit, gives me greater scope to consider some groups of young people up to the age of 25. These young people are among those groups.

The primary focus of this investigation was on obtaining the views and experiences of this specific group of young people, and finding out what it means for them being in this situation, in terms of how they live, think and feel. These are young people in precarious situations and one young person, in sharing their views, described the process as like 'unwrapping the bandages'. This reveals just some of the difficulty faced in helping the young people share their views. A great deal of care and consideration was given to eliciting their voices in a way that was safe and supportive and we are very grateful to the local authorities and NGOs who helped us to do this.

How these young people have ended up in such difficult personal situations should be placed in its legislative and policy context and the report therefore also explores this. Central to these young people's lives are their local authority carers and the lawyers who represent them in their asylum claims

Representatives of both have been interviewed as part of this work, and what they said serves to illuminate the context in which a young person's journey to having no lawful status takes place.

The recommendations in this report concerns two broad areas of policy. We wanted to answer the question: 'What needs to be done to ensure young people seeking asylum can properly put their case before the decision maker?' This goes to the heart of Article 12 of the UN Convention on the Rights of the Child, which requires State Parties ensure that the child is provided with the opportunity to be heard in any judicial and administrative proceedings affecting her or him. The recommendations at the end of chapter 3 address this issue. Our hope is that in implementing the recommendations fewer children will become Appeal Rights Exhausted young adults.

The second area of policy is perhaps more challenging as it looks at those who have spent their formative years in the UK. The passage of time in these crucial formative years changes them in many ways from who they were before they left their homelands and travelled to the UK; arriving as children, and now looking straight at adulthood as people who have grown up here. They are looking, also, at being told they do not meet the standards for being granted asylum. In this section we attempt to answer this question: 'What more could be done to ensure the safety and wellbeing of, and a successful transition into adulthood for, those found not to be need the UK's permanent protection?'

We appreciate that these two policy strands and attendant challenges would be tough issues for any UK Government to tackle. Nevertheless, backed as this report is by powerful accounts of personal lived experiences by the young people affected, I now urge those who consider our recommendations to bear in mind that these young people are emerging into adulthood alone, in the most difficult of circumstances. If we can work with them, harnessing their energy and commitment to rebuilding their fractured childhoods, surely we can all benefit. They are asking us to listen, and having listened to hear and heed them. And so am I.



**Dr Maggie Atkinson**  
**Children's Commissioner for England**

## Executive summary

This report brings together a range of concerns that the Office of the Children's Commissioner has had for a number of years about how unaccompanied children navigate the asylum system they are channelled through when seeking permission (leave) to remain in the United Kingdom.

The primary focus of the research for this report was on young people who had been unsuccessful in their asylum claims and who were now young adults (or on the cusp of becoming so). These young people are expected to leave the UK and return to their countries of origin – often war zones or countries whose Governments violate the rights of its citizens. Their voices and experiences feature throughout.

The report is presented in two halves. Part 1 defines what is meant by unaccompanied children, provides an overview of their numbers in Europe and the UK, and looks at what happens to those whose claims are unsuccessful. It also considers care arrangements and the impact of how losing their asylum claim affected their status in the care system. The final chapter in part 1 reviews the legal assistance available to help children and young people put their cases before decision makers. At the end of part 1 we make a series of recommendations to Government, the Legal Aid Agency and others designed to allow children to participate fully and have their voice heard in legal proceedings that affect their lives and outcomes.

Part 2 focuses on what young people told us about their journey from leaving their own country to final refusal of asylum, and the barriers they face in returning home. It highlights what would be good practice for agencies in dealing with unaccompanied children in the asylum system.

The conclusion of this report considers how the Government might reconfigure current arrangements for those who do not meet the stringent criteria for asylum to provide a more realistic prospect of them leaving the UK at an appropriate time. The approach builds on discussions that have emerged in Europe suggesting that young migrants should be permitted to remain in the host state to complete a life project that prepares them for return to their country of origin or moving on elsewhere. At the end of part 2 we make a series of recommendations on how this may be achieved.

### **Part 1**

#### **Unaccompanied children arriving in Europe**

Unaccompanied children are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Each year, several thousand unaccompanied children arrive in Europe in the hope of finding protection,



safety and a chance to build a new life. Many claim asylum.

In 2012, the United Kingdom was the fifth top destination country in Europe for an unaccompanied child to submit an asylum claim in, behind Sweden, Germany, Belgium and Austria. The UK received 1,125 applications.

In 2012 around a quarter of unaccompanied children claiming asylum in the UK were successful in obtaining refugee status while the remainder had their claims refused outright or were granted limited leave to remain until age 17½. Limited leave is granted on the sole ground that there are no adequate reception arrangements for the child to be returned to in the country of origin. The UK Government expects young people whose limited leave is not extended on review to leave the UK.

### **Removals of unsuccessful applicants who have turned 18**

Government figures suggest that only a small proportion of those who arrive as unaccompanied children return voluntarily, with or without assistance, or have their removal enforced once they turn 18. Between 2010 and 2012, 4,240 unaccompanied children claimed asylum in the UK while over the same period only 585 former unaccompanied children departed or were removed (13.8% of the number of arrivals over the same period). The gap in the figures suggests that the majority of former unaccompanied children remain in the UK as young adults with an undetermined or unlawful status.

### **Care arrangements**

A child with no one who holds parental responsibility for them, including an unaccompanied child, is accommodated by a local authority children's service who act as their corporate parent. For an unaccompanied child seeking asylum, a grant for their care can be reclaimed by the local authority looking after them from the Home Office's asylum support budget. The size of the grant depends on the age of the child or on whether they have reached 18. The decline in numbers of unaccompanied children claiming asylum in the UK over several years has meant that the number of over 18 care leavers being supported by local authorities outnumber the numbers of children below 18 who are being looked after.

### **Further leave to remain following the expiry of limited leave at 17½**

Where a child's asylum claim has been unsuccessful and they have been granted limited leave to remain until the age of 17 ½, they can apply to vary (extend) that leave. This is normally refused as the young person will no longer meet the criteria for a grant of limited leave when they become 'aged out' on turning 18.

The refusal of further leave triggers a right of appeal before the immigration tribunal but in order to be represented through legal aid the young person must pass a merits test. If the appeal is not brought or is unsuccessful the young person becomes Appeal Rights Exhausted (ARE). On becoming ARE

their continued presence in the UK becomes unlawful. This status can still change if they are able to successfully lodge a fresh claim for asylum, in which case they re-enter the asylum system pending a decision on the fresh claim.

### **The effect of an unsuccessful asylum claim on care arrangements**

Becoming ARE affects an over 18 year old care leaver's support entitlements. Immigration legislation requires the withholding or withdrawal of care leaver support provided by the local authority once the young person no longer has a current lawful basis to remain. The grant from the Home Office can only be claimed for up to three months after the young person becomes ARE and is contingent on the local authority assessing whether withdrawal of support would breach the young person's human rights – for example, by making them destitute while attempting to pursue a fresh claim for asylum.

Local authorities find it difficult to withdraw accommodation and support from young people who they may have looked after for a number of years and with whom they have an on-going relationship. In failing to discharge their duties under care leaving legislation they also open themselves up to legal challenge and reputational damage.

Government statistics confirm local authority assertions that the Home Office do not remove most of the young people who they say should no longer be here. This is often because there are barriers to removal such as an inability to secure the agreement of the country to which return is planned to accept the young person. In these circumstances it is the local authority and local tax payers who continue to foot the bill for these young people's care.

### **Forced removals and disengagement from local authority services**

Three local authorities in different parts of England covering both port and non-port areas were interviewed for this research. Figures provided suggest a correlation between post 18 ARE young people going missing or disengaging with local authority services and the level of enforced removals of ARE young people taking place in the local authority area. ARE young people who have leaving care services withdrawn or who disengage with the authority of their own volition are no longer able to lawfully access employment or benefits and are forced into destitution, illegal working and, potentially, crime.

### **Legal provision to unaccompanied children**

Competent and early legal representation is critical in determining whether a child seeking asylum obtains the settled status being sought or limited leave that expires at 17½. For this research, lawyers working under legal aid were interviewed about representing unaccompanied children. Young people also told us about their experience of claiming asylum with the assistance of an immigration lawyer.

Lawyers were reasonably content with the mechanism for being remunerated

for unaccompanied children's asylum cases but were unanimous in stating that the cap on spending, after which an extension must be agreed by the Legal Aid Agency, was unrealistic to properly represent the child. This research confirms that unaccompanied children need time to understand a complex legal regime, build rapport and trust with their lawyer and feel confident about disclosing difficult or traumatic experiences that need to be put before decision makers.

While asylum cases remain within scope of the legal aid regime, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) has taken most other immigration matters out of the regime's scope and this has impacted on lawyer's ability to take instructions and fully represent their child clients. The merits test for representation on appeal remains a barrier for unaccompanied young people to put their case before an independent tribunal. Without good quality representation, children with meritorious claims for international protection continue to be refused asylum and face the journey to becoming ARE.

## **Part 2**

### **The journey to Europe and arrival**

The initial flight of unaccompanied young people often occurs quickly with little time for planning. Overland journeys may be long, arduous and punctuated by stays in countries along the way. Children arriving by air face screening interviews on arrival that put them in fear of being put back on a plane. The choice of a destination country is often in the hands of agents or other adults that broker their departure but, particularly for those travelling overland, may also be influenced by peers they travel with.

Following arrival, children find it hard to understand what is happening to them and are confused by the different adults they meet and what their roles are. Some undocumented children are wrongly assessed as adults and may be detained. With help and assistance from foster carers and social workers children gradually learn to adjust to their new environment and begin to learn English, opening the doors to making friends, engaging in education and rebuilding their lives.

### **The asylum claim and accessing legal representation**

While there is a duty under European law for States to secure legal representation for unaccompanied children, no single UK agency appears to own the duty to ensure that this happens in a timely manner to fit with Home Office processing targets. Screening staff at the Home Office ask children *if* they need a lawyer and in the absence of a pro-active approach from their local authority some children rely on peers or other UK contacts to find them one.

While a recent report from the Independent Chief Inspector of Borders and Immigration (Vine, 2013) found overall good practice in substantive asylum

interviews, young people reported to us that they found the interviews stressful, adversarial and sometimes pervaded by an attitude of disbelief from the interviewing officer. Some children felt that interviewing officers lacked empathy and made assumptions about the culture that they came from. Following the interview, several young people told us of decisions taking over six months in circumstances that suggested that service of the decision was held back in order to refuse the claim outright rather than having to grant a period of limited leave.

### **The refusal of asylum and grant of limited leave**

Some evidence was provided by young people that their legal representatives were not working as they should for them. Complaints included losing papers and missing the deadline to apply for further leave to remain, failing to explain the asylum process properly and not keeping them informed of progress on their case.

At the service of the decision to refuse asylum there was almost universal misunderstanding as to the nature of the limited leave with young people believing it to be a 'visa' that could be extended when it was near to running out rather than a refusal of asylum and a deferral of removal. The nature of the leave sometimes only became clear to young people when the application to extend it was refused.

The misunderstanding of the nature of the leave granted is critical. An appeal brought while still a child is likely to be the best opportunity to be recognised as a refugee. A change in the law being brought about by the current Immigration Bill will mean that all unaccompanied children refused asylum but granted limited leave to remain will soon have a right to appeal at the point of refusal.

There is a lack of awareness amongst children and local authority staff that any refusal to appeal on merits grounds by the child's lawyer must be explained to their client, who must also have the opportunity to challenge the lawyer's decision. This issue goes to the heart of a child's right under the UN Convention on the Rights of the Child to have their voice heard in any legal proceedings that affect them (UNCRC, Article 12).

### **Expiry of leave and becoming Appeal Rights Exhausted**

Before limited leave expires at age 17½, an application can be submitted to vary (extend) the leave. The waiting period for a further decision to be made can be months or years. Although still lawfully present during this period, young people are not provided with any document to prove so. This can impact on their ability to conduct their lives in a dignified manner. Young people experience the waiting as hugely frustrating and debilitating. They cannot make plans for their futures and their motivation is affected.

Without being able to appeal the decision to refuse further leave, the young person finally becomes Appeal Rights Exhausted. This status ushers in a

new regime of having to report regularly at an immigration office. Failure to report will lead to being treated as an absconder. As some people are detained when they report to the immigration office, pending removal, there is significant fear attached to reporting events. For some, the anticipation of reporting leads to anxiety, sleeplessness and depression. For some young people who remain in the care of their local authority, services may now be withdrawn or they may disengage with the service of their own volition in anticipation of being arrested at their accommodation.

The choices open to the young person at this point are stark. Few choose voluntary return and most embrace the risk of entering the world of illegal work and reliance on their network of friends and contacts for somewhere to stay.

### **Barriers to returning**

Formal barriers to removal may focus on a lack of documentation from the country of origin who may not accept that they are genuinely a national of their country. Diplomatic relations do not exist with some countries to which the Home Office seeks return. There may also be an outstanding application for a fresh asylum claim.

The young people who spoke to us talked not about barriers to removal but about the barriers preventing them from being able to return. Formative years spent in England had made some re-evaluate restrictive social relations and norms in their countries of origin. Some had lost or were questioning their religious beliefs. Most felt that they had been encouraged to integrate into the UK and had taken this at face value. There was a sense of being cheated out of a life that had been promised.

Some young people had started education for the first time and while they had worked hard and achieved well, they remain illiterate in their own mother tongue, meaning that opportunities on return were limited and not commensurate with their educational achievements in the UK.

Many retained a genuine subjective fear of what would happen to them on return due to the events that had prompted departure, on-going war, conflict or repression or because they felt they would be visible to those at home due to their exposure to the influences of British culture.

While for some any contemplation of return was impossible in current circumstances, for others the idea of remaining in the UK to finish their education was seen as something that could equip them for a life elsewhere.

### **Conclusions: A way through the impasse**

There is cross-Government and cross-party consensus on the need to improve the life chances of care leavers. This was most recently articulated in the cross-Government strategy to help care leavers with the transition to a successful adult life. The Children (Leaving Care) Act 2000 (CLCA) was introduced in recognition of the vulnerabilities of those turning 18 and of the

additional help that those raised by the state need to enter successfully into adulthood.

This rationale should extend to unaccompanied children as much as it does to other care leavers. The CLCA provides for support to continue up to the age of 21 and for those entering higher education, up to 25. We propose that leave arrangements for those children whose claims are unsuccessful should align with current leaving care legislation where they cannot be returned safely to their families whilst still a child.

Such an approach would allow unaccompanied young people to build both the resilience and the qualifications and experience necessary to move into adulthood with hope and prospects for the future – whether that future is in the country of origin or in a third country. In order to achieve this, the current system of granting leave up to age 17½ would need to change to grant a longer period of leave.

Other changes would also be necessary. Schedule 3 of the Nationality, Immigration and Asylum Act 2002 would need to be amended to exclude those who had arrived as unaccompanied children from its ambit. This was recommended last year following the inquiry into the treatment of separated and unaccompanied young people by the Joint Committee on Human Rights. A further change would be needed to the Education (Student Fees, Awards and Support) (Amendment) Regulations 2011 to allow any young person with the new type of leave to access student support and to pay fees at home student rates.

Grant funding for the care of unaccompanied children and care leavers should be administered by Department for Education rather than the Home Office to signify that the grant is for care purposes and not a tool of immigration control.

The approach suggested conforms to thinking promoted through the Council of Europe and is called life projects. A number of European countries including France, Austria, Hungary and Sweden have adopted measures that take a more flexible approach to turning 18 and allow the same groups of young people limited permission to stay beyond formal adulthood.

We suggest to the UK authorities that a successful transition to adulthood not only favours young asylum seekers but is also in the interests of the state. To move from the current impasse to a more hopeful future, the UK should now follow this route for the benefit of both the children and young people involved and for wider society.

## Introduction

This report brings together a range of concerns that the Office of the Children’s Commissioner has had for a number of years about how unaccompanied children navigate the asylum system they are channelled through when seeking permission (leave) to remain in the United Kingdom. While unaccompanied children hold the same rights under the United Nations Convention on the Rights of the Child (UNCRC) as any other child within the UK’s territory, they are often less able to exercise those rights because of their particular vulnerabilities. The difficulties they face lead to poor outcomes for most of these young people.

By listening to young people’s own accounts of what has happened to them and by taking an overview of the key actors, institutions, laws and policies they must navigate throughout their individual journey, this report pinpoints some of the gaps through which young people continue to fall with disturbing regularity and with such negative consequences. There are also costs to wider society when we ignore the plight of these young people.

This report will contribute to the debate about the treatment of unaccompanied children and young people recently rekindled by the Joint Committee on Human Rights enquiry (JCHR, 2013) to which the four UK Commissioners gave evidence and to which the Government has recently responded (UK Government, 2014).

Several recent and imminent developments in law and policy will have important consequences for asylum seeking children now and in the future. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) , the further changes announced by the Ministry of Justice in *Transforming Legal Aid* (Ministry of Justice, 2013), the current Immigration and Modern Day Slavery Bills working their way through Parliament, and forthcoming statutory guidance on unaccompanied and trafficked children from the Department for Education are amongst the most important. The changing policy and legislative landscape which these young people inhabit offers both opportunities and threats to finding durable solutions for their situation.

Unaccompanied children who seek asylum engage and test state parties commitment to key rights guaranteed under the UNCRC (to which nearly every country in the world has signed up). In respect of decision making Article 3(1) of the UNCRC requires 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.*

In relation to the child's ability to participate in decisions that affect their life, Article 12 requires that:

*1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

*2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

These and the other rights contained in the UNCRC have acted as the guiding principles for the recommendations we make as a result of this research.

### **The definition of an unaccompanied child**

Unaccompanied children, according to the Committee on the Rights of the Child<sup>1</sup>, *'are children, as defined in Article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so'*.

Children who *'have been separated from both parents, or from their previous legal or customary primary care giver, but not necessarily from other relatives'* are referred to as separated children. *'This group of children may, therefore, include children accompanied by other adult family members'*.

Each year, several thousand unaccompanied children cross borders, often in dangerous circumstances, to reach Europe. Many claim asylum<sup>2</sup> in the hope that a European destination country will offer them protection, safety and a chance to build a new life.

In 2012, the United Kingdom was the fifth top destination country in Europe for an unaccompanied child to submit an asylum claim behind Sweden, Germany, Belgium and Austria. This contradicts public perception in the UK that as a nation we receive more asylum seekers than our European neighbours (Blinder, 2011).

Figure 1 illustrates the numbers of unaccompanied children claiming asylum

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<sup>1</sup> The definition adopted by the Committee on the Rights of the Child follows the definition provided by the Refugee Agency, the United Nations High Commission for Refugees (UNHCR).

<sup>2</sup> An asylum claim is a claim that it would be contrary to the United Kingdom's obligations under the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol or Article 3 (right not to be subjected to torture, inhuman or degrading treatment) of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms for a person to be removed from or required to leave the United Kingdom.



in Europe since 2008.<sup>3</sup> We have included the top ten countries here, but the full list can be seen in Appendix 3.

**Figure 1: Asylum applicants considered to be unaccompanied minors (In ascending order based on number of applicants in 2012)**

Area	2008	2009	2010	2011	2012	Up to Sept 2013
<b>Sweden</b>	1,510	2,250	2,395	2,655	3,580	
<b>Germany</b>	765	1,305	1,950	2,125	2,095	
<b>Belgium</b>	485	730	1,080	2,040	1,530	
<b>Austria</b>	695	1,040	600	1,005	1,375	
<b>United Kingdom</b>	4,285	2,990	1,715	1,400	1,125	835
<b>Italy</b>	575	420	305	825	970	
<b>Switzerland</b>	595	415	220	310	495	
<b>France</b>	410	445	610	595	490	
<b>Denmark</b>	300	520	410	270	355	
<b>Poland</b>	375	360	230	405	245	

(Data sourced from the Home Office (2010d) and Eurostat (2013))

While these figures are illuminating to a degree, they only tell part of the story. Many more unaccompanied children arrive in Europe and find it difficult to access the first or subsequent country's asylum system or do not claim asylum – sometimes because the national authority provides other arrangements that allow a young person to remain on another basis such as a temporary residence (e.g. France and Spain) or work permit (e.g. Italy).

This report focuses on the journeys of unaccompanied children once they arrive in the UK and in particular on those unaccompanied children who come here seeking protection and a place of safety (asylum seekers). The journey of the majority leads eventually to the rejection of their protection claim and the expectation that they will return to their country of origin once they are adults.

However, it appears that in spite of this expectation, only a small proportion either leave voluntarily or are forced to return to their home country once they turn 18. Details of removals of former unaccompanied asylum seeking children once they are 18 are shown in Figure 2 below.

<sup>3</sup> Children seeking asylum on their own are often referred to by Home Office and Local Authority actors as 'Unaccompanied Asylum Seeking Children' (UASC). Critics of the term 'UASC' often point out that the emphasis in the terminology is on the immigration status ('asylum seeking') of the child rather than on their minority. It is argued that this mirrors a policy framework that treats them first and foremost as migrants rather than children who require to be treated as such.

**Figure 2: Removals of former UASCs for the period January 2010 to June 2013**

<b>Final removal Types</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Total number of removals</b>
Assisted voluntary return	37	41	51	24	153
Enforced	99	179	94	67	439
Facilitated returns scheme	5	0	5	5	6
Voluntary departure	19	34	26	15	94
<b>Grand total</b>	<b>159</b>	<b>254</b>	<b>172</b>	<b>107</b>	<b>692</b>

(House of Lords written answers 28 January 2014)

A comparison of the totals in Figure 2 with the number of asylum claims lodged by unaccompanied children in the UK between 2008–12 in Figure 1 illustrates that the numbers claiming asylum annually are considerably in excess of those who are removed.

Even allowing for the fact that around 28% (Home Office, 2013) of unaccompanied child asylum applicants are successful in their claims and granted Refugee Leave there is a significant ‘deportation gap’ – the gap between the number of people eligible for removal by the State at any time and the number of people a state actually removes<sup>4</sup> (Gibney, 2008). This gap raises the question of whether policies designed to encourage or force young people to return to their countries of origin on reaching adulthood are effective.

Most young people who spoke to us during this research demonstrated an intention to embrace the risks of remaining in the UK in the hope that they would somehow, eventually, be able to regularise their position. For a majority, return to their country of origin was simply not considered realistic or possible. The choice to remain here as young adults with no legal status has implications not only for their futures but for wider society.

Without the ability to access legal work they face exploitation from rogue employers who understand that they can lower wages to subsistence levels, require long hours and neglect safe working conditions without complaint. Such employment practices may depress wages in local economies where these young people live<sup>5</sup> and may also cause resentment in the settled community who are understandably not prepared to work for the wages and in conditions that these young people are forced to accept.

<sup>4</sup> The phrase deportation gap has been retained as it is used by Gibney in his article. It is technically an incorrect use of deportation as these are properly described as administrative removals.

<sup>5</sup> See for example the Migration Observatory briefing on the impact of migration on wages and employment at <http://www.migrationobservatory.ox.ac.uk/briefings/labour-market-effects-immigration>

## **Overview of the care arrangements for unaccompanied children**

Although many young people's experiences of the process of seeking international protection – what we call the asylum process – apply equally to children who are defined as separated as well as to those who are unaccompanied, a key difference between these two groups of children centres around their care arrangements.

Unaccompanied children seeking asylum will go into the public care of the local authority in which they first come to attention. Accompanied children (encompassing separated children, children in private fostering arrangements and those who arrive with a parent or guardian) will be cared for by the adult identified by Home Office or Local Authority officials as accompanying them (or receiving them into a private fostering arrangement) and will not go into the public care system unless there are identified concerns about the adult claiming to be responsible for them.

There is much to be commended in the public care arrangements in place for unaccompanied children. They are accommodated under the Children Act 1989 in the same way as a citizen child with nobody to care for them would be. Quite properly, the 1989 Children Act is blind to the immigration status of the child in their care in recognition of the fact that they are first of all deemed to be children in need.

### **The relationship between asylum determination and the care of unaccompanied children**

The asylum determination system and the care system for unaccompanied children are intimately connected. Principally this happens through Home Office control and administration of the money provided for unaccompanied children's care.<sup>6</sup> This is known as the UASC grant<sup>7</sup> and is claimed back from the Home Office by local authorities to enable them to support unaccompanied children in their care. The Home Office also administers the leaving care grant which is available for the support of former unaccompanied children who turn 18.<sup>8</sup>

The income stream from these grants is vital for local authorities and is the mainstay of the cash support available to them to cover the additional duties and responsibilities they incur in looking after unaccompanied children. There

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<sup>6</sup> There are of course other important interactions between the Home Office and local authority children's services, notable the process of age assessment.

<sup>7</sup> The UASC grant is drawn from the Asylum Support budget which is controlled and administered by the Home Office. For details can be found here:  
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithasylumseekers/local-authority-grants/uasc2011/grant-instructions.pdf?view=Binary>

<sup>8</sup> More details on this can be found here:  
<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCoQFjAA&url=http%3A%2F%2Fwww.ukba.homeoffice.gov.uk%2Fsitecontent%2Fdocuments%2Faboutus%2Fworkingwithasylumseekers%2Flocal-authority-grants%2Fleaving-care%2Fgrant->

is a per capita formula for the grant reclaim for unaccompanied asylum seeking children which is contingent upon their age.<sup>9</sup> Those under 16 attract the largest grant in recognition of the additional expense of placing them in foster care. Those aged 16 and 17 are normally expected to live in less expensive semi-independent accommodation with others in their situation. This latter group receive ‘arm’s-length’ support from local authorities via independent reviewing officers, social workers and key workers who will ensure that a care plan and a pathway plan ( detailing the trajectory into adulthood) is in place for them as for any child in public care.

The money provided under the Home Office leaving care grant to young adults is significantly less than the grant they provide to unaccompanied children. The reason for this is that once the child turns 18, and while they remain legally present, they are able to either work or claim mainstream benefits such as income support and housing benefit. This is also the case for children whose asylum applications are successful.

### **Unsuccessful claims**

Conflict emerges between the asylum and care systems where a child has been unsuccessful in an asylum claim. The Home Office will not provide grant funding for the care of over 18s who are no longer lawfully present due to a negative final outcome of their protection claim. However, leaving care legislation and a significant body of case law continues to place obligations on local authorities to provide certain types of on-going support to care leavers. There is an unresolved conflict between leaving care legislation and associated statutory guidance and immigration legislation over the support to be provided to this group of young people who have been cared for by the state once they reach the age of majority.<sup>10</sup>

The Home Office expects that once a young person’s protection claim has finally been found not to meet the criteria for a grant of leave – that is they have become ARE – that the support they receive from the local authority should be withheld or withdrawn to conform to Home Office policies intended to create conditions to encourage departure from the UK of those without lawful reason to remain.

This policy stance is supported by Home Office control of the leaving care grant which is no longer provided for young people once they become ARE. Three months of grant can continue after the young person has become ARE in order for the young person to make arrangements for returning to their country. This is contingent on the local authority carrying out a human rights

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<sup>9</sup> There are exceptions to the ‘per capita’ grant reclaim process. A number of ‘gateway’ authorities are remunerated through an additional grant in recognition of the higher numbers of unaccompanied children who enter care with the authority due to its location. Unlike the per capita grant, details of individual settlements with the ‘gateway’ authorities are not in the public domain.

<sup>10</sup> See for example: Paul Carter (Leader, Kent County Council) and Andrew Ireland (Corporate Director for Families & Social Care) 18.03.13 Paper to Cabinet: *Appeal Rights Exhausted (ARE) Cases*.

assessment. Local authorities are often reluctant simply to withdraw support for young people they may have looked after for a number of years and may also face both legal challenge and reputational damage if they attempt to do so.

## **Methodology**

The primary aim of this research has been to gather and present the experiences and views of unaccompanied children in their journey through the asylum system and in particular where this has led to a rejection of their protection claim. In addition we wanted to find out how local authorities negotiate these difficult transitions in a young person's status and how Home Office requirements impact on their support to them.

We also wanted to explore issues encountered by lawyers who deal with children's asylum claims, in particular the constraints and challenges they face in representing children and young adults.

The research for this project was compliant with the Office of the Children's Commissioner safeguarding policy and participation strategy which requires us to ensure that our research and involvement of children and young people places their safety and wellbeing as paramount. This ensures the work is undertaken in an ethical manner and includes agreeing with participants their voluntary consent, anonymity and the boundaries around confidentiality.

The primary consideration that emerged during the initial scoping stage of this research was the need to ensure the emotional wellbeing of young people who were at risk or who had already become ARE. To this end a participation technique was employed that helped create a safe and supportive climate which would encourage the young people to share their views and experiences in a way that protected them from recounting potentially difficult or personal stories that would cause them distress. This involved the development of a group story or stories based on their experiences, understanding and views. A more detailed explanation of the methodology used for this report can be found in Appendix 1.

To explore these issues, we developed the research approach outlined in Figure 3 below.

**Figure 3: Research methodology**

<b>Method</b>	<b>Participants</b>	<b>Objective</b>	<b>Analysis</b>
Four workshops with young people involving a story teller	32 young people ranging from 16 to 23 years old from three+ local authorities who were at risk of, or had become ARE	To develop a story or stories with the young people in the workshops as a way into enabling them to share their views and experiences of approaching or becoming ARE and to understand the journey that brought them to this point	Thematic analysis of notes and transcripts
Interviews	Four social work professionals from three local authorities and nine lawyers handling children's asylum claims	To explore their perspectives on the care and legal arrangements for unaccompanied children	Thematic analysis of transcripts and interview notes

In addition to the workshops and interviews, a literature and policy review undertaken by the author has informed the research. Please see the reference section at the end of the report for a full list of sources cited.

# Part 1

## Chapter 1: Unsuccessful asylum claims from unaccompanied children

This chapter outlines what happens to an unaccompanied child following an unsuccessful application to the Home Office for asylum. Figure 4 shows a simplified version of the progress of an asylum application from a child.

**Figure 4: Simplified process of an asylum application**



## **Unaccompanied children in the Immigration Rules**

Unaccompanied children can apply for asylum in their own right. The UK's Immigration Rules (the Rules) require that in view of their potential vulnerability, particular priority and care is to be given to the handling of their cases (Part 11, Rule 350). Any child over the age of 12 claiming asylum in their own right will be interviewed about their claim (Rule 352).<sup>11</sup> While an unaccompanied child must meet the same criteria as an adult in order to obtain asylum or humanitarian protection the Rules say that:

*Account should be taken of the applicant's maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of his situation (Rule 351).*

### **Unsuccessful asylum claims from unaccompanied children**

Until April 2013, when an unaccompanied child was refused asylum or humanitarian protection, Home Office policy was normally to grant a period (or consecutive periods) of leave outside of the Immigration Rules until they reached the age of 17½. Termed Discretionary Leave, because it was given at the discretion of the Secretary of State but in line with Home Office policy, it was awarded where there were no adequate reception arrangements in the country to which the child would otherwise be returned if leave to remain were not granted. As a result of a decision of the Supreme Court<sup>12</sup> the previous policy relating to Discretionary Leave for unaccompanied children has now been incorporated into the Immigration Rules (Rule 352ZC). This has not resulted in any change of approach. Unaccompanied children who are unsuccessful in obtaining asylum or humanitarian protection are still granted what is now termed UASC Leave<sup>13</sup> for a period of 30 months or until the child is 17½ years of age whichever is shorter (Rule 352ZE).

### **What happens to an unaccompanied child's immigration status after Discretionary/UASC Leave expires at age 17½?**

UASC Leave is a form of limited leave – that is it is time-bound as opposed to indefinite. Under the Immigration Act 1971 a person who has limited leave to enter or remain can apply to the Secretary of State to vary that leave. If the application to vary limited leave is made before the current period of the leave has expired (in the case of an unaccompanied child, before age 17½), the current leave is deemed to be extended during the period where the decision on whether or not to vary the leave has still to be reached. The importance of this deemed extension is that the applicant remains lawfully in the UK when their current leave expires and while the decision to vary the limited leave remains pending.

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<sup>11</sup> Unless unfit or unable' to be interviewed.

<sup>12</sup> See Munir [2012] UK Supreme Court 32.

<sup>13</sup> In this report we shall refer to both 'UASC Leave' and 'Discretionary Leave' as appropriate to the context.



In the case of unaccompanied children who have applied to vary their leave in time (before expiry of their Discretionary/UASC Leave at age 17 ½) the decision on whether to extend the leave is often made on, or shortly after, their eighteenth birthday so that when the decision is made the young person has reached legal adulthood. By virtue of the fact that they are no longer legally a child, the application to vary the leave is often refused – though new grounds for a grant of leave will be considered.

Where further leave is refused on or after the child's eighteenth birthday, they are treated as an adult by the Home Office and their lack of current leave to remain means they may be detained and removed if no appeal is lodged. An appeal must be lodged with the immigration tribunal within ten working days of the decision to refuse to vary the leave or it is deemed to have expired, resulting in the applicant having no current lawful basis for remaining. Where this occurs, detention and removal can take place without consideration of any reception arrangements in the country to which the young person is to be removed as they are no longer legally a child.

However, a refusal to vary the leave attracts a right of appeal to the immigration tribunal. For children who had a decision on their asylum claim made after they had reached the age of 16 ½, this will be the first opportunity to present their asylum claim before an immigration judge as there is currently a statutory bar on appealing a decision that results in a grant of limited leave of less than one year (Nationality, Immigration and Asylum Act 2002, section 83).

Although there is a right to appeal under current immigration legislation, in practice applicants without private funds have to pass a merits test, administered by their legal representative, in order to obtain legal aid to pursue an appeal before the tribunal. The legal representative must assess the chances of success as at least 50% before they are funded by the Legal Aid Agency to provide representation in proceedings.<sup>14</sup> Some former unaccompanied children fail the merits test and may then try and raise the money to be represented privately or, as reported by some of the young people in this research, appear unrepresented. Others will give up on an appeal altogether.

Where an appeal is brought following a refusal to vary leave, the appellant's leave is once again deemed to continue until the appeal has been determined. This is usually some weeks after it has been heard by the immigration judge who will often reserve their determination of the appeal after hearing the case.

Where the first-tier immigration judge allows the appeal, the Home Office either concedes and grants either Refugee Leave or humanitarian protection, or if they think the judge has made an error of law, they may appeal to the upper tribunal. The right to appeal to the upper tribunal on an error of law also applies to the young person if their legal representative finds fault with the

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<sup>14</sup> This is discussed further in chapter 3.

first-tier judge's dismissal of their appeal. There is a further right to appeal on limited grounds from the upper tribunal to the Court of Appeal where either party is dissatisfied with its decision.

Once no further appeal can be brought by the appellant, they are deemed to be ARE. At the point that a young person becomes ARE they cease to have a lawful basis for remaining in the UK and are at least for the time being left without a lawful status.

A further avenue can be pursued by anyone who becomes ARE, which while not immediately securing further leave, may prevent removal. When a human rights or asylum claim has been refused and any appeal relating to it is no longer pending, a Home Office decision maker must consider any further submissions and, if rejected, must then decide whether the further submissions amount to a fresh claim. Submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. To be so, submissions must not already have been considered and, taken together with the previously considered material, must create a realistic prospect of success (notwithstanding its rejection). An applicant who has made further submissions cannot be removed before the Secretary of State has considered them (Immigration Rules, paragraph 353).<sup>15</sup> A positive outcome may be achieved for an applicant who lodges a fresh claim and they may in due course regain a legal basis for remaining in the UK through a grant of leave.

Nine out of the 32 young people in our research sample had submitted representations in the hope of establishing a fresh claim. Four had been successful in establishing these and were waiting for a further asylum decision which if refused would attract a right of appeal. The ability to make submissions to establish a fresh claim is an important safeguard against a change in country conditions, further evidence coming to light to support the claim or poor initial representation and is rightly recognised in the Immigration Rules.

Becoming ARE means a young person over 18 can no longer access the benefits which accrue to a person who has leave remaining to work or claim social benefits. It also affects their entitlements as care leavers and therefore potentially the support they receive from the local authority that has been caring for them.

## Chapter 2: The impact of immigration legislation on care leaving duties and arrangements

Most unaccompanied children who enter care become entitled to a leaving care service as a former relevant child.<sup>16</sup> Those with current leave on turning 18 are entitled to housing benefit to assist with their accommodation costs and income support or job seekers allowance if not working. Where a young care leaver is engaged in work, education or training they are also entitled to a contribution from the local authority towards expenses related to employment, education or training (Children Act 1989, sections 23C, 24A and 24B). The Statutory Guidance, *Planning Transition to Adulthood for Care Leavers* (Department for Education, 2010) provides some guidance for local authorities and notes that:

*Planning transition to adulthood for UASC is a particularly complex process that needs to address the young people's care needs in the context of wider asylum and immigration legislation and how these needs change over time.*

While the guidance provides a framework for pathway planning for this group of young people, it is case law that has largely defined the parameters of the leaving care duties contained in the Children Act 1989 and the associated guidance.

### **Exclusion from local authority support**

Once a former unaccompanied child is considered to be unlawfully in the United Kingdom as a result of becoming ARE, immigration legislation cuts across their entitlements as care leavers and requires care leaving support to be withheld or withdrawn. *Planning Transition to Adulthood for Care Leavers* contains only the following guidance:

*Pathway plans should always consider the implications for the young people if their application to extend their leave to remain is refused, or their appeal against refusal of that application is dismissed. In such circumstances the person may become ineligible for further support and assistance because of the effect of Schedule 3 of the Nationality, Immigration and Asylum Act 2002.*

The withdrawal or withholding of local authority support under sections 23C, 24A or 24B of the Children Act 1989 (the leaving care provisions) is governed by Section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act

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<sup>16</sup> Any child who has been in the care of the local authority for at least 13 weeks after their sixteenth birthday and prior to reaching 18, will be entitled to a leaving care service as a former relevant child on reaching 18.

2002. Schedule 3 prevents certain classes of ineligible persons from eligibility for support or assistance under leaving care and other types of local authority support. The class of ineligible persons in which most former unaccompanied children fall into once they become ARE is of persons unlawfully in the United Kingdom.

However, in recognition that withholding or withdrawal of essential support may amount to inhuman or degrading treatment<sup>17</sup>, Schedule 3 was drafted to include a human rights exception. Local authorities are thus able to continue to exercise a power or perform a duty (for example under the leaving care provisions of the Children Act 1989) *'to the extent that its exercise or performance is necessary for the purposes of avoiding a breach of – (a) a person's Convention rights, or (b) a person's rights under the Community Treaties* (Nationality, Immigration and Asylum Act 2002, Schedule 3, Paragraph 3).

Where a local authority concludes that Schedule 3 prevents them supporting a former unaccompanied child, they must also consider whether withholding or withdrawing support would breach human rights. If so, this would leave the authority open to legal challenge. For these reasons, local authorities have been encouraged to undertake what have become known as human rights assessments on former unaccompanied young people who have become ARE.

To assist local authorities to find their way through the legislation, non-statutory practice guidance has been produced by a task group of representatives from the No Recourse to Public Funds Network (NRPF)<sup>18</sup>, Local Government Association, Association of Directors of Children's Services, Convention of Scottish Local Authorities and the Welsh Local Government Association. (LGA, ADCS, NRPF, 2012). They have also produced a template human rights assessment form for use by local authorities to determine whether withdrawal or withholding of local authority support would result in a breach of the service users' human rights.

### **Local authority perspectives on care leavers who become ARE**

We interviewed three local authorities in the course of this research to find out what guided the practice, processes and procedures they had in place once a care leaver became ARE; what liaison and coordination there was with the Home Office; and what their view was of the impact on these care leavers of becoming ARE. All the local authority interviews were recorded and transcribed and interviewees given the opportunity to amend what they said. Local authorities were of different sizes and in different locations in England and included port and non-port authorities so as to capture the children who arrive by different routes into the UK.

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<sup>17</sup> R (Limbuella) V Secretary of State for the Home Department [2004]

<sup>18</sup> The No Recourse to Public Funds Network is a network of local authorities and partner organisations focusing on the statutory duties to migrants with care needs who have no recourse to public funds.

All the local authorities interviewed follow the statutory guidance in pathway planning and a dual or triple planning perspective which over time is refined as the young person's immigration status becomes clear. This means planning is based on possible periods of uncertainty when immigration status remains unclear, long term perspectives should the young person be granted permanent permission to remain, and planning for a return to the country of origin should the young person be required to do so.

### **Guidance used to work with care leavers who had become ARE**

Two of the authorities interviewed (A and B) used only the Children Act 1989, the care planning regulations and statutory guidance (either the Leaving Care Act guidance or *Transitions to Adulthood*) to guide their practice. The view of both of these authorities was clear: *'essentially we work with them as either looked after children or care leavers'*.

While they were aware of the NRPF guidance this had not explicitly informed practice to date. At the date of interview (September 2013) neither authority was conducting human rights assessments (HRAs) with both foregoing the three months' worth of grant offered by the Home Office as a result. Local Authority A was receiving training from NRPF on human rights assessments and was intending to conduct them in future for the dual reason of having the additional funding and because it was seen as *'helping to make a judgement about whether it is right to return that young person'*

Local authority C had sought out advice on ARE young people and human rights assessments both in order to comply with what they saw as the legal requirement of Schedule 3, and because the 3 months' worth of grant was deemed essential to the service's income stream. The NRPF guidance was praised as very clear.

### **How a care leaver's ARE status is communicated to local authorities**

The Home Office determines the point at which a care leaver becomes ARE. All three authorities told us the main way they found out about a care leaver's changed status was through the grant reclaim mechanism. For example, Local Authority A received a monthly claim calculation from the Home Office that identified all unaccompanied children as well as care leavers. The leaving care grant claim reports identified those who remained eligible and those who did not.

Grant income for a young person who is a care leaver ceases on the day that they become ARE and can only be reclaimed on evidence that a HRA has been conducted. Where a HRA is conducted, only 13 weeks of funding is available from the date of a young person becoming ARE, after which, if the authority continues support, they must do so from their own budget. One local authority had around 100 ARE young people being supported by them, including their accommodation and subsistence, a substantial call on its resources.

The Home Office considers it is unacceptable to use public funds to support adults who are here unlawfully. Two of the local authorities consider that they retain their leaving care duties and would be open to legal challenge if they were to withdraw support and they therefore continued to provide support as before.

Local Authority B had an additional mechanism for receiving information about ARE status in the form of a secure email box shared between the local immigration compliance and enforcement team and the local authority. We were told that in practice, notification of ARE status rarely came through this route, but rather as a result of the grant claim data matching process, or from the young person.

In Local Authority C information on which young people had become ARE was normally received only through the grant reclaim process. The authority's request to reclaim the previous few months expenditure on the young person was responded to by being informed that they had been determined as ARE on a particular date and a request to forward, retrospectively, a HRA in order to claim the three months funding post- ARE.

Authority C also reported that they sometimes found out from the young person themselves although this was not regular:

*Often they won't as they don't want to understand the letter [received by the young person from Home Office] or they just can't face it. Their way of managing that is to throw it in the bin and go on like nothing has changed.*

Authority C also commented that:

*A coping strategy for lots of young people is 'complete ostrich'. If we find out from young people often it's because the personal advisor who has been working with them might have visited them at home. There might be loads of post sitting there and they say 'Oh what have you got in there? [Notification after the event]...prevents us from doing the stuff that we need to do and would actually like to do. It means we're always working backwards.*

### **Procedures post-notification of ARE status**

Local Authority A seemed least affected by the change in young person's status and continued to provide a leaving care service. A recent restructure of the Home Office had had an impact on communications between them and the authority:

*That's changed recently because we used to have the local immigration teams (LIT's) and there was regular communication and updates from the workflow manager. They would send us a spread sheet from them and we would check it and look at the immigration status but now the Home Office is under restructure. The LIT teams are*

*not necessarily in operation in the same way so what we get is on a monthly basis. We get a data match-up similar to the payments and calculations spread sheet and we match our information against theirs. We can contact them about individual young people to check out but we can't ask them in batch to check a number of young people which is where we used to get regular updates.*

Authority B, while continuing to support their young people as care leavers by providing accommodation and an essential living allowance, had made what they described as 'a trial evaluated decision' not to conduct HRAs. However they had come to a bi-lateral arrangement with the Home Office that, on becoming ARE, the young person became part of a reporting monitoring process between the Home Office's immigration compliance and enforcement team (ICE) and the local authority. This consisted of a register compiled by ICE and sent to the authority at the start of every week. The young person's personal assistant was asked to follow up with any young person who had missed their reporting appointment to check they had not gone missing and to remind them of their reporting obligations. Where an appointment had been missed the ICE team might request the latest contact information for the young person, although such requests were said to be ad hoc. Monthly meeting had been set up to discuss these arrangements.

The authority advocated for release from the reporting obligation in certain circumstances such as illness or clashes with educational obligations. Where the reporting obligation was not adhered to by the young person for no good reason, the authority had agreed to apply a sanction of stopping the young person's essential living allowance (although not removing their accommodation) until reporting resumed.

The backdrop to Authority C's procedures must be understood against the asylum team's operating model. Until very recently, Authority C received no additional cash support from children's or leaving care services and had relied exclusively on the income from the Home Office grants to run the service. This does not apply in the other two local authorities who receive undisclosed additional income because of their size and location.

Authority C routinely transfers all young people with continuing lawful residence into housing authority accommodation at 18<sup>19</sup> rather than continuing to support them in accommodation funded from the social care budget. They also ensure an immediate transition to welfare benefits. On discovering the young person's ARE status, the local authority informs both the benefits agency and the housing authority that they are no longer entitled to support:

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<sup>19</sup> See the *Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006*. Since the change brought about by the decision to bring Discretionary Leave within the Immigration Rules, the allocation of social housing to those with limited leave to remain 'outside of the Immigration Rules' is under threat. It may be too early to assess the full impact of this change and how it will impact on social services budgets.

*It makes it difficult in terms of our working relationship with young people. They know we're not the Home Office and we're very clear about the rules and we generally work really hard so we have a good, positive relationship with them. So when we find out they are ARE we're the ones that have to say 'I'm sorry I'm going to have to ring the benefits agency to tell them that you're no longer entitled to claim benefits'. That makes for a very rocky bit of a relationship.*

The HRA is then carried out:

*We look at a number of issues in doing our assessment. We take information from what they are telling us about their circumstances at the time. We also take information from case files and what we have in terms of history. So we may have young people who, while we are actually responsible for supporting them, are never in, are seen working in the car wash, are seen working in various restaurants, and don't stay in our accommodation anywhere near as often as they should. We consider those factors when we think about what support we offer – and we will test – we have to. We have a very limited resource and have to direct that at those we believe to be genuinely vulnerable. Those young people that we know couldn't find their way out of a paper bag on their own and are at risk of destitution, ultimately we end up offering them accommodation and a weekly allowance. I insist they have a personal advisor and they are seen every week as those we have assessed as needing help are more vulnerable emotionally when they are ARE and waiting to be deported than during most of the time we have worked with them.... so it is only those that are ARE that post 18 we prioritise and provide emergency housing and regular financial support directly for.*

### **Local authority assessment of the impact of becoming ARE on a young person and on their relationship with the authority**

Local Authority A described the impact on their young people of being informed that they had become ARE:

*It is a very anxious time. We have generally got some cases where we see instances of the stress levels and mental health becoming affected, anxiety levels. They can decrease their engagement with us as well because as much as we say, 'we don't make those decisions, we are supporting you', we are all one system from their point of view.*

In terms of the on-going relationship with the local authority, Authority A reported that:

*It is variable and down to how the young person perceives our part in that to some extent but also how we are able to get through some of the levels of anxiety because when people are very anxious it is difficult to hear that we are in a supportive role and so it is very much dependent on the social workers, the personal assistants, maintaining*



*that relationship supporting and using the network around the young person. The reaction is variable and it depends on the young people's situation.*

Local Authority A had only a small number of ARE young people who disappeared from care – one in 2012 and none up to September in 2013. This may be correlated with the low number of removals in the authority – reportedly two in 2012 and none in 2013 (up to the September interview date).

By contrast, in Local Authority B there had been 31 enforced removals over the same period; 15 in 2012 and 16 up to September 2013. 26 young people had disappeared without notifying the authority over the same period – 14 in 2012 and 12 to September 2013. Authority B's assessment was that ARE notification to the young person was the prompt for their disappearance:

*A number of young people have gone missing purely because they have a notification that they are ARE. I know this because I chair all the cases of missing children... I have a list of them. When I'm chairing, I look at the risks... why could this young person have gone missing? We trace back steps. We know they were perfectly fine. Then they get a letter to say that they are ARE. Two weeks later they have bolted. Now of course this is not scientific, but we know there is a link.*

Authority B's perception of how young people reacted to being informed of becoming ARE was similar to Authority A's:

*In some cases...young people become confused. So the worker is there with them and they are shaking. There is a lot of confusion about what they want to then do. One worker said somebody was standing up, sitting, he didn't know where to place himself. That's just receiving the letter.*

In terms of the subsequent relationship with the authority the impact was described as:

*Huge. [There are]...different types of young people. So you have either the very emotional and vulnerable young people who require a lot of support. You have the adversely resilient young people who can go about doing their work things but of course, there are all these emotional things they are not able to cope with. Or you have emotionally stable young people who have gone on to university and carried on with what they need to do. So when you have a very vulnerable young person, trust easily is eroded. They are very quick at that stage with the confusion to say, 'Well you are UKBA, and you have reported me, why didn't you tell me this was happening?' So it does really affect the relationship. I think we have probably a better relationship with...some of the more adversely resilient ones who have had one worker for a period of time, because if you have changes of workers that also has an impact, doesn't it?*

Local Authority C estimated that four young people had been removed between 2012 up to September 2013. However the pattern was not the same as in Authority B with only one being removed following a reporting event, while the others had followed criminal convictions or being picked up working illegally.

Authority C also distinguished between the more and less resilient young people in their care but unlike in Authority B, it was the 'savvy' ones who disengaged and the more vulnerable that returned:

*We've had young people who we've had close relationships with who can't understand why we have to do this [inform the Department for Work and Benefits and housing of their 'ARE' status] and who get really cross and really upset. We've had people who have rejected us for a bit. When they've ended up on the verge of having nowhere to sleep at all they have then come back. So I'm glad that they've come back but I understand that initial period of anger. But that's my bit about 'well it's not actually my job to be doing this. You guys should be doing this. Home Office should be doing it'. Because that makes what we are trying to manage unnecessarily difficult. The ones who are vulnerable almost have no choice but to come back to us. That's almost part of the test – that they will come back and when we assess them we are helping them. You can feel them calm down and feel that relationship start to rebuild. But for those who are a bit more life savvy, who have had jobs and a range of people and contacts and places to stay, that relationship might not recover. I'd like to think that the most vulnerable come back and certainly the young people we are supporting are the ones I think are emotionally quite vulnerable.*

## **Conclusions**

Different approaches to supporting young people who become ARE appear to be conditioned by both the operating model of the local authority and the strength of the relationship with the Home Office in respect of ARE related communication. It seems unlikely that the small number of removals from Authority A and C are entirely unconnected with their ability to maintain, albeit more difficult, relationships with their young people once they become ARE. By contrast, the disengagement of ARE young people in local authority B appears linked to the higher number of removals there. This has implications for future policy as it might be anticipated that the greater the effort to enforce removal in any locality, the greater the number of ARE young people who will disengage from statutory services and go missing.

While the grant for supporting young people continues to come to local authorities from the asylum support budget administered by the Home Office rather than from the Department for Education which funds social care for non-asylum seeking children in the care system, and while the grant is linked to the young person's immigration status through the mechanism of Schedule 3, the relationship between the ARE young person and their local authority is likely to continue to be difficult for both parties leading to the risk of young

people being cut off from support or disappearing from care and exposing themselves to danger and exploitation.

We consider that the approach adopted by the Joint Committee on Human Rights (JCHR, 2013) to these issues should be explored in more depth by the Government irrespective of its rejection of the Committee's recommendations on these issues (UK Government, 2014). The Committee suggested that grant funding to local authorities for the care and support of unaccompanied children and young people should be wholly the responsibility of the Department for Education to demonstrate that funding is given in order to safeguard them and promote their welfare (JCHR, 2013, recommendation 5). They also suggested an amendment to Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to ensure that those who had arrived as unaccompanied children could continue to receive their entitlements as care leavers once they had turned 18 (Ibid, recommendation 36).<sup>20</sup>

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<sup>20</sup> An improved formulation of the Committee's recommendation was put down as Amendment 234 to the Children and Families Bill by the Earl of Listowel and supported by Baroness Neuberger, the Lord Bishop of Leicester and Baroness Butler-Sloss.

## Chapter 3: The legal aid regime and quality of representation in children's asylum cases

Competent and early legal representation is critical in determining whether a child seeking asylum eventually obtains the settled status being sought (through being awarded international protection) or whether the temporary protection (contingent upon the child's minority) of UASC Leave (formerly known as Discretionary Leave) is obtained.

Whereas UASC Leave is most likely to be followed by a final rejection of the asylum claim and an expectation that once the child reaches adulthood they should leave the UK, Humanitarian Protection Leave and Refugee Leave is given for five, after which Indefinite Leave to Remain (ILR) can be applied for and as a matter of policy is normally granted. ILR is also known as permanent residence or settled status and can lead to citizenship if sought and depending on certain requirements being met.

The fact that a competent children's immigration lawyer will obtain asylum in the majority of their cases strongly suggests that if the standard of legal representation could be raised to the level of the best, many more children would obtain recognition as refugees and would avoid the fate of the young people who are the subject of this report.

As part of the current research we talked to nine immigration lawyers who we knew to have extensive experience of representing children in asylum applications and who also had achieved high levels of success in doing so. All of the lawyers we talked to worked for firms or not-for-profit organisations that had immigration contracts with the Legal Aid Agency (LLA) (formerly the Legal Services Commission) and who were therefore paid for representing children through legal aid funding.

As unaccompanied children seeking asylum will nearly all be directed to a legal aid lawyer, it was important to consider any structural factors in current legal aid arrangements that assist or frustrate the provision of good quality representation to children (including the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012).

We also wanted to obtain lawyers' views on what other changes, beyond legal aid, might be desirable to improve access to, and quality of, representation to asylum seeking children. In respect of access, one matter that lawyers brought to our attention was the practical difficulties often experienced in getting children to their legal interviews and the sometimes unhelpful attitudes of social workers or foster carers.

## **Additional contractual requirements for legal aid in unaccompanied children's asylum cases<sup>21</sup>**

Where an unaccompanied asylum seeking child is provided with legal advice, assistance and representation under legal aid there are a few additional requirements designed to assist children in the contract between the provider of the legal service and the funder of the service, the Legal Aid Agency (LAA). These can be summarised as follows.

- A positive obligation on the provider to refer an unaccompanied child for advice on public law duties where the child is experiencing problems relating to the local authority's duties under the Children Act 1989 (for example, where the authority is disputing age) or in any other area of law such as family, community care or housing.
- A requirement that the work carried out on behalf of the child is conducted by a caseworker accredited to at least level 2 of the immigration accreditation scheme for lawyers.
- Mandatory criminal records bureau checks within the last two years for any caseworker providing advice and assistance to an unaccompanied child.
- Provision for claiming for attendance at asylum screening interviews and any other Home Office related asylum interviews for any child claiming asylum in their own right. This is not the case for adults.

Apart from these, the other main difference between the contractual requirements for an unaccompanied child's asylum case and an adult's case is the funding arrangement between the provider and the LAA.

## **Funding of unaccompanied children's cases under legal aid**

The remuneration available for unaccompanied children's cases differs from that available for adult asylum seekers. Whereas most asylum and immigration controlled work<sup>22</sup> is remunerated in adult's cases at a fixed fee, advice and assistance to unaccompanied children on both their initial asylum application and for representation on their appeal where their initial application is refused is remunerated at hourly rates.<sup>23</sup> Some of the lawyers interviewed suggested that the remuneration arrangements for unaccompanied children's cases were better than the provision for adults making them quite an attractive proposition for legal aid lawyers.

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<sup>21</sup> The overview presented here is indebted to the publication by Solange Valdez and ILPA (2012) entitled *Separated Children and Legal Aid Provision*.

<sup>22</sup> Controlled work covers advice and assistance for making an application for asylum or other permission to stay known as 'legal help' and representation before the immigration tribunals known as 'controlled legal representation'. It also covers licenced work for representation in the higher courts.

<sup>23</sup> 2010 Standard Civil Contract, Section 8, Immigration Specification, Paragraph 8.83(k).

There is an £800 cap<sup>24</sup> for work that can be claimed on an unaccompanied child's asylum application which is remunerated at different hourly rates depending on the task being performed. After the provider reaches this limit they must apply to the LAA for an extension of their costs before they can carry out any further work on the case. This application will be considered by the LAA and work cannot normally continue until such costs have been approved.

If the child's case is refused on initial application there is a cap of £1,600 for the purpose of preparation and representation at an appeal. This work includes preparing submissions using the factual matrix and legal argument, preparing and submitting a bundle of the documents to be relied on and attendance and advocacy at court.

### **Why additional time is needed in children's cases**

The £800 cap for making the initial claim covers the following work: introductions and building rapport with the child; explanation of the roles of different parties and procedures; entitlements and status pending the asylum claim; taking instructions on the child's history, family, fears and events leading up to departure or escape; drafting the statement; reading the statement back to the child to ensure accuracy; advice and preparation prior to the Home Office substantive interview; going through the Home Office substantive interview record with the child to identify any mistakes or ambiguities and where necessary explaining these in writing to the decision maker. Evidence may also need to be obtained from witnesses, carers or other third parties to put before the decision maker.

These tasks are made more difficult by children's pre-flight experiences and history. In one case file audit (Thomas et al, 2004) 100 young people's pre-flight experiences were examined and primary reasons for flight determined. These included the death or persecution of family members (37 cases), the persecution of the young person (21 cases), forced recruitment (15 cases), war (12 cases) being trafficked (10 cases), educational purposes where schools at home had closed down (five cases). In all, 86 of the young people had experienced violence, 13 had witnessed the death of family members, 32 had suffered sexual violence and 16 had lived in hiding. The high level of trauma events found here is consistent with findings in other studies and indicates a heightened risk of anxiety and depressive symptoms (Bean et al, 2007; Hades et al, 2008).

The lawyers interviewed told us that it would be very unusual to prepare even a straightforward case from an unaccompanied child within the hours worked under the initial LAA limits. The time needed in complex cases can be substantial. Sometimes this is because the child is not coping with their past, their injuries or separation from or loss of their family. As one lawyer

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<sup>24</sup> This does not include up to an additional £400 for disbursements which cover fees for experts and court, travelling and witness expenses and interpreters fees and other add-ons such as attendance at Home Office interviews.

explained:

*When a child is not coping very well within the legal process we often rely on the support of their social workers or youth workers. Young people can have difficulty in expressing their pain and talking about their past. It is not uncommon for children who have witnessed or experienced abuse, persecution or exploitation to self-harm. As legal representatives we have to be attuned to such issues and then liaise with relevant support services to ensure that the child obtains the help that they need.*

When working on a fresh claim, the time needed to prepare the case is much extended due to the need to read through all the previous files including representations, statements, reasons for refusal and tribunal determinations from the initial application. Most lawyers interviewed suggested it might normally take four to five hours just to read through the files in a fresh claim case before even meeting the client.

### **Applying for an extension of funding**

An extension application must be completed once the lawyer approaches the £800 limit if further work is required on the case. The application involves explaining and justifying the details of the work done to date and the further work anticipated. Provided detailed explanations are given, obtaining an extension from the LAA was not considered difficult by the lawyers we interviewed. However we were told by trainers that lawyers outside of London have complained that their extension applications are often 'knocked back' by the LAA and that they feel pressured or unable to carry out the work necessary on a child's case.

We were told that it can take up to several hours to prepare and submit an application for an extension of funding and that, depending on the funding stage, only 12 or 30 minutes is funded to do so (billable time). As most of the time taken to make the extension application is unfunded it was suggested that firms who have targets for staff completing up to six or more billable hours per day might only work the hours up to the relevant financial stage limits (i.e. £800 on the initial application). In this type of business model staff may be discouraged from spending unbillable time in applying for an extension of funding resulting in fewer hours being available to spend with a child and on preparing their case.

### **Funding disbursements in children's cases**

Third party expenses incurred in a case are called disbursements. Disbursements are money paid by the lawyer to other professionals, agents or on non-overhead expenses on a case. For example, disbursements pay for interpreter's fees, obtaining medical and social services files or commissioning an expert report to support an application. The disbursement limit at the initial asylum application stage is £400.

The LAA requires lawyers to obtain three quotations when commissioning an expert report before permission is granted to contract with them. This is time consuming and sometimes it may not be in the child's best interests to accept the lowest quotation. An example was given where, despite the child having been under the care of a psychologist for two years previously, the LAA required the solicitor to obtain quotations from two other psychologists before a report could be commissioned. Justifying and getting the LAA's approval to a higher rate can be time consuming and may in any event be rejected by the LAA. We were told that this can have a significant impact on how the child's case is justly determined.

### **Mixed cases following LASPO**

LASPO restricted the grounds on which legal aid funding could be provided within the immigration category. Whilst asylum<sup>25</sup> remains within scope of legal aid funding, the majority of immigration matters (including Article 8 European Court of Human Rights (ECHR) applications) are now out of scope. For the purpose of controlled work, funding for anything that is not an asylum claim is treated as an immigration matter.

The lawyers we spoke to explained the practical, professional and legal difficulties that the new restrictions brought in by LASPO had caused. It was emphasised that it was always likely to be important to take instructions from a child on a range of matters that may not neatly fit into the asylum category. Information provided by a child may fall on the borderline between an Article 8 ECHR family and private life issue (now unfunded) and a serious risk of harm Article 3 ECHR issue (still funded). Lawyers will need to hear the child's whole account, probe and may need to talk to witnesses before deciding which.

It is important that all the elements of an unaccompanied child's case are put before the decision maker and not only those that fall within the post-LASPO restrictions. As in other child protection assessments there may be evidence from third parties that are relevant to understanding the child's fears or behaviour. One lawyer told us:

*A child may be unable to articulate their fears due to their capacity and minority. For example, we recently had a case where the child said very little about their feelings and fears but evidence from their foster carer confirmed that the child suffered from nightmares causing distress and bedwetting. Both the foster carer and the social worker were seeking professional help and support for the child. It was vital that this evidence was gathered and put before the decision maker.*

Some of the lawyers we spoke to told us that one of the less visible but detrimental impacts of the LASPO changes was that lawyers who would have previously obtained evidence from carers or other adults who knew the

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<sup>25</sup> Paragraph 30 of Part 1 of Schedule 1 of LASPO defines an asylum claim as one made under: the Refugee Convention; the EU Qualification Directive; the EU Temporary Protection Directive or Articles 2 or 3, ECHR.



child to build their protection case now felt forced to limit their evidence gathering for fear of not being paid. We were told that this was particularly concerning where younger or very vulnerable children were concerned:

*Unfortunately, lawyers have been put in the difficult position where acting in the best interests of their child clients comes second to the financial viability of their firm or organisation for fear of being nil assessed (not paid for the work that they have done). Lawyers no longer feel able to take evidence from a child's carer or relevant third party as this may be misconstrued by the LAA as being linked to an Article 8 application rather than the child's international protection claim. It can be crucial to explore the environment of the child in the UK to understand their fear of return. A child may be able to explain why they fear return only once they have had an opportunity to understand and discuss why they feel safe here.*

Furthermore, the nature of a case is not always immediately apparent:

*Some cases referred to us as immigration cases can in fact turn into protection claims, but this only becomes apparent once we have been able to meet with the client and gather evidence from third parties. Because of their minority children may not understand why they are in the UK but through legal investigations we are able to determine the true nature of a child's case. For example, we had a case referral from a foster carer who had been supporting a child for several years. Due to the excellent care and support provided, the young person was considered a part of the family unit, excelled at school, and did not want to revisit his difficult past. He had forgotten the 'bad things' that had happened to him when he was younger and it was not considered necessary to delve into his past by carers when he was doing so well with their support. It was only when we had an opportunity to check the social services file and the history of his entry into the care system that we understood the nature of his arrival into the UK. He had been trafficked and the serious concerns over his welfare had led to child protection measure being instigated. Understandably, child protection records were not linked to the immigration application. We were able to identify that this was a child-specific asylum claim not merely a child who had spent most of their life in the UK.*

The issues raised above go directly to the intention behind Immigration Rule 351:

*While an unaccompanied child must meet the same criteria as an adult in order to obtain asylum or humanitarian protection account should be taken of the applicant's maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of his situation.*

## The impact of applying a merits test on a child's asylum claim

Before providing services under controlled work the supplier will need to assess and record both the child's means and the merits of their case. It is beyond the scope of this chapter to consider the means test but suffice to say this is not generally a problem for unaccompanied children but may well be for a separated child whose carer's means will be aggregated with the child's.

The merit test for legal help (advice and assistance required to make the initial asylum application) will be met if there is sufficient benefit to the client. At this level of service it is recognised that even where the prospects of success are poor, funding should be available initially. As a cost benefit test the emphasis having started work is on whether to continue. The more help that is provided, the more the cost benefit will need to be taken into account.

The merits test for controlled legal representation or CLR (for representation before the first tier and upper tribunal) will now not be met if the prospects of a successful outcome for the client are unclear, borderline or poor – that is below a 50% chance of success. There are exceptions to this in some circumstances and asylum cases may meet the exceptional criteria.

With borderline cases no longer funded under CLR since LASPO, a previous concession to unaccompanied children appears to have been lost. It had been clear under the old Immigration Funding Code that where an unaccompanied child had a right of appeal on asylum grounds and *prima facie* came within a relevant Convention then CLR should be granted on the basis that the child would meet the merits test to at least borderline level as *age ...may be a contributory and weighty factor in determining refugee status* (LSC, 2005). The forerunner of the LAA, the Legal Services Commission (LSC) made this statement out of concern that many children were not appealing the refusal of asylum when granted Discretionary Leave. This remains a matter of concern with many of the children spoken with during this research telling us that they had just accepted Discretionary Leave without appealing.

Interviewees also identified a disincentive for legal representatives to appeal against a refusal of asylum where Discretionary Leave is granted. There is a key performance indicator (KPI) which requires providers funded under CLR to achieve a positive outcome (a successful appeal) in 40% of cases. If this target is not achieved, the contract with the LAA is threatened. It is likely that more refusals of asylum would be challenged in unaccompanied children's cases if they were excluded from this target. There is precedent for this in respect of detained fast track cases which are not included in the 40% successful outcome KPI.

## Assessing the quality of representation and LAA auditing of children's asylum cases

The quality of a legally aided firm's work is assessed through various LAA audits including through peer review. The Specialist Quality Mark (SQM) and the Mediation Quality Mark (MQM) are standards owned by the LAA and are quality assurance standards for legal service providers. Legal service providers that hold a legal aid contract must have either the SQM or MQM standard or the Lexcel Practice Management standard (Lexcel).<sup>26</sup> Despite lawyers being subject to LAA audits we were told that most of time spent in assessing a file during audit focused on costs and expenditure (for example whether there was sufficient evidence of the client's means on the file or whether the costs incurred were justified). One lawyer reported that:

*The main difficulty confronted by lawyers at LAA audits are that a child's file is normally assessed down or in the worst scenario 'nil assessed'.*

Legal aid suppliers are also subject to peer review conducted on behalf of the LAA. Peer review is a quality assessment tool that directly measures the quality of advice and legal work carried out by legal aid providers. Some of the lawyers we spoke to directed us to guidance on the Ministry of Justice website<sup>27</sup> that they rated as good general advice on what steps were necessary in order to provide quality representation in immigration cases (produced by immigration peer review panel members). However the guidance was considered insufficient to address the specific issues and complexities involved in preparing children's cases including matters that might affect the child's ability to give instruction:

*More is needed to audit the quality of work on children's cases. There is a peer review system that can be a good way in which quality can be measured.*

The quality of legal representation given to children was investigated by the Refugee Council in *Lives in the Balance* (Brownlees and Smith, 2011). The research examined the quality of legal advice offered to separated children, including how legal representatives work directly with, relate to and build relationships with children to prepare them for interviews; communicate with them and keep them informed of developments.<sup>28</sup>

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<sup>26</sup> The Lexcel quality standard is owned by the Law Society. Information relating to Lexcel is on the Law Society's website. Details of providers who hold the SQM, MQM or Lexcel are listed in the LAA's provider directory.

<sup>27</sup> For more details, visit: <http://www.justice.gov.uk/downloads/legal-aid/quality/immigration-quality-guide-september-2010.pdf>

<sup>28</sup> In particular the report considered knowledge and awareness of law, guidance and policy in this area and the entitlements of separated children, direct communication with the child or young person and with other relevant professionals working with or on behalf of the child, presentation of the child's case, commitment to making the case as strong as possible, willingness to pay attention to the progress of the case, keeping the child or young person informed of developments and preparing them for key events relating to their application.

Among the key findings of that report was that the quality of legal representation unaccompanied children receive is variable both within and across firms. Representatives who could communicate well with a child were also generally knowledgeable in the relevant law and country information and used this well in presenting the case. Tellingly the report found an insufficient number of high quality legal representatives able to provide a good standard of advice and representation and a worrying number of representatives whose knowledge of relevant law and policy was woefully inadequate. They did not have the requisite skills to ensure that a child they were representing could fully participate in the process.

The quality of the legal representation was a recurrent theme during the research for this report and we would like to see further consideration given as to how the quality of children's immigration lawyers might be improved. We would like the Law Society to consider this matter further, drawing on the expertise of the Immigration Law Practitioners Association, and hope that some of the evidence from children in part 2 of this report will assist with this thinking.

### **The accompanying adult in legal interviews**

It is widely accepted that there should be an appropriate or responsible adult in all legal interviews that a child attends. The primary role of this adult is to ensure the welfare of the young person during the interview. Home Office rules require this for substantive asylum interviews and the draft forthcoming statutory guidance from the DfE suggests that '*the child's social worker or carer should accompany them in all meetings with legal professionals* (DfE, 2014, paragraph 33). The accompanying adult does not have to be a social worker and in some circumstances should not be.<sup>29</sup>

Lawyers told us that they often experienced unhelpful attitudes from social workers and foster carers accompanying the child. Reasons cited for such attitudes ranged from not understanding and not having had training on their role in the interview as the person responsible for the child's welfare, conflict with other commitments such as (in the case of foster carers) other childcare commitments, not understanding the need for multiple interviews with the child and an attendant prejudice that these were self-serving in order for lawyers to earn more money. There also appears to be no separate funding for foster carers to attend legal interviews with children so attendance is seen as a financial burden. It is not known whether social workers can claim travel expenses for attendance at legal interviews.

While these issues could usefully be researched further, the problems raised could be easily solved by the appointment of a guardian to the

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<sup>29</sup> OCC's response to the consultation suggested that the draft guidance was amended to read: *The child's social worker or carer should arrange for them to be accompanied in all meetings with legal professionals*. This is because it will be inappropriate to send local authority staff where the child is in dispute with the authority over their age or provision of a service.

unaccompanied child. One duty of a guardian would be ensure the young person attends their legal interviews and to accompany them in doing so. The appointment of a guardian to all unaccompanied children has been a longstanding recommendation from the Children's Commissioner and this research leaves the recommendation undiminished.

### **Recommendations to assist unaccompanied children exercise their rights under Article 12 of the UNCRC**

Article 12 (2) of the UNCRC states:

*...the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

In part 2 of this report we look at the physical and mental journeys that are made by unaccompanied children from departure or flight in the country of origin to becoming ARE following an unsuccessful asylum claim in the UK. While the recommendations at the end of part 2 aim to address the situation of those who have had their claims finally refused, the recommendations at the end of this part of the report are designed to assist children indirectly by creating conditions in which they can properly exercise their right to have their voice heard and thus prevent them from becoming appeal rights exhausted in the first place.

## **Recommendations**

### ***Law Society***

We recommend that the Law Society gives consideration to how the quality of immigration lawyers providing services to children might be improved and suggest that it works with the Immigration Law Practitioners Association to develop an appropriate scheme.

### ***Legal Aid Agency***

We recommend that the LAA takes the following steps, in line with Article 12 of the UNCRC, to facilitate unaccompanied children's voices being heard in their asylum claims.

- Review the 'cap' of £800 for unaccompanied children's cases and base any future cap on a realistic average for properly preparing a straightforward children's case
- Prepare clear and accessible guidance for lawyers on the information required to justify further expenditure on a child's case. The guidance should be published so that those assisting the child such as local authorities or advocates understand the legal aid regime and are able to hold legal representatives to account if further work is denied.
- Ensure that in all funding decisions in children's asylum cases the best interests of the child rather than the lowest bid is the primary consideration.
- Prepare peer review and LAA audit guidance to assist with understanding how the quality of legal aid providers work in children's asylum cases can be better measured.

### ***Ministry of Justice***

We recommend that the Civil Legal Aid merits criteria regulations 2013 are amended to exempt children's asylum cases from any merits test.

We also recommend that an order be made under section 9(2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to bring all claims from children and young people under immigration control who arrived as children and remain under the age of 25 back within the scope of legal aid irrespective of the ground on which funding is sought.

### ***Government***

That in line with Article 18(2) and 20(1) of the UNCRC the Government should arrange for the appointment of a guardian or specialist advocate/adviser as soon as an unaccompanied or separated child is identified. Guardianship arrangements should be maintained until the child has either reached the age of majority (where settlement has been established) or has permanently left the UK's territory. The guardian should be consulted and informed regarding all actions taken in relation to the child.

## Part 2

### Chapter 4: Departure, journey, destination and arrival

The next four chapters consider the different stages in a young person's journey to final refusal of the claim. This chapter considers departure, the journey to Europe and the UK, arrival at the destination and initial contact with the authorities. Chapter 5 looks at applying for asylum, the help available for this and the experience of the substantive asylum interview. Chapter 6 considers how children understand the grant of Discretionary Leave to remain and Chapter 7 looks at what happens when Discretionary Leave expires, waiting for the decision on whether the leave is going to be extended and the experience of being finally refused.

To provide an overview of these stages we first reproduce a composite story of a child coming to the UK on his own to ask for protection. This story was developed during one of the workshops we held with young people with the assistance of the Office of the Children's Commissioner's professional storyteller. The words and phrases used are all the young people's own. In developing a collaborative account of a boy's journey the young people were able to express their own difficult experiences indirectly and therefore more easily. We found that as rapport developed between the facilitators and young people over the course of workshops, they tended to speak more directly from their own experience and felt less need to revert to talking in the third person. Nevertheless the ability to revert to talking about 'a boy' or 'a girl' was an important safety net throughout the duration of the workshops.

#### **A boy's story**

Once upon a time there was a boy. He grew up in a land where there was no freedom. He was afraid for his life. He had no future, he had no voice. He decided to leave, to find somewhere he could be safe, somewhere he could make some kind of life for himself.

He travelled from land to land. The journey was dangerous, sometimes even worse than the place he'd left behind. He saw others die along the way and he didn't know if he would survive. Sometimes, he was beaten and told to go. Sometimes, he met kind people who helped him a little, gave him advice on where to go next. But most of the time, he didn't know where he was going – he was just told to go here, do this, hide here... he lived in fear of the people who were meant to be helping him travel – they were violent and they told him lies. He dreamed of being somewhere safe.

One day, he was put on a lorry, hiding in a fridge. He could feel the lorry moving and then it stopped. The doors opened. He jumped out. The lorry

driver shouted, so the boy ran and hid. But then the police came and he was found. He was taken to a cell and asked so many questions. He was so confused – and so tired – he just said whatever came into his head.

Then other people came and took him to a home. He learned that he was in England. He was able to sleep and eat. At first, everything was so new. He had to learn his way around – how to cross the road, what the money was and, of course, how to speak English.

He was given a solicitor and he helped him make his claim for asylum. The interview with the Home Office was so stressful. They asked so many questions, they expected him to know so much that he didn't know. They referred to the answers he'd given when he first arrived and every time he paused to think, they told him he was lying. He met other people in the same situation and it seemed just chance whether you got a good judgement or not.

When he got the letter saying his claim was no good, it just didn't make sense to him, the reasons they gave. Why did they not understand that he had no choice but to leave? That there was no way he could go back? But at least he had a visa to stay. He could carry on going to college and living in the flat he'd been given. He began to make friends, learn new things, feel at home here. He thought that if he worked hard, never missed a day of college and did everything they asked of him surely they would let him stay.

And then his leave ran out. He waited to hear whether it was extended. He waited for months. He couldn't concentrate on anything else, it was so stressful: would he be allowed to stay longer? Suddenly he wasn't like his new friends at college: he couldn't apply to uni, he couldn't get a job... he was just waiting for his life to start again.

At last, he heard his extension had been refused. His solicitor told him he could appeal but it would now cost him so much money that there was no way he could afford it anyway. He couldn't stay in the house he'd been living in. He couldn't stay with friends: it was too risky for them and anyway, he needed to find a way to live for himself. But it was so hard. There was no good way of earning money and the bad ways were so tempting. What did he have to lose?

He wished he'd never been allowed to stay in the first place – he'd got so used to England now, he couldn't bear the idea of moving on again. To go back to his country after all these years – it would be impossible. There was nothing for him there, except death. Why else had he left his homeland? Better to die a quick death here, he thought. He heard of someone who'd been detained and sent back. He lived in constant fear now that they would come for him. The fear made him physically sick, paralysed. He felt completely trapped.



## Reasons for leaving, the journey and choice of destination

The academic literature suggests that initial flight of unaccompanied young people often occurs quickly with little time for planning (Wade, 2011). Overland journeys may be long, arduous and punctuated by stays in countries along the way. Choice of destination is often in the hands of agents or other adults that broker their departure (Crawley, 2010). The experiences of the young people in our research broadly support these findings.

We did not attempt to directly engage with the young people about their reasons for leaving their country of origin. This will have been explored during their application for asylum by both their legal representative and the Home Office. While we were clear it would be inappropriate to enquire about what may have been difficult or traumatic circumstances of departure, we found some young people volunteered information about who initiated the decision to leave.

A common theme was of being sent away. Young people understood this as a protective mechanism initiated by a parent, near relative or adult relative of a friend. No one suggested they left entirely of their own volition or under their own control. This can present difficulties when applying for asylum as considerable detail is normally required by the decision maker in order to substantiate the claim to be in need of international protection even allowing for the concession in the Immigration Rules<sup>30</sup> regarding the assessment of claims from unaccompanied children.

*My mum gave some money to some people to take me here. But technically, I wasn't with somebody to take me, like family or anybody. So it was just basically me with other people who I didn't know then. I got to know them on the way.*

*The parents decided already with the agent that the boy has to go from Afghanistan to London. But even the parents don't know about London. They think that London is a country, not a city. They don't know about these things there. So that's why they choose London. They don't even know of a country like France, which is Euro country, or Greece – they're thinking of London. They just think it's a better place than others. So they don't think France will be similar to London or the UK, the immigration staff, life, and things.*

*When I come here I was 15 – I didn't know nothing about political. All I know is this happened to us. So, they said, 'You didn't give us enough information' but I said, 'How can I give information when I don't know?' My father wouldn't come to explain political stuff to his son when he's 15 or 14.*

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<sup>30</sup> Account should be taken of the applicant's maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of his situation.

## The journey and the destination

Participants in the workshops had a great deal to say about their journeys to the UK.

*There is too many dangerous things in the travel when they travel with boat. So, the boat – they are for three people, or five people. The agent, they put about 20 people. And when they are moving there are some strong waves because of weather. Some people they lose their lives.*

*You're concerned, they're gonna attack you, or they gonna beat you, even they gonna kill you. They don't care. I came like this. I didn't arrange things with the agent – one of my friends, his dad, he deals with agent. When I spoke of it, my friend's dad, he said, 'The agent said like this, like that; you can go like, you know – easy'. And I start the journey, even there is no water to drink, and about seven days without a drink or anything, and it was horrible. When you ask something, when you have got something nice or you have got some rings, something expensive, they ask you, 'Give me this'. If you're gonna ignore or say, 'I don't give you', they gonna punch you. By force, they take things. It's difficult.*

A more sinister suggestion was that agents sought out young people in order to extract money from the family:

*They [agents] can kidnap you. So they just want money from your families. They kidnap you for that take out your nails; beat you up, things like that.*

## The destination country

Participants only rarely suggested that the UK had been a positive choice on their part as a destination country, particularly at the start of their journey:

*I was thinking, like, I will go London. I will go to Norway, you know, thinking about...different possibilities. But some of the young people are trying to just get out from Afghanistan, just want to leave.*

While there is on-going debate and discussion about which European country might be best to try and make a future in amongst young migrants as they travel, these details are not necessarily known by the adults sending them away.

*OK, so the boy meets older people on his journey. So the people have experience from other people, so is telling the boy: 'If you go to London, you will have more support, social things, education with other life'. So, that's the point, yeah.*

*But because most of the people at home, they don't know anything about European countries, so nobody talks, so they only know about London; they don't even know if London's a country or a city.*

England does not appear to have the untarnished reputation it once had as a destination. This is reflected in the shifting patterns of asylum applications from unaccompanied children across Europe presented in Figure 1. The following two comments are from young men who have been here for a number of years.

*Now there are people staying in other countries like France, Belgium and Austria, because they have seen the situation of UK, with immigration staff, cos they are think they are knowing a lot because they have seen people waiting for five, six year or 10 years, so they don't, they just try to stay in different, other countries.*

*Because a lot of the UK is day by day getting difficult with this kind of stuff. For example, I know people who have been deported. So they not gonna come to this country because they have already experienced... so they are going to choose a different country for themselves or for the people who try to come.*

In contrast, many young people told us that they were unaware of which country they had arrived in. This is because their journey had been controlled by people smugglers or agents who did not provide this information:

*I went to a shop and they didn't take Euros. I knew I must be in England.*

For many who travel overland and through Europe, the last part of the journey across the English Channel is often very dangerous (Matthews, 2012):

*I travelled in a petrol tank with sand in it, I was so thirsty, I just had to bang on the tank when I thought we had stopped*

### **Asylum screening interviews**

Following publication of *Landing in Dover* (Office of the Children's Commissioner, 2012) the Government accepted the central recommendation that asylum screening interviews for children should be delayed in cases where the asylum claim is made at the first point of contact with officials. Our purpose in making this recommendation was to urge the authorities to give the child a chance to rest and recuperate from a journey that is exhausting and dangerous, and the opportunity to instruct a legal representative. We found that information obtained during the initial screening interviews at Dover was sometimes used in the reasons for refusal letter when rejecting a claim for asylum.

The young people we spoke to for the current research did not necessarily arrive in Dover. A significant portion had arrived by air. Some may have

undergone screening interviews before the Government's announcement that asylum screening of children at the point of entry would cease. However we are also aware the instruction conveying the Minister's decision was taken up unevenly at ports of entry across the UK.

Whatever the reason for it occurring many of the children who we talked to who had claimed asylum at a port as opposed to in-country were screened on entry. Their evidence acts as a reminder of why we made our recommendation given how confusing it can be for a child when they first arrive.<sup>31</sup> Confronted with detailed questions from immigration officers, children are fearful of the consequences of their answers – the most pressing fear being of immediate removal.

*I remember I was in (airport) and I just came because I have a difficult situation – like where I came from I don't feel safe. I'm not open to talk at that time. I don't even know where I am and it's too different from where I came from. They ask me a hundred questions which was confusing me. It was really the hardest moment in my life. Because they shouldn't ask me all those questions. My mind it was not even suitable to answer all those questions.*

*When I came I didn't know what they were talking about or asking me. They don't explain. They scare you sometime. So you should give us time to adjust. Yeah, I just cried because they were scaring me. 'Why you did this? Why you did that?'*

*When we're new you don't know anything and you don't trust anyone. You've come from a different situation. So when they ask you too many questions, you don't know whether to tell the truth or lie. When they take notes, that's going to be your case. So when you arrive you must tell them everything. Some people find it hard – can't tell everything first time. You don't even know what is going to happen.*

*The first time you come they don't know you, you don't know them. 90% of people might not want to say the truth because for me I didn't know who they are or where I am.*

*Am I back in my own country or somewhere else? But people around me didn't look like people from my own country so I thought it must be somewhere else. When people came to me they took me to a room and asked me questions. I didn't know if I had to tell the truth or lie – didn't know where I am. You're just coming in and they ask 'why have you come here?'*

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<sup>31</sup>What young people told us about the experience of arriving at a port of entry might also usefully inform current work being undertaken to review the procedures for gathering information from unaccompanied asylum seeking children on arrival. See Cm 8778 (February 2014) Government Response to the First Report from the Joint Committee on Human Rights Session 2013-14 HL Paper 9/HC 196: Response to Recommendation 12.

One young woman was expecting to meet a promised contact at the airport she arrived at:

*I thought I was waiting for someone to come, that the person is here. That's why I try to get to where I have to go, that man taking me. But they said I was in England. I said, 'I'm waiting for this person'. They said, 'OK so you came all this way for this person', and they said they'd check and there was no person. So I wondered, 'Why am I here?' and it felt like the end of the world for me.*

One young person arrived in the east of England in a lorry and while being held at a police station had his age assessed by the local authority. It concluded he was over 18. As a result he was treated as an adult by immigration officials and detained. He spent a month in an adult detention facility before he was released after having his age re-assessed by a different local authority.

*When I was coming to UK, they put me in detention centre, in jail, more than one month. After one month they let me out of jail. I see lot of problem when I leave my country, in another country like Greece, Turkey, Italia – every country see too much problem. The agent, he beat me with knife. When I come the UK they put me in jail.*

### **Arrival and care**

For some young people who had travelled through Europe and encountered police or other authorities during their journey the idea of being placed in care was new and treated with initial suspicion:

*You start off thinking where to go and how to start a new life. When you go to the Home Office you don't know anything about the system of the UK, so, they try to push you to go out to some people who can look after you.*

Some young people, especially those arriving prior to age 16 and therefore more likely to be placed in foster care, reported good experiences of being cared for in the aftermath of the stress of arriving in a new country:

*They [social services] did a great job. They helped me a lot, especially [name]. She was the first person I met in the social services. She came and picked me up [from the immigration office] and she took me to the foster carer and I used to receive calls all of the time – after two days, sometimes every day. And after that she used to come and meet me and see that I'm doing ok and that I'm alright. At the time I couldn't speak English so they used to bring a translator for me. So they came just to ask me how I'm doing and make sure I'm ok. They helped me a lot.*

Young people's priorities when they first arrive are not to lodge an asylum claim. As covered in the next chapter, children do not really have an idea of

what an asylum claim is or what is necessary to pursue one, let alone implications for their future trajectories.

As reported by Kohli (2006), '*...the young people's own reported stages of resettlement were to deal with the present first, the future next and the past last*'. Kohli's insight into the order of priorities that young migrants have is highly relevant to young people's approach to their asylum claim, the importance of which is relegated to other more pressing matters:

*The first thing is very important is to have an education and to learn the rules, how to speak to people and to make friends.*

*When I came to UK, I was 14 years old. I couldn't speak English at all. I had to learn, because the situation was very hard. Especially for the first six months. I couldn't make any friends; I couldn't watch telly, anything. So, everything was very boring and very stressful. So after a while, I start learning.*

### **Best practice points**

#### ***Local Authorities***

- Where it is possible that an asylum applicant is a child but age is uncertain, a local authority age assessment should not be conducted at a police station or port of entry. The young person should be accommodated for the time being until a lawful assessment can be conducted in the presence of an appropriate adult.
- Where possible a child should be accompanied to the asylum screening interview by a lawyer whom they have had the opportunity to meet beforehand and who can explain what will happen. The Legal Aid Agency will pay for attendance of a lawyer at an unaccompanied child's screening interview.

## Chapter 5: Securing legal representation and the initial asylum application

### The need for representation

An unaccompanied child, speaking no English and dealing with the immediate pressures of arrival, needs a legal representative to assist in navigating the legal process of claiming asylum. This is recognised within the European common asylum policy and reflected in Council Directive 2013/32/EU (the recast Procedures Directive):

*With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 14 to 17, Member States shall:*

- (a) take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of a representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end.*

While there is an acceptance by all the agencies that an unaccompanied child is entitled to such help, we suggest that currently no one agency really owns the responsibility for ensuring that a child seeking asylum is provided with it. Home Office process guidance to asylum decision makers, *Processing an Asylum Application from a Child* (Home Office, 2013c) notes that:

*All children are eligible to receive legal aid to help them with their asylum application and the Legal Services Commission (LSC) will fund a legal representative's attendance at a screening event and a substantive interview. However, funding is not available for the 'First Reporting Event' or other 'Reporting Event'.*

The guidance is silent on how such legal help might be obtained, though reference is made to the Refugee Council's Children's Panel of Advisors as a source of non-legal help in dealings with central and local Government agencies.<sup>32</sup>

Nobody appears to own the duty to ensure that the assistance children receive is of a good quality or that the child is consistently brought to interviews with their lawyer to allow rapport to be built, instructions taken, and

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<sup>32</sup>For further details visit:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257469/processing\\_asylum\\_application\\_1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processing_asylum_application_1.pdf)

the asylum process explained . As we saw in chapter 3, these issues are important. Thorough, good quality initial representation can make the difference between a successful and unsuccessful asylum application.

For local authorities, a successful asylum application makes care and pathway planning simpler. There are considerable savings to be made through avoidance of having to appeal, or lodge fresh claims, or support young people later in the absence of funding. Placing greater emphasis on getting the decision right first time around would benefit the child and all agencies.

### **Is the need for legal representation fully recognised?**

We were surprised to find a number of the young people had not had the importance of obtaining legal representation explained to them in screening interviews at the Asylum Screening Unit:

*They [Home Office] didn't say why you needed a solicitor. He just asked, 'You need a solicitor or not' So how are we to know? We can't know this. How are we to know why you need a solicitor?*

*At the first time when I came in there, I went to Home Office and Home Office ask me, 'Do you need a solicitor?' I said, 'What for solicitor? I don't know?'*

Forthcoming statutory guidance on which the Department for Education (2014b, paragraph 33) is currently consulting is not sufficiently definite on the need for representation. It says:

*Unaccompanied and trafficked children **may** have need for access to specialised legal advice and support. This could be in relation to immigration and asylum proceedings. If they have been trafficked, it may also be in relation to criminal or compensation proceedings. The plan should note **where legal support is required** and how it will be provided. The child's social worker or carer should accompany them in all meetings with legal professionals. [Emphasis added]*

We strongly welcome the forthcoming statutory guidance on care for unaccompanied and trafficked children and recognise that the guidance is still in draft. However we are concerned that the wording of the above passage appears to suggest the care planning process should assess whether or not an unaccompanied child requires legal representation. Corporate parents need to understand unequivocally that legal representation is both required under the Procedures Directive and is in the child's best interests. A newly arrived migrant child is not in a position to decide whether or not they need a legal representative. As a lawyer put it to us in the course of this research:

*It's very hard for children to understand or conceive of a system that works under the Rule of Law as their experience of justice is not around the State being able to protect you but more likely a village*



*elder dispensing local justice according to custom.*

## **Accessing a legal representative**

Our research indicates that the route to a young person finding a lawyer is not always because of a need identified during care planning. Sometimes it appears peer recommendation is the route in. While this is unsurprising given peer support and advice may have been a significant and trustworthy source of advice during a child's journey, there may be issues of whether, inadvertently, young people recommend legal representatives who may not be skilled or competent in handling children's asylum claims.<sup>33</sup>

*When I move into the lodging then there's a boy. So he introduced me to a solicitor. So that's how I found her. And I introduced more people. My friend needed a solicitor because the Home Office they gave up a paper to him. The solicitor needed to fill that paper and my friend didn't have a solicitor. That's why I introduced him.*

Local authorities are in different positions in respect of local suppliers who can conduct asylum work under legal aid. Some may rely on a single supplier, either a commercial solicitor's firm or a not-for-profit organisation such as a law centre. Others have a choice and may have developed local practice around whom they direct unaccompanied children's cases to.

## **The substantive asylum interview**

Once a child lodges their asylum claim, a clock starts ticking. At the end of the screening interview the child is provided with a blank self-evidence form (SEF) which must be completed and returned within 20 working days. The Home Office has a target of completing a child's case within six months of the claim being lodged. The main event within this is the substantive asylum interview, the date of which is arranged after receipt of the completed SEF.

A recent Chief Inspector of Borders and Immigration report into the handling of asylum claims by the Home Office (Vine, 2013) recoded overall good practice in the conduct of asylum interviews. The Chief Inspector found there was training in place including specialist training in interviewing children; that responsible adults were present in 90% of interviews; breaks were offered in 93% of cases; and many examples were seen in files sampled and interviews observed of child-friendly behaviour though with a few examples of unsuitable questioning.

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<sup>33</sup> Although little research has been conducted amongst asylum seekers, let alone child asylum seekers, on the 'choices' they make when instructing a legal representative, it is known that many cultures are likely to see 'free' legal aid as either being less good than a service that is paid for or, even worse, in the 'pay' of the Government and therefore unlikely to serve their best interests in obtaining settlement. There is a clear incentive for firms who are not in receipt of a legal aid contract but who have lawyers accredited to conduct asylum and immigration cases to foster or instil such prejudice.

However he also noted that average (median) interview length was around two hours 45 minutes. Most were less than four hours with interviews in the midlands clustered around two to three hours but more variation in London. These are very long periods of time to expect a child to concentrate especially if they are as vulnerable as unaccompanied children are. While it is encouraging that breaks were mostly offered, they should be required at regular intervals.

Young people told us the substantive asylum interview could be a stressful experience. This emphasises the need for the presence of both a legal representative and a responsible adult known to the child who can understand their signs of stress and loss of concentration. Some young people told us the atmosphere in the interview was adversarial and pervaded by an attitude of disbelief by the interviewing officer.

*If they ask you a question in your interview, if you keep them waiting about one minute they will say, 'You are lying'. They don't give you a chance to think. They say, 'If you are thinking you are lying – you just think about something to lie to us.'*

One young person felt there was very little understanding of his background and culture:

*In my opinion, the Home Office, they don't treat people differently. I come from Africa. Here it is advanced. You can see four, five, six or 10 years olds know many things. But in my country we don't know these things even if you are 14, 15, 16. But here they expect you to answer all questions when they ask you, so there's gonna be something you don't know. They don't understand, they don't know, because maybe here culture is like that, they know their minds from a younger age to know many things. But for us it's different. They don't understand that.*

There was also anger and incomprehension at being judged to be lying:

*I'm just saying, how comes someone like a young person is lying? Like they know it's more than 40 years' war in Afghanistan, and they don't know what it's like. They're judging people: 'You're lying'. I just want them to stay for a week there, then they would realise what's going on. They're living in a safe country. They can't even hear the bullet. They can't hear the bomb blast and things like that. I know that they are judging. They are sitting there.*

*I feel like treated differently from other people from my country, because we have the same situation – which is banned religion. So many problems that is faced by my people. That is quite clear, well known, and also our president has admitted it publically. Why, if people who come from my country are facing the same problem, why should the decision be different? Is it luck? Does the person who is asking you, do they understand your situation? You just ask yourself, 'Why me'? You see someone in same situation, and you didn't get it and they did. Why? The question should be raised, it's really stressful.*

## Waiting for a decision on the asylum claim

Waiting for a decision following an interview preoccupied all the young people who spoke to us. The waiting – whether for an initial decision or for a decision on a variation application following the expiry of Discretionary Leave, meant they felt unable to plan for the future. Waiting for a decision is also been highlighted as a major concern by the young asylum seekers self-advocacy group Brighter Futures in their recent report *The Cost of Waiting* (2013).

The Chief Inspector's report (Vine, 2013) also examined the time it took to make decisions on children's claims, from the lodging of the claim to service of the decision. In the files he sampled he found that average (median) time between the asylum claim and service of decision was 64 days in London and 141 days in the midlands. In the midlands the shortest interval was 69 days. Some young people in our sample appear to have experienced longer waits than the averages in the Chief Inspector's report. It is worth noting that the Chief Inspector did not disaggregate average decision times by grants and refusals. Refusals may take longer to process due to the need to write a considered reasons for refusal letter whereas a grant does not require a reasoned explanation. We note the growing attention being paid to family tracing in unaccompanied children's cases and consider that this will feature in lengthening decision times.<sup>34</sup>

Although young people's experience of waiting is likely to have included waiting for a decision on the variation application submitted by those with Discretionary Leave before they reach 17 ½ some young people referred to the wait following the substantive interview:

*When I go for interview after three months they give me one answer, because my social worker used to say to me, 'You were trafficked' and something else. And when Home Office decided they say, 'You were not trafficked', and the lady at the Home Office say, 'I'm gonna give you answer in two weeks – the big answer.' And they didn't give me it for eight months now.*

It is also possible that delays in serving the decision following the substantive interview may occur where the child is older in order to refuse the claim outright rather than have to grant Discretionary/UASC leave:

*Eight months ago I went for my big interview and they didn't give me any answer yet. I called my solicitor. He said, 'For what you call me?' I say, 'You know for what I call, because I need help', and she say, 'I can't make that decision so just wait.' Now in five months I'm gonna turn 18. She says, 'If they refuse you, you have to go back.'*

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<sup>34</sup> See for example: Home Office (2014) *Identity Checking and Family Tracing via the Albanian Authorities*.

*After, I don't remember, one month or after three weeks, I did biggest interview. They didn't give me more days, like a few months – only three weeks. And I went there and they sent me the answer after six months when I turned 18. After, I went to the court. I was alone, no-one else, just with my social worker, no lawyer, no solicitor.*

*The problem is to get documents. I've been in this country for four years, just waiting for papers and I only turned 18 four or five days ago. And still, they didn't tell you what's going on.*

## **Best practice points**

### **Home office**

- Home Office screening staff should identify whether or not a child has a legal representative and, if not, formally notify the local authority caring for the child.
- In substantive asylum interviews regular breaks should occur to allow for children's shorter attention spans.
- Serving of decisions should not be delayed in order to be able to serve outright refusals rather than a grant of UASC Leave.
- Where family tracing is undertaken by Home Office officials, children should be informed including of any anticipated delays in serving the decision that may result.

### **Local authorities**

- Local authorities should ensure that legal representation is arranged immediately when assessing the needs of an unaccompanied migrant child. Where possible a legal appointment should be arranged before the child meets formally with the Home Office, including before the screening interview.
- Where it emerges during care planning that a child already has a solicitor the local authority should take particular care to ensure that the services being provided to the child are adequate.
- A standard of the legal services to be provided to an unaccompanied child by their immigration lawyer should be developed. Based on established best practice principles and the Legal Aid Agency's rules concerning what may be claimed for, local authorities should use the standard to assess whether suppliers are providing an adequate service to children in their care.

## Chapter 6: The refusal of asylum and grant of Discretionary (UASC) Leave

The reason many children become Appeal Rights Exhausted young adults are because they have been unable to put their claim forward adequately. Sometimes this is because of the quality of legal advice and representation.

### Poor representation

In the example below the solicitor failed to submit an application in time to vary the young person's leave when they turned 17½. This meant the young person had no current leave to remain and no outstanding application to consider leaving them unlawfully in the United Kingdom. Urgent remedial action would have been necessary to rectify this situation.

*My solicitor is not working properly. I came in England in 2011. But I just saw the solicitor only two times with my social worker and after that I didn't see her for a long time. But they're not working, properly because [when Discretionary Leave was due to expire] when I apply for next visa after one year they say, 'Oh, you didn't apply and you didn't give me your visa.' I was thinking, 'What's going on? I gave you the visa. I came to you with my social worker and I gave you my old visa to apply for the next one.' But now she's saying, 'Oh, you didn't give me.'*

A lack of explanation of the decision on the claim was mentioned in several cases. In the example below the young person had not understood that his permission to stay had only been because he was a child:

*The solicitor's job is to explain to someone what's happening or what's next. So you keep enjoying your new life. You go to school, try to learn English, new language, and try to make friends. You don't think of your case and the solicitor doesn't let you know about your case. So finally when you turn 18 then you get in trouble with the Home Office and they ask you to go to report. Then you realise what's going on, what's happened to you when you just turn 18. And so totally your life just changed forever.*

*There is one thing more about solicitor – when you get something from Home Office, the solicitor doesn't explain properly. The problem is that the people who come from Afghanistan don't know English. You come here, you go straight to the solicitor, you don't know anything. Then the solicitor sends you to Home Office and the Home Office gives you to the social care or something like that and you think that everything is done and that there is nothing else you have to do. So the solicitor does everything but sometimes the solicitor doesn't let you know. They do send a letter to you but how do you know about the letter if you don't know any English?*

## The grant of UASC Leave (formerly Discretionary Leave)

A specific issue around these quality concerns is a failure by the representative to explain to the child that a grant of Discretionary/UASC leave means asylum has been refused. Children should have the nature of this leave and its implications carefully explained by their legal representative. They should also be given the opportunity to appeal against the initial outcome of their asylum claim where possible:

*I thought it was visa, the same as you were saying, I got visa, that's it.*

The common term used by young people to describe Discretionary or UASC leave was a 'visa' which has rather more positive connotations than a refusal of asylum. We found that young people were encouraged to believe that they could extend their visa when it was near to running out. The use of the term extension in this context is only correct where further leave can still be granted to a child on the same basis as before. This applies to only a minority of unaccompanied children who seek asylum. The Immigration Rules are clear that the limited leave given to an unaccompanied child cannot be granted beyond 17½ and any further application at that age is correctly described as an application to vary the basis on which the leave has been granted. The conditions for the original grant will no longer exist once the child reaches 17½.

Rule 352ZC of the Immigration Rules concerns the '*requirements for limited leave to remain as an unaccompanied asylum seeking child*' (UASC Leave). The Rule makes clear that '*the applicant must have applied for asylum and been refused Refugee Leave and humanitarian protection*' [emphasis added]. The Rule also requires that '*the applicant is an unaccompanied asylum seeking child under the age of 17 ½ years throughout the duration of leave to be granted in this capacity.*'

While the Rules are clear that UASC Leave denotes a refusal of asylum and that it lasts only until age 17½, we found widespread incomprehension of the meaning of UASC/Discretionary Leave by young people. The responsibility for this lies with their legal representatives.

*I didn't know what was going on around me. I didn't know what Discretionary Leave to remain was. What does it mean? What does the visa mean? What is it for and why do I need it? So I didn't know because the way I came and travelled to this country, I didn't have any passport or anything. After a while, before it finished, I realised I have to apply for the extension.*

*When I came here I was 16, I didn't even know that I received a document or a visa for one year to stay in this country. They didn't give it to me, I didn't know until it was four months left to expire and then I realised that yes they were telling me I had a visa. So, I get it, and then four months later it expired, so I couldn't do anything with it. When I get the discretionary leave to remain here – the first time I*

*didn't even know that when I'll be 18 I'll be sent back. I didn't understand, cos there was this translator from Iran and I didn't even understand what he was saying to me.*

Children's lack of understanding that Discretionary/UASC Leave is a refusal of asylum can mean they are denied their Article 12 right<sup>35</sup> under the UNCRC to participate in a decision that will affect the course of their lives into adulthood. This is particularly the case where the child has a right to appeal, and an opportunity to receive assistance in doing so, which may not be there when they are adult.

Other young people appear to have understood that their visa was for a limited time only but were also told by carers or legal representative that they could 'extend' it when they reached 17 ½.<sup>36</sup> For these young people, immersed in the present, making friends, learning English and attending school or college, the distant prospect of 'extending their visa' was sufficient to defer further thinking about this and get on with their lives.

*[On who explained Discretionary Leave] The first person was my foster carer, and you've got three years and two months. So I didn't care that much about it, I said 'OK'. And after a while, my social worker explained it to me as well so that 'It's OK at the moment so this is what have you got. So you can wait, and then you can apply for the extension' – that's what I listened to, her voice. So that's what I did. I didn't argue about it, or appeal or anything.*

### **The right to appeal a refusal of asylum when granted Discretionary Leave as an unaccompanied child**

*At that time, you have actually been refused, and given permission to live only for one year. You don't know that. The solicitor's job is to ask you, "What could you get more proof of?" for instance.*

If an unaccompanied child is refused asylum after the age of 16 ½ and there are no adequate reception arrangements for them to return to they will be granted a period of UASC Leave until age 17 ½. Because the period of leave is less than one year they are barred from appealing the refusal by virtue of

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<sup>35</sup> Article 12 says that:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

<sup>36</sup> Even the DfE statutory guidance *Planning Transition to Adulthood for Care Leavers* uses the term 'extension' in a confusing way: 'young people who are granted Discretionary Leave have the opportunity to apply for extension to this Leave after three years or on reaching 17 ½.' While applying for further leave as a child could be properly described as an application to 'extend' leave, an application at 17 ½ should be referred to as an application to vary leave as it can only be granted on a different basis.

Section 83 of the Nationality, Immigration and Asylum Act 2002. Conversely if the child remains under 16 ½ at the point of refusal of asylum they will be granted a period of Discretionary Leave of more than 12 months and will attract an immediate right of appeal.

The Immigration Bill currently progressing through Parliament will remove the Section 83 statutory bar. This is a very welcome development, one the Office of the Children's Commissioner and many others have been asking the Government to change for many years as its primary effect has been to deny a significant number of unaccompanied children an immediate right to appeal the refusal of asylum.<sup>37</sup>

This imminent legislative change is an opportunity for both legal representatives and local authorities to change their approach where a child is refused asylum. Once a universal right of appeal for children refused asylum exists, the approach must be to exercise that right wherever possible as this will *always* be in the child's best interests. Local authorities in particular need to grasp this and ensure such an approach is reflected in care planning for unaccompanied children. In practical terms, this means allocating resources to accompany the child to meetings with the solicitor, questioning any refusal to grant funding to pursue an appeal (see below) and accompanying the child when they go to court.

Legal representatives working under legal aid are required by the Legal Aid Agency to examine the merits of appealing a refusal of asylum before applying for funding to pursue the appeal. If the legal representative refuses funding to the child on grounds that they fail to meet the merits criteria for appealing, they are required to complete a form for the Legal Aid Agency called a CW4 which contains the date and reasons for their decision. A copy of the CW4 form must be given to the child or those acting on the child's behalf within five days of the decision. Furthermore the child or those acting on their behalf must be advised of the right to a review of this decision.<sup>38</sup>

While the immigration specification and the funding code require that the provider assists the client with a review of the decision not to apply for funding only if instructed by the client, in the case of a child a more pro-active approach is required. The local authority caring for the child should ask for a review of the decision and, if necessary, approach another provider for a review of the merits.

A more pro-active approach to appealing a refusal of asylum assists children's understanding of their situation because, following an appeal before an immigration judge, they have more certainty about their future and are better able to consider, and exercise, the choices available to them.

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<sup>37</sup> We have argued previously that Section 83 operates to indirectly discriminate against children as while it applies to anyone granted limited leave of less than one year, it disproportionately affects unaccompanied children.

<sup>38</sup> Paragraph 8.42 Civil Specification 2010, Immigration, Section 8. See also para 29.22 of the Immigration Funding Code, November 2010.



The uncertainty that has been created by the grant of Discretionary Leave is of no service to the child or to local authorities which must engage in planning for different possible outcomes for a child in their care.

### **Best practice points**

- A child's legal representatives should always conduct a personal interview with the child on receipt of the asylum decision. Where asylum is refused the representative must go through the Reasons for Refusal Letter with the child and assess the prospects for appealing. Where the merits review of the case leads the provider to decline to apply for funding to pursue an appeal, the child and the accompanying adult must be informed of the right to a review of the decision not to apply for funding and, where asked, the legal representative must assist in making the appeal to the funding adjudicator.
- Legal Aid Agency guidance to those auditing children's asylum cases should require an assessment of whether the legal representatives has correctly assessed the merits of the case and informed the child of their right to a review where further representation has been declined.
- As part of their care planning, local authorities should monitor whether a personal interview with the child takes place following the asylum decision within the time limit for appealing (ten working days from service of the decision). Where the legal representative refuses or fails to conduct such an interview the local authority should consider removing them from being an approved supplier for children's cases and communicate their decision to the Legal Aid Agency.
- The care plan should specify that an appropriate adult, familiar with the child, should be present at the post decision interview with the legal representative to ensure the child understands the decision, the right to appeal a negative decision and the right to appeal to the funding adjudicator where the provider declines to pursue an appeal on merits grounds.

## Chapter 7: Expiry of leave – becoming Appeal Rights Exhausted

Once the application to vary UASC/Discretionary Leave has been submitted, usually shortly before the child reaches 17½, the wait begins to see whether the application has been accepted or rejected. Nearly all young people reported lengthy waits.<sup>39</sup> Waiting is made harder by the lack of any Home Office documentation to prove identity and to show you have an outstanding application under consideration, are in the UK lawfully, and entitled to work or claim benefits.

If the decision is made to refuse further leave, a right to appeal is triggered. As a young adult whose asylum claim has already been refused whilst a child, it becomes harder to reassert the claim. As seen in chapter 3, there is no longer legal aid to bring a claim that a private life has been established in the UK where the length of a young person's residence has made such a case arguable. The case study below shows how unjust this can be.

Where no further appeals can be brought a person becomes appeal rights exhausted. This is a time of fear, anxiety and depression for young people and also the time where a regime of reporting to an immigration enforcement office begins. For some this is a prelude to detention and removal and for others, fearing this, a time when they question whether it is in their interests to remain engaged with the local authorities who have cared for them.

### **Yusef 's story: Waiting for a decision to vary leave**

'Yusuf' [not his real name] is now 23. He arrived in 2005 when he was 14 years old and was placed in foster care. A lack of English meant he couldn't make friends or watch TV and he describes this period as boring and stressful.

He claimed asylum, was refused and granted Discretionary Leave for three years. The three year 'visa' seemed like a long time when he was 14 and he was told he could extend it later. He got on with his life, learning English, attending school and then college. He didn't understand the nature of the leave he had been given. As a 14 year old he saw it all as 'paperwork' that was being dealt with by someone else.

At age 17 he was advised to apply to extend his visa. Now, nearly six years later, Yusuf is still waiting for a decision on whether the Home Office will vary his leave to remain. Despite letters from his solicitor, from a young asylum seekers project and twice from his MP, his most recent letter from the Home

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<sup>39</sup> These waiting periods did not form part of the Chief Inspector of Border's and Immigration's inspection programme when he recently considered the treatment of unaccompanied children.

Office said a decision would be at least another six months.

Yusuf has worked very hard. With the financial support of his children's service he attended college and got an HND in engineering. As the money wasn't quite enough to pay all the fees, Yusuf worked for the college over the summer holidays as an IT technician to earn the extra £2000 that he needed to finish his course. He has achieved a good result and now wants to go to university to finish his degree. He can't easily do this without refugee status or indefinite leave to remain. As a young person with Discretionary Leave he would have to pay overseas student rates and would not be entitled to student support.

Yusuf was identified as being a great candidate for a job by a local engineering firm. They wanted to offer him a job and train him as an apprentice. When they checked his status with the Home Office helpline they found that he was still waiting for a decision on whether to vary his Discretionary Leave. They apologised and told Yusuf that while he had the right skills and attitude they couldn't risk investing in the training him if there was a chance that he wouldn't be able to stay.

After spending nearly half of his life in the UK Yusuf has a strong claim to remain here on the basis of having established a private life. Since LASPO 2012, standalone private life claims such as Yusuf's are no longer within scope of legal aid funding.

### **Waiting for a decision on the application to vary UASC/Discretionary Leave**

*I think everything should get done on the time, because we all mentioned that we need some hope to live for tomorrow. So they should get back to us as soon as possible, or really early.*

For the young people in our workshops, the issue of waiting and its corrosive effects on their mental state was something that they wanted to highlight to those responsible for making decisions:

*It's the same problem for all of us. We don't know what's going to happen tomorrow. You can't plan your future.*

*I have a request for Home Office to not leave us a long time to decide the cases – especially for young people, who are doing our education. Because most of the young people, they leave education after halfway through. So they should help them to not leave their study and try to decide their cases quickly.*

*I was given two years when I came here; it was expired when I was 17 and a half. I applied for extension. I think waiting is a problem, a personal problem. I'm doing my last year in college now, and next year I'm going to uni, but I don't know what to expect. If I had a decision I would have something in my mind, but I don't know what to do. I can't*

*go to uni without that and I've been waiting for this decision for almost two years now.*

*It's nearly two years now, since I didn't get my decision... if they say 'refused' then you will look at some options to going to court or some automatic option, but they say, 'Wait, wait'. How long are you gonna wait?*

*If you ask anybody, they'll give you the same answer. You just go to town and around. Kill time until you get a paper and wait for that day when you can change your life around.*

### **Lack of identity documents**

The Asylum Registration Card (ARC) is the identity document issued to asylum seekers. When asylum is refused and Discretionary Leave given until 17½, the ARC card is taken back. The person is no longer an asylum seeker and the document granting UASC/Discretionary Leave must be used for identity purposes. However when this expires at age 17½, no replacement identity document is issued while the variation is sought. The lack of an identity document is very problematic in everyday life.

*When I went to get the [Discretionary Leave] visa from Home Office, they said they needed my asylum registration card, and then I take it. I tried to apply for an extension [of Discretionary leave]. I get a photocopy of the card and I send them the original, and then they refused it and now I don't have a card. I have nothing right now, I lost my bank, I couldn't get money and I had to apply on internet for ID card and paid £40 for it. It's very bad when you don't have ID to show who I am and why I'm here.*

*At the moment, I haven't got any ID. The only ID, so, I was lucky – I got my driving licence. That's the only ID I've got now. I show if I need. That's the only ID I've got... original ID. There's nothing left for me, and I send it all to the Home Office.*

We consider a young person lawfully remaining in the UK pending an active review of their variation application should not be entitled to an identity document which enables them to conduct daily life in a dignified fashion.

### **Fear, anxiety and depression**

For all the young people the prospect or reality of becoming appeal rights exhausted was a critical moment in their journey. They experience it as a complete loss of control. The situation prevents positive thoughts or planning of any kind and undermines the commitment young people have made to their education. For most it had resulted in a pervasive sense of fear, anxiety and depression, and for some contemplation of suicide.

*I feel scared too much, that the police will come catch me, I can't study, can't do anything.*

*It really affects you in many ways, like, not having a paper. It could be in the class. You might be the only person, people asking you and then you're not confident to explain or they don't understand because they are not in your situation. You don't feel safe in the first place. They could deport you at any time. Where you are running away? It's really depressing.*

*They ask me at college, 'What do you wanna be?' I don't wanna say because I'm someone who gets disappointed quickly. So I don't wanna say, 'Well I wanna be a doctor.' I don't wanna hurt myself, so I'd rather say, 'Nah, I just don't know.'*

*Sometimes if you study, it doesn't help, you know? Say I'm studying in this country, some day they deport me. It doesn't make any sense, that's not why I study. If I go back, I'm gonna be a soldier. It doesn't make any sense for me to study. And the main thing is if you sit here and if you think about getting the paper, it's not easy to study, you know? You just get more down and down, just thinking about the paper.*

*You can do crazy thing when you are depressed. It could be drugs, it could be crime, it could be all of those things because you don't have anything to do.*

One young person who had established a fresh claim for asylum looked back at his time of being Appeal Rights Exhausted:

*You can't call that living. You can call it, maybe, I don't know, surviving. Living would be going to school, college, whatever you are interested to do. I don't know, anything, sports. So, that's not living. I've lived; I've been through these hard times. You just can't think. It comes to the point that you can't think. You're just lost. I've been like that for a long time. So I'm, like, recovering now. But, you're in a situation now: your interests have gone, and you don't know what's gonna happen, so you're just on the edge, waiting to fall down. If you get a positive result, then things will be better, of course – slowly, gradually, but, at that point you don't know what's going to happen. You can't work – you're not allowed to work or study.*

One young person asked us to imagine how we would feel if the tables were turned:

*I want to ask a question about if they refuse everything. What would you do if you come to my country, and you're not safe in this country, and you know 100% you will get killed. So if you come to my country, and you get refused, and then they say, 'You're not allowed to stay in here, so we want to send you back – what would you do?' Would you*

*go back? If you know they will put you in prison and then beat you slowly and slowly until you're dead, would you choose that way or would you choose to kill yourself right there?*

## **Reporting to an immigration office**

Anyone subject to immigration control but with leave to remain is not normally required to report to the police or an immigration office. Once leave expires, immigration control requires reports in person to an enforcement office or police station. The requirement could be to report daily, weekly or monthly, the frequency of reporting being at the discretion of the immigration service. It appears that reporting requirements do not take account of medical conditions, finance for travel to the reporting office or whatever else the young person is doing, such as attending college.<sup>40</sup>

The significance of being required to sign on is not lost on young people:

*No, this is the thing. Once your case is on a critical point, returning or refuse, that's when they ask you to report. The decision's made. Then you are detained.*

*The worry is that, that is the critical point of your situation. So you go for a report and if your case is totally refused, then they will just detain you from there. So, you are nervous, you're anxious, and you can't predict. So when you go there... the feeling of being sent back to your country. So that's the feeling you get when you go there.*

*It's scary. I'm going there [to sign at an immigration office] every month and it's scary. Every month I'm thinking about for next time – what happens the next time? And next time it's finished, I'm looking at the next time. Everyday think; think; think. This is no life. A very short life.*

*I used to go and sign, I used to go every sign; I don't wanna go now, because I'm scared.*

*They used to ask me to come every week. I used to attend two colleges, cos I want to achieve something but they were asking me to come in weekly. So that's why I was very bored with signing weekly and I left it because of that reason. But still I was going to college – I wasn't illegal. The Home Office was thinking that I was illegal, but I wasn't because I was still being supported by the social services in my attendance and everything from college. Yeah – waiting for that decision. But the important thing is wasting of time of people, you know, because you keep going there for so long but nothing changes.*

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<sup>40</sup> Although in one local authority area, arrangements appear to be made whereby the local authority supporting the young person can advocate on their behalf for a relaxation of the requirement.

The dangers of failing to report when required are very real:

*You will get a letter saying, 'Come back for a report.' I didn't so they broke my door. They catch me inside the house. They take me. I was interned. They take me to the detention centre. I was in for two months in detention centre. They release me but now they accuse me again – 'We'll come after you.'*

### **Disengaging from local authority support**

For the young people who had become ARE, the new requirement to report and sign on regularly prompted consideration of disengagement with services including the local authority who had been caring for them. It also signalled the beginning of a life as someone illegally in the UK, seeking accommodation and work wherever it could be found. The evidence presented in chapter 2 of this report suggests a correlation between receiving the letter from the Home Office informing the person that they have become ARE and requiring them to report, and moving into the unsafe and unregulated world of the shadow economy. Crime is also likely to become increasingly attractive if all other options fail:

*I don't know where I'm going and what's going to happen tomorrow. Am I going to be a good boy, or a bad boy? Am I going to end up being a nurse, or a drug dealer? I've no idea what's going to happen next.*

*The boy tried to leave everything that he had for example school, support from social workers, cos he got scared from Home Office that they have sent letter. Most of the people go to report, most of them know, but the boy just, he ignores because he wants to stay in this country, cos his life is in danger in Afghanistan and he doesn't want to go back. So, he leaves everything, like Home Office stuff and school, social care things. He tried to go to a different city in the same country, and he wants to be underground and live his life.*

*I'll tell from my story what happened to me, how I experienced these things. You get some sort of support from the Government, once you're refused. But then if you have some good friends, they can offer you a place to live, a little money here and there, food, you can get that from them. But, the other thing is, if, for example, myself, I don't like to be, I don't like to get things for free; I like to earn it. To be honest, I'm not allowed to work. I work a little, just enough to get something – for example, you know what I mean. But that's not usually, I guess. That's not like regular work. It's just sometimes. So, you live off your friends; most of the time you don't have somewhere to live, to stay for the night. You are outside, somewhere in the park, wherever you find comfy. So, I mean, you go through a lot during that time. People can prefer to get the little money they're offered by the Government, and they can live with that little money... but for me, I like to get my problems sorted, whatever I like to do.*

### **Best practice points**

- That the active review carried out by the Home Office on applications to vary leave should be time limited. If there are barriers to removal at the time of review, continuing leave should be granted.
- That the Home Office issue an identity document to a young person while a decision remains outstanding on their variation application.



## Chapter 8: Barriers to returning

In one local authority area in which research was conducted we were told that at the time they had 102 ARE care leavers. Of those, the Home Office had estimated that there was no imminent prospect of removal in 57 cases, while 45 were deemed removable. The average number of weeks that this population had been ARE was 75, with the longest being 198 weeks (just under four years) and the shortest, four weeks.

'Barriers to removal' is a term used by the Home Office and often includes a lack of cooperation by the country concerned in re-documenting the young person. This may be as a result of a lack of diplomatic relations (e.g. with Iran, North Korea), or a requirement of evidence of nationality, or because the country refuses to accept them as a national.<sup>41</sup> Trying to return a person abroad under escort without having that country's acceptance of the returnee's nationality, or proof of such in the form of a valid passport, leads to entry being refused and the person being required to return to the UK immediately.

In this chapter we explore barriers to returning rather than barriers to removal. Barriers to returning are the reasons young people give for being unable to return to their country of origin. 'Home', in this context, is a highly contested term. As one social worker put it:

*When we are saying this to an 18 year old, 'Go home' and they have been here say four or five years, what does 'home' actually mean to them? So it becomes a very difficult conversation to hold onto about 'voluntary return'. Needless to say, yes we do have that conversation with them.*

In addition to trying to understand why the idea of return was not possible from young people's perspectives, we wanted to explore their ideas of the conditions would need to be in place for this to be considered.

### **The impact of growing up in England**

Going through adolescence in England for four or five years or longer had made some young people re-evaluate the more restrictive social relations and norms in their countries of origin. Lack of freedom of expression was a common theme:

*You don't have freedom down there. If an elder tells you to do something you have to do it. You can't disagree with them even if you don't understand what he is doing. But he's still judging you about – 'Do this', 'Do that'. No freedom.*

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<sup>41</sup> The Home Office has powers to send fingerprints from the person they wish to remove or deport to the country of which they believe the individual is a national subject to not disclosing that the person has made an asylum claim (Immigration and Asylum Act 1999, Section 13).

*You cannot say anything. What you don't believe in or what you know. For some people I think it's impossible even to go back and live there even for one day cos they can't even think of going because the environment is completely different. You'll have different views and they'll have different views. You're not free to talk your opinion.*

Having started an education in the UK and become literate in English, some young people could not contemplate return to a country where they were illiterate in their own mother tongue:

*The thing is when I was in my country, I didn't go school, I didn't go anywhere. So I don't have an education from there – nothing at all. I don't even know how to write my second name. I just know how to write my first name.*

*If I go back to my country I don't even know my language. I know how to speak it but I don't know anything about writing or reading. I started my education with English so it (returning) wouldn't work for me.*

Some felt unable to contemplate return as a result of having learned, changed, and adapted to a new way of life:

*I came here. I learned English quickly. I integrated into society. And my visa was 10 months, but then I already learn many things about this country and then they said they wanna send me back.*

*Most of us have lived here throughout our teenage years, some of us even younger. So imagine. We leave our country behind, everything, culture, even the language, everything. So you leave that place, learn new things, adapt to new things. You come to a society and learn many things in that society and you become a part of that society.*

*Once you get to this country, you think you are safe – people are nice to you, no one is trying to hurt you. So you feel safe – you don't wanna go. Even though you get a visa that says that you will be sent back, once you've turned 18. But the person who gets here, he's safe here, so he doesn't want to go until the time. So when the time comes, then he has already blended into the society and he's done many things. So the point comes and he doesn't want to go back, and then the problems start there.*

*What happens is, you come to this country – I was ten when I left Afghanistan – so, I lived here in Europe for almost half of my years, for half of my life. So, for me, my lifestyle is completely different to the people living in Afghanistan. My point of view, my way of living, everything is completely different. So I think you get used to living, you get used to life, and when you go back to Afghanistan, I think your way of thinking; your way of life is different. In England when you come here you get support and you're free to say whatever is in your mind.*

The loss, dilution or rejection of religious belief was anticipated as a factor that would prevent reintegration which may put the young person in danger:

*In Afghanistan, you cannot share if you don't practice your religion; no one can accept you next to them. Even in your own house, your father won't accept you as his son or anything. That's the worst thing you can be. Cos living here is like, well, it's not like living in Afghanistan of course. I would be like a perfect Muslim, and my thinking wouldn't be like this, where I am now. This is what I'm saying. When a person comes here, so, it's the best way to send him back from that day when he arrives. It's just like playing with the life, you know.*

A number of young people told us or suggested that they had been encouraged to assimilate and learn to adapt to a new way of life and found it very hard to then have the investment that they had been encouraged to make under threat of being taken away:

*I thought, 'I'll be going to college' and I started to live, you know, like other people. It gives you hope. You start to make your life. But it's just like giving you a house then just taking it back like that, from you. It affects you mentally; it's really, really bad.*

*I wish this country was like Italy or Greek or somewhere like that. Just let you go. 'You tried your best. You come here to save your life'. They know they can't look after you or anything so that's it, you know. You try somewhere else. But if I know 100%, for example if they tell me, 'We wanna send you back' then I won't go to this country, I go somewhere else.*

*It's better to say, you know what – you can't live here, instead they let you stay two years, and then you make a lot of friends. I made a lot of friends... I start going church, I practice my religion and so on, and then, in some part of the middle of it they just say, 'You know what – stop here, you go back.' Then you have to make another life again.*

*I think the Government from this country, they should do like how Italy and Greek and France do it. For example, they know how long they let me stay in those countries. Here, I'm not sure how long I'm allowed to stay. It's OK when I come here, if they say, "Go straight away – leave my country", like Greek, Italy and France do. This is good rule. I like these rules. Because, they know 100% they can't look after you so they say, 'Go', that's it, you have to go. You have no choice. When you come here, it's not clear. You don't know what's going on tomorrow. For example, after three and half years, do you know what they say to me? They said, 'We lost all of your papers.' After three and a half years! How I'm not going to go crazy, no?*

It is not of course possible under UK law to return children in the absence of adequate reception arrangements but these opinions do highlight an

important policy consideration. When an unaccompanied child arrives in the UK and cannot be returned immediately, do we encourage them to integrate and belong – and watch them embrace this expectation – or not?

### **Fear of return**

Some young people knew of others who had been returned. Their friends' experience had hardened their resolve to remain in the UK:

*I know three of my friends: one of them is currently in a detention centre, one was sent back years ago, and one was sent recently, sent back to Afghanistan. I didn't have a contact with him, but my friends had contact with this guy, but he is in a big trouble. His father is telling him to join the Taliban because, of course, they're from old school so they like the Taliban sometimes; they support them. So, this guy's in this situation, now he doesn't know what to do.*

Videos posted on YouTube featuring Taliban executions of young people were shown to us on some young Afghans' mobile phones. These had prompted sleepless nights, particularly for those under reporting restrictions.

Some children had come from countries where the state authorities had persecuted their families and it had been these underlying issues that led to families sending them away. For these young people, return could only be contemplated with a change of government at home.

*Yeah, it's like, there's no place like home, no matter what. I don't wanna live here for the rest of my life, because, I just want to be with my people, with my family and everyone in my country. But it depends if the problem is gone or still remaining in my country. If things are going better, then yeah, why not [return] but it depends how the problem is gone. As long as the Government's still there nothing is gonna change. So if like the Government's changed and let's say things will be better, then yeah.*

*If things got better, obviously, all of us would want to go back, cos there's nothing like home. Imagine speaking your own language, having your own... practicing your own religion, culture, everything, you know. Even the smell of it, you know its beauty of it; there's a beauty of it. So, I don't think anyone wants to live other country, really.*

*When you have a problem with the Government – it depends on what problem you have – but I know 100% there won't be any chance there for me.*

*You wouldn't have come here if you didn't have any problems in your country, so, if the situation is still the same there is no point of going back. And if you are in a peaceful country, a stable country, it doesn't mean you are just ok – you can't just stay at home and do nothing. You need to achieve something in your life, like go and get educated or go to work. It's necessary to have that...that's just how I feel.*

## Incentives to return

Government figures show that in the 3 and a half year period from 2010 to June 2013, only 153 former unaccompanied children took assisted voluntary return (AVR) to their country of origin.<sup>42</sup> This is a small number, considering that over approximately the same period (2010 to September 2013) the figures show that 5,075 unaccompanied children sought asylum in the UK.<sup>43</sup> Some of the young people we interviewed mentioned they had been offered financial incentives to return through the AVR scheme. For these, the offer was seen as inappropriate and a fundamental misreading about their motives for coming here on the part of UK authorities:

*I received a letter one day. They said, 'How about if we give you that amount of money, and gave you a ticket, so you can go back?' So I said, 'There's nowhere to go back', and they said, 'No, no, you don't have to say anything, you can just go away and think about it.' And I said, 'I know there's no way back and it's not about money – if it was about money, I wouldn't be here. I grew up in a family that, whatever I wanted I had everything, every single thing. Here, I don't have anything.*

*I wouldn't leave my own country; I wouldn't leave my own family; I wouldn't leave my little brother when he was six months, nine months; I wouldn't leave my mum, that was giving me a hug every day, and the love I used to get from my family, and the father who was looking after me 24/7, giving me everything. I wouldn't leave them to come here for money or anything like that.*

We wanted to test the idea of other, non-financial incentives and in particular whether being allowed to complete their education without threat of removal might make some young people reconsider leaving the UK at some point in the future. This received a mixed reaction.

Some liked the idea of being allowed to complete their education but only because it gave them further options to apply to go and live elsewhere if required to leave. Others made the point that there is little incentive to study in the UK if you are going to return to their country of origin, because the education received could not be put to good use:

*If they let me to stay for like four years more, for me it would be good because I have only left four or three more years to finish my own education. So then I can use it in some other country if they send me back. I can go to a different country with that qualification and can start my life easily. But if they send me back now, when I don't have my qualification from uni, then nothing works for me. If I go back to my country I don't even know my language. I know how to speak it but I*

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<sup>42</sup> See Figure 2.

<sup>43</sup> See Figure 1.

*don't know anything about writing or reading. I started my education with English so it wouldn't work for me. So I need to have a full degree to work somewhere. So if they send me at this time no. But if they let me stay till I finish then I can decide my life and my future.*

*It's very clear that if the Government says, 'You can stay for this amount of time, then you will be sent back', that's a very good thing to me cos you know then what to do. You can study until that time and then if the country you are from is safe, you know that it's gonna be ok to live there, then of course, everyone will go back. There's no question. So, I think it would be good if they say that, 'OK, after this time you will be sent back', then I will study until that time, get a degree or something. Then if the country is safe I'll go back, and if not, I'll go somewhere else. I think everybody will do the same. The uncertainty of your decision is killing everybody.*

### **Hopes for the future**

While waiting and long term uncertainty dominated the lives of young people we talked to, there was often a thread of hope in the form of a fresh application for asylum being sought or already lodged that provided a focus whereby they could project themselves into a future that would be stable and fulfilling:

*If I get the visa, I'm gonna think about my future, I'm gonna find a good job. And after that, I'm gonna get married, and fix my future.*

*One option is that you get to stay in this country, and you might go and study, become something. Work in this country, and then be a normal person, and then have a good life, make a family and make it bigger and bigger.*

*There are too many peoples like me. They are waiting for their visa and they are waiting for their future. What will happen? What should he do? I hope everyone is same like me so he gets the thing that he wants in future. Also I want to continue my education and make a difference, and just not make my life; I want to help other peoples who are same like me.*

## 9. Discussion and recommendations

*We want care leavers to enter adult life with the same opportunities and life chances as their friends. If someone needs a helping hand to get into work, to find a college place or to access the right employment services, it shouldn't matter which part of government provides it.*

Edward Timpson, Children and Families Minister, 29 October 2013

The evidence from this research suggests that current policies aimed at managing young adult failed asylum seekers who arrived in the UK as unaccompanied children are not working well either for the young people, their local authority carers or for Government and wider society.

In this chapter, we summarise current arrangements for former unaccompanied children whose asylum claims have failed. We then outline a road map out of the impasse that unintended consequences of the Discretionary Leave policy – a policy intended as a protective measure to secure children's best interests – has left us in.

The key change that is required is to align leave arrangements for unsuccessful unaccompanied child asylum applicants with existing legislation, guidance, policy and practice for care leavers.

### **The framework of the Children (Leaving Care) Act 2000**

The Children (Leaving Care) Act 2000 (CLCA) has provided a legislative framework for pathway planning and aftercare support in England. It was introduced into law as a response to evidence that the outcomes achieved by citizen children leaving care at an early age were poor, included high risk of homelessness and unemployment, and that leaving care services designed to assist them were inconsistent across local authorities (Biehal et al, 1995; Broad 1998; Stein, 2004; Stein and Wade 2000).

The CLCA was intended to delay the transition from care, improve arrangements for preparation, planning and support and strengthen the framework for providing financial assistance. Provisions included a new duty to assess and meet the needs of all eligible young people, new arrangements for financial support and requirements for local authorities to provide pathway plans and personal advisors to guide young people through the transition to adulthood up to the age of 21 (or 25 if they are continuing in education) (Department of Health, 2001).

### **Care leaving and the transition to adulthood: Current arrangements for unaccompanied children**

Volume three of the Children Act 1989 Guidance and Regulations, *Planning*

*Transition to Adulthood for Care Leavers* (DfE, 2010), provides guidance to local authorities on what they are required to do in order to prepare care leavers for the transition to adulthood:

*As corporate parents, responsible authorities should provide support to care leavers in the same way that reasonable parents provide support for their own children. The participation of care leavers is fundamental to effective pathway planning. Young people should be central to discussions and plans for their futures and it will be exceptional for decisions about their futures to be made without their full participation. They must be active participants in building their future, based on their hopes and aspirations. The responsibilities of local authorities to prepare pathway plans and support care leavers as they make the transition to adulthood apply irrespective of any other services being provided for them, for example, because they are disabled, in custody, or because they are being looked after as they entered the country as an unaccompanied asylum seeking child (UASC).*

Unaccompanied asylum seeking care leavers pathway planning is made considerably more complicated by the asylum decision making process (Wade, 2011) and, in particular for those whose asylum claims have been unsuccessful, by the requirement to apply to vary Discretionary/UASC Leave at age 17½ and the uncertainty that follows this. The guidance (DfE, 2010, p.39) says:

*Pathway planning to support a UASC's transition to adulthood should cover all areas that would be addressed within all young people's plans as well as any additional needs arising from their specific immigration issues. Planning may initially have to be based around short term achievable goals whilst entitlement to remain in the UK is being determined. Pathway planning for the majority of UASC who do not have permanent immigration status should initially take a dual or triple planning perspective, which, over time should be refined as the young person's immigration status is resolved. Planning may be based on:*

- *a transitional plan during the period of uncertainty when the young person is in the United Kingdom without permanent immigration status*
- *longer term perspective plan in the United Kingdom should the young person be granted long term permission to stay (for example through the grant of refugee status) or*
- *a return to their country of origin at any appropriate point or at the end of the immigration consideration process, should that be necessary because the young person decides to leave the UK or is required to do so.*

The local authorities interviewed for this research all emphasised that they planned with young people for different paths into adulthood depending on the resolution of their immigration status. We were told this occurs from an early stage. One local authority explained how the planning process develops:



*The needs led assessment start just up to three months before they are 16 and then the pathway planning starts. Most of the young people will have some status and know that will be reviewed just before they are 18 so we need to start it then because any later it's not giving them enough time to consider and to think about what might be the alternatives. The other important factor is also that pathway plans are reviewed regularly and if there is any change in circumstances again it's gone through. I am sure in your work with young people you can tell them but you need to kind keep reminding them and for something very difficult to manage, like the possibility of you being returned home, they may not want to hear that so it is a good opportunity – doing reviews – for a person that advises social workers to have that conversation and preparation with the young people as well. So it is a live discussion going on.*

It is evident that the principle means for getting young people to consider return relies in the first instance on discussions that local authority social care staff have with them during the pathway planning and review process. Government also regards these discussions as key but, as discussed in chapter 1, has legislated through Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to allow for the withdrawal or withholding of leaving care services where the care leaver is not prepared or is unable to return to their country of origin of their own volition. The Government's thinking was most recently expressed in its response to the Joint Committee on Human Rights (UK Government, 2014, p20):

*However, whilst many will continue to be supported post 18 as 'former relevant children' (the status given to children who were in care but have now left the care system), some will not due to their immigration status, which may require them to return to their countries of origin. Even so, there should not be a cliff edge that signals any reduction in support. The key here is early discussions as part of the care planning process. The possibility of return for some asylum seeking young people should be discussed as part of the pathway planning process, where there is a possibility of them becoming Appeals Rights Exhausted and therefore having no right to remain in the UK.*

### **A failure of triple planning?**

While limited research on pathway planning for unaccompanied young people indicates evidence of variability across local authorities (Wade et al, 2005), the evidence from this research suggests that the triple planning approach may over rely on the young person's acquiescence in what the state has required for their future and an underestimation of their agency in shaping their own futures.

What prevents most young people from contemplating return are the barriers discussed and set out in the previous chapter. When it is considered that only 153 former unaccompanied children made an assisted departure over a three

and a half year period between 2010 and June 2013, it must be concluded that current strategies relying on a triple planning approach linked to ending leave entitlements once the child reaches the age of majority, are at best only mildly effective in achieving their goals.

Government is alert to the limited success of current strategies, and in the broader context of aiming to reduce net migration, has recently increased focus on enforced removals of young adults who arrived as unaccompanied children. The risk of pursuing this policy does not appear to have been fully considered. The data provided to us by local authorities indicates that where increased enforcement activity has been pursued young people disengage from statutory services and go missing in greater numbers than where active targeting of this group has not occurred. The strategy is placing these young people in danger and risks undermining government efforts to develop a comprehensive anti-slavery strategy, as exploitative or abusive employment may be considered the most viable option by a young person who does not consider return possible.

A discussion on alternatives to current policies is not without precedent and we consider as a starting point the recommendation of the Committee of Ministers to Member States on life projects for unaccompanied migrant minors (Council of Europe, 2007)

### **‘Life projects’: A framework for reconciling the interests of unaccompanied children and the state?**

The concept of the ‘life project’ is the development of the capacities of children to allow them to acquire and strengthen the skills necessary to become independent, responsible and active in society in accordance with the best interests of the child as defined in Article 3 of the UNCRC. Key objectives relate to social integration, personal and cultural development, housing, health, education and vocational education and employment.

The life projects concept was designed with all unaccompanied migrant minors in mind and not just the narrower group of asylum seeking children who are the subject of this report. The life project concept does however take into account the specific situation of each child including the *‘special guarantees afforded to unaccompanied minors seeking asylum in particular regarding non-refoulement<sup>44</sup> and the identification of durable solutions’* (Council of Europe, 2007).

A life project is conceived of as an individual tool based on *‘a joint undertaking between the unaccompanied migrant minor and the competent authorities for a limited duration’* (Council of Europe, 2007). They aim to define the child’s future prospects and provide a long term response to the needs of both the child and the parties concerned including a lasting solution for both Member States and young people.

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<sup>44</sup> ‘Non-refoulement’ is a principle of international law which forbids the rendering of a victim of persecution to their persecutor, generally a state actor.

As an integrated policy tool the life project should take into account the child's specific situation: their personal profile (age, gender, identity, culture of origin, level of education, mental development and maturity, possible traumas suffered, health, vocational experience and skills); migration history (factors influencing departure, circumstances of the journey, duration of residence); family environment and nature of family relations; the situation in the country of origin (political, legislative, socio-economic, educative and cultural context, human rights situation, availability of appropriate care and support – including reception); the special guarantees afforded to asylum seekers; the child's own wishes, expectations and perceptions and finally, the situation in the host country – including the political, legislative and socio-cultural context, availability of opportunities for the minor and the possibilities of remaining. Enjoyment of rights guaranteed under the UNCRC is seen as a precondition for the realisation of the 'life project'.

In discussing the conditions required to implement life projects Member States are urged to pay special attention to the case of unaccompanied minors seeking asylum (Council of Europe, 2007):

*Asylum procedures should not affect the effective preparation and implementation of life projects for these minors for whom enhanced protection is necessary, in particular with regard to the principle of non-refoulement.*

The Committee of Ministers envisages life projects, depending upon their objectives, as being implemented *either* in the host country *or* in the host country and in the country of origin *or* in the country of origin *or* in the specific case of family reunion, in a third country in which the parents are lawfully settled.

Of particular relevance to children attaining the age of majority while in the host country, the Committee of Ministers (Council of Europe, 2007) recommends that:

*Where he or she shows a serious commitment to their educational or vocational career and a determination to integrate into the host country, he or she should be issued with a temporary residence permit in order to complete the life project and for the time necessary to do so.*

This is echoed by the comments of Thomas Hammerberg, Council of Europe Commissioner for Human Rights (2006–12) who explains the need for such provisions in terms that concur with the findings in this report (Kanics et al, 2010):

*In the absence of a mechanism that could allow young adults to remain in the country, they are sometimes forced to interrupt their studies or begin an underground life. This interruption of the residence permit has obvious consequences as a child may have spent a long time in the country and made efforts to integrate into the host society. All the*

*efforts made by the child and social workers – learning the language, finding appropriate accommodation , assimilating into the host culture and developing a social network – risk being undermined. This should change. Separated children who have successfully integrated should be granted an extension of their residence permit when they come of age.*

Of course the primary mechanism that does and should allow those who have sought asylum as children (and who are now young adults) to remain in the UK is the asylum determination system itself. Where a child has been recognised as a refugee, their resettlement in the UK is likely to take a smoother course than for those whose application for asylum has been rejected. What Hammerberg suggests is a mechanism for those who are not given refugee status – both non-asylum seeking child migrants reaching the age of majority and those whose asylum claims have been unsuccessful and who have been allowed to stay only on the basis of their minority and an inability to safely return them as children.

This holistic approach recommended by the Committee of Ministers has strong parallels with a formal best interests determination process which the Joint Committee on Human Rights suggested that the Government should evaluate as an alternative to making improvements to the existing decision making model (JCHR, 2013, recommendation 3). The Government's response to the Committee's comments has been that they will '*consider the case for establishing a Best Interests Determination process in the context of the existing immigration and asylum process*' (UK Government, 2014). We very much welcome both the JCHR's recommendation on this issue and the Government's response which seems to leave open the possibility that the existing asylum determination system and a best interest's determination system could co-exist.

### **How might the life projects approach work in a UK context?**

Public care of children in need is a devolved matter across the United Kingdom but there is potential in aligning a life projects approach to existing (devolved) legislation around care planning and care leaving. A core idea of the life projects approach is a formal contract between the young person and the state setting out duties, rights and responsibilities and leading to a durable solution.

The life projects approach does not address issues of belonging, integration and loss of cultural identity that some young people spoke about during the research and which is considered the concept's flaw by some academics (Chase, 2013). However, young people also told us of their inability to plan and project their lives into the future with some hope. In the absence of a clear framework for progression and with increasing restriction on their access to education, training and employment, they felt their lives were being wasted. Young people valued clarity in decision making and believed that the current system of awarding and then applying to vary a period of limited leave failed

to provide sufficient clarity or stability for them to move forward and project their lives into the future.

Where unaccompanied children fail to gain asylum and where they cannot be safely returned to their parents, an early explanation that they will be allowed to remain for a time limited period in line with current legislation and guidance for care leavers, would provide the clarity and stability to allow them to complete life projects that would equip them for departure from the UK, whether or not this involved a return to their country or origin, at the appropriate time.

### **Aligning leave arrangements with leaving care legislation**

The CLCA was passed into law in recognition that at age 18 most care leavers were failing to achieve good outcomes and were not yet fully equipped to live independently and navigate a pathway into the adult world without further support.<sup>45</sup> It is reasonable, and upholds the principle of non-discrimination contained in the Children Act 1989 and the UNCRC, that leaving care arrangements should apply to *all* qualifying care leavers irrespective of their immigration status. We conclude that those that have been unsuccessful in obtaining asylum should continue to be supported in the UK up to the age of 21, or for those who have been able to obtain a place in higher education, up to age 25.

Such an arrangement would require a new kind of immigration leave. This should be introduced into the Immigration Rules to replace the current UASC Leave. The new leave should apply (subject to their being no adequate reception arrangements available in the country of origin at the time of the initial decision to refuse asylum) to all unsuccessful asylum applicants who arrive in the UK as unaccompanied or separated children.

The leave granted should allow the holder to be eligible for student support and to be treated as a 'home student' for fees purposes. This would require an amendment to the Education (Student Fees, Awards and Support) (Amendment) Regulations 2011.

### **Creating better conditions for voluntary departure**

Having invested in and succeeded in realising their life project within the timescales outlined above, young adults would be motivated to seek opportunities to utilise the education and skills obtained. Such opportunities may need to be pursued outside of the UK if the young person were barred from taking up employment here and further leave was not available. It may be argued that young people would continue to go missing as they approached the new age limits on their stay particularly if required to return to their country of origin following completion of their life project. With enhanced education or training there would be opportunities to work or continue

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<sup>45</sup> There is cross-party consensus on this issue with the current government recently launching its cross-government strategy for care leavers.

education in countries other than the country of origin while remaining in the UK without a legal status would become less attractive the more skilled or educated the young person becomes. As the young person wants to use their education and skills to progress their lives – as all of the young people in this research indicated that they wanted to – then there is a strong motivation to leave the UK to pursue opportunities abroad.

While we should acknowledge that for many of the young people the idea of return to the country of origin will remain impossible on account of a retained fear, some of the other barriers to leaving reported by the young people we spoke to could be addressed through the approach outlined above.

### **Retaining and developing the first language while in the UK as part of the life project**

To date there has been little emphasis in care planning arrangements on unaccompanied children retaining and developing the language they arrive with. This should change. Not only is it a child's right to retain their linguistic and cultural identity, there is evidence that being literate in one's first language helps in the learning of a second language (Krashen, 2004). Children are therefore likely to become literate in English more quickly and progress further with their education with help in retaining and developing literacy in their mother tongue language. In addition to this, being bilingual may be a highly valuable and marketable skill whatever the trajectory of the young person's future life which is likely to be contingent on the eventual success or failure of their asylum application.<sup>46</sup>

While for the individual child or young person being bilingual can provide both enhanced future employment opportunities and a greater sense of connection to the culture of the first language, UK businesses who wish to operate in the countries that these young people come from will also be alert to the potential of having well educated bilingual employees.

### **A continuing asset to the UK and an innovative approach to international development**

British businesses should be able to contract with an unaccompanied young person and sponsor them through training or further or higher education in the UK on the basis of an agreement that they can provide employment for them in their country of origin or elsewhere if they successfully complete their course. Once employed, deductions from pay could ensure the payback of any student loan (obtained either from the state or from the sponsoring company) in the same way that student loans are currently paid back by earning graduates in the UK. The incentive to pay back the student loan following departure could also be regulated through the imposition of travel

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<sup>46</sup> There are good reasons for all young asylum seekers to maintain and develop their mother-tongue languages while they remain in the UK whether their life trajectories mean that they are able to remain here or whether they are required to leave. This is explored further in Appendix 2.

bans to the UK on those failing to make the repayments.

The approach set out above would not only benefit young people unable to remain in the UK permanently but would enable UK businesses to have a competitive advantage in emerging post-conflict countries such as Afghanistan through investment in human capital. It may be an effective and efficient way of deploying a portion of our international aid budget

### **Similar approaches in other European States**

The approach suggested above adapts best practice found in other European receiving States to UK conditions. The Council of Europe and the UN High Commission for Refugees recently conducted field research on comparative practice in respect of the transition to adulthood of unaccompanied and separated children in four European States (UNHCR, 2014).

Their findings suggest that at least some European States have appreciated that basing return policies around the legal age of majority raises the same issues as have been identified in this research. As a result various policy responses have been pursued. In Austria, since 2013, young asylum seekers can enter an apprenticeship scheme in a field where candidates are lacking in a specific region. State support is given up to age 21 but further funding is available up to age 26 for young adults following education. In France, a formal contract, the *Contrat Jeunes Majeurs* (CJM) provides access to education, housing and other social rights up until the age of 21. In Hungary, turning 18 does not impact on young people's access to education and if enrolled before their majority, they can pursue education and receive support up to age 24 where protection has been granted or where the decision is outstanding. In Sweden, young people are fully supported up to the age of 21 irrespective of their educational situation or legal status. For those wishing to continue education after 21, loans can be provided by the state in the same way as for Swedish students.

The report concludes with a quotation from a French parliamentarian which is a useful synopsis of the reconciliation of interests that the life projects approach encapsulates:

*From our point of view, it is neither logical, nor 'profitable' to welcome these young people, to train them and to then take away any future perspective the day of their majority. The notion of the 'life project' implies supporting the children, including after they have reached the age of majority, until the accomplishment of their project. Besides, a young adult who returns to his country of origin with a qualification or training will be more able to participate in its development.<sup>47</sup>*

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<sup>47</sup> Quote translated from French from Isabelle Debre, 'Les Mineurs isolés en France', May 2010, Senat. Available at: [http://www.justice.gouv.fr/\\_telechargement/rapport\\_mineur\\_20100510.pdf](http://www.justice.gouv.fr/_telechargement/rapport_mineur_20100510.pdf)

In conclusion, we suggest to the UK authorities that a successful transition to adulthood not only favours young asylum seekers but is also in the interests of the state. To move from the current impasse to a more hopeful future we outline, as recommendations, what the core steps in such a process should be.

### **Recommendations**

- Current limited leave to remain given to unaccompanied children to age 17½ should be replaced with a new form of limited leave that aligns with leaving care legislation and guidance. Legal barriers preventing access to leaving care services, employment, apprenticeships, further and higher education during the extended leave period should be removed.
- The Department for Education, in conjunction with local authorities, should explore how unaccompanied children might maintain and develop literacy in their first language while remaining in the UK.
- The Department for Business, Innovation and Skills in conjunction with the Department for International Development should consider how British businesses could identify and utilise the talent and potential of unaccompanied children and young people for the mutual benefit of the young person and the United Kingdom business sector.



# Summary of report recommendations

## Government

- Amend the civil legal aid merits criteria regulations 2013 to exempt children's asylum cases from any merits test.
- That an order be made under section 9(2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to bring all claims from children and young people under immigration control who arrived as children and remain under the age of 25 back within the scope of legal aid irrespective of the ground on which funding is sought.
- Appoint a guardian or specialist advocate as soon as an unaccompanied or separated child is identified, in line with Article 18(2) and 20(1) of the UNCRC. Guardianship arrangements should be maintained until the child has either reached the age of majority (where settlement has been established) or has permanently left the UK's territory. The guardian should be consulted and informed regarding all actions taken in relation to the child.
- That grant funding to local authorities for the care and support of unaccompanied children and young people should be wholly the responsibility of the **Department for Education** to demonstrate that funding is given in order to safeguard them and promote their welfare.
- Current limited leave to remain given to unaccompanied children to age 17½ should be replaced with a new form of limited leave that aligns with leaving care legislation and guidance. Legal barriers preventing access to leaving care services, employment, apprenticeships, further and higher education during the extended leave period should be removed.
- The **Department for Education**, in conjunction with **local authorities**, should explore how unaccompanied children might maintain and develop literacy in their first language while remaining in the UK.
- The **Department for Business, Innovation and Skills** in conjunction with the **Department for International Development** should consider how British businesses could identify and utilise the talent and potential of unaccompanied children and young people for the mutual benefit of the young person and the United Kingdom business sector.

## Legal Aid Agency

- Review the cap of £800 for unaccompanied children's cases and base any future cap on a realistic average for properly preparing a straightforward children's case.

- Prepare clear and accessible guidance for lawyers on the information required to justify further expenditure on a child's case. The guidance should be published so that those assisting the child such as local authorities or advocates understand the legal aid regime and are able to hold legal representatives to account if further work is denied.
- Ensure that in all funding decisions in children's asylum cases the best interests of the child rather than the lowest bid is the primary consideration.
- Prepare peer review and LAA audit guidance to assist with understanding how the quality of legal aid providers work in children's asylum cases can be better measured.

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DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)

## Appendix 1: Methodology

The primary aim of this research has been to understand the experience of unaccompanied children's journey through the asylum system where this has led to a rejection of their protection claim. In addition we wanted to find out how local authorities negotiated these difficult transitions in the young person's status and how Home Office requirements impacted on their support of these young adults. Good quality and timely legal representation may also determine whether an unaccompanied child is granted asylum or whether they obtain limited leave to remain until they reach adulthood. We interviewed lawyers to look at factors in the legal aid regime that helped or inhibited these children's chances of obtaining the result they hoped for.

### **Securing the involvement of young people in the research**

We approached three local authorities, all of whom we knew to have significant numbers of unaccompanied children and young adult failed asylum seekers in their care. The invitation letter to local authorities explained the project thus:

*The aim of the project is to obtain and consider the views, experiences and intentions of separated/unaccompanied young people who have previously been 'looked after' children but have now turned 18 and whose asylum claims have failed. Care leavers are normally supported under the leaving care provisions of the Children' Act 1989 until they are 21 (or 24 if in Higher Education). However for this group of young people their entitlement to a leaving care service is affected when they become 'appeal rights exhausted' (ARE) and at this point they potentially face withholding or withdrawal of their leaving care support includes their accommodation and subsistence. The project will aim to ascertain how much the young people understand about their situation, the options that are open to them and their intentions given their precarious situations.*

In two of the local authorities approached we worked directly through managers with responsibility for this group of young people to access the young people themselves. In the other local authority, access was obtained through a local authority funded NGO. In addition we worked directly with one NGO that has a track record of supporting young asylum seekers – particularly through the transition to adulthood.

Although the initial intention had been to focus solely on those who had become ARE feedback from our participating partners was that this group in particular were very hard to reach, often in crisis about their situation and therefore may be reluctant to work with us. Concern was also expressed that mixing groups of young people some of whom were ARE and others who were not, was likely to be very difficult for those left without further options. We therefore agreed to provide a facility to interview young people separately

if they felt unable to participate in a workshop with others.

### **The approach to obtaining young people's views**

The safety and wellbeing of young people that the Office of the Children's Commissioner work with is always our paramount consideration in our engagement with them. From our understanding and experience of working with young people in the asylum process we anticipated the difficulty and sensitivity of obtaining the views of this group of young people on this issue. So prior to contacting the partners we hoped to work with, we had devised a method of engagement that we thought would minimise the difficulty of talking about any painful personal experiences through a 'story-telling and creating' approach.

We tendered for the services of a professional storyteller to assist OCC participation and policy staff in running the workshops with the young people. The invitation to tender expressed what we saw as the story-tellers role in the workshops:

*We recognise the sensitive and emotive nature of such discussions with young people whose futures are unclear and lives unsettled and so wish to provide them with an opportunity to express their views in a safe and supportive environment. The project will use distancing techniques such as developing a fictional story to enable the young people to talk about lives and experiences whilst maintaining respect for privacy around their own personal stories.*

### **Organisation and structure of the workshops**

OCC's partner organisations made the arrangements for the young people to attend the workshops and to arrange for food and refreshments. Young people were reimbursed for their travel expenses where required and also given a small 'thank you' token in the form of a certificate indicating their participation in the research and £10 shopping voucher at the end of the sessions. It was explained that we were not in a position to intercede in their individual cases and that the purpose of the project was to make recommendations that may assist other young people in their situations in the future.

Each workshop began with introductions of OCC staff and the storyteller and short activities aimed at relaxing the young people and building rapport. The formal part of the sessions began with the telling of a 'traditional' story agreed beforehand with the storyteller. Telling a traditional story encouraged the group to relax, listen and share something together, as a group. It also demonstrated how telling a story can have a powerful effect on the listeners, thereby encouraging them to contribute to the group story that was then created or simply to tell their own story directly.

Our assessment is that the technique worked well in allowing the young people to talk indirectly about their experiences while giving them the

confidence to express views that they might have been more reluctant to attribute to themselves. So, for example, they were encouraged to talk about 'the boy' (or 'the girl') when reflecting on a particular issue being faced. It was notable in all the workshops that as confidence increased, they felt able to dispense with this distancing technique and talk directly from their own experience. However, there were also occasions where they reverted, or were encouraged to revert, to talking in the third person. Each workshop produced a short story that came from the young people and was re-told to them at different stage as the workshop progressed using as far as possible their own phrases and expressions. This was an important safety net when talking about very difficult or painful subject matter. Closing with another traditional story gave the participants a chance to reflect on what had emerged in the session and was also a small way of giving something back to those who had been so honest and brave in telling about their experience.

In line with our Participation Strategy and Safeguarding Policy we discussed and agreed with our partner organisations that the young people would be monitored for any adverse impact on their wellbeing and that they had access to support and counselling if required. We also follow up with partner organisations after the sessions for their reflections and feedback on the impact of our meeting on the young people. This is part of one response we received:

*I think that things went well. Obviously it was quite raw for some of the young people but on the other hand they live with the fear and anxiety of being removed daily anyway so having an event like this does not really change that as I think that most emotional problems are quite near the surface anyway once you are ARE.*

*One boy commented that he felt that his bandages had been unwound and his wounds left exposed! As a response to this we have set up an art therapy class so that we can provide some emotional support to those who feel that way however, this boy has quite serious mental health issues and was reported advised to leave if he felt uncomfortable and yet he choose to stay and I think that he was pleased to stay. Another boy who has had a history of self-harming hugged one of my colleagues and said thanks for listening to me before he left. Avoiding talking about negative things does not make them go away and I think that the event was handled sensitively.*

### **Profile of the young people involved in the workshops**

Having listened to the feedback from our partner organisations the decision was also made to widen the scope of project to engage not only those young people who were now ARE but also those at risk of becoming so. In addition we extended the invitation to those who were ARE but had submitted a fresh claim for asylum and were waiting to hear (or had heard) whether the Home Office had accepted their fresh claim as valid which would put them back in the system to await a determination on the new claim.



During the four workshops that were run in different parts of the country, monitoring forms were used to establish basic biographical information about the young person as well as their current 'status' in relation to their immigration situation.

Over the four workshops (including one separate individual interview) we worked with a total of 32 young people. Workshops ranged in size between four and 11 young people. The tables below represent aggregated data from all four workshops and are drawn from the biographical data provided by the young people themselves (sometimes with the help of a support worker) at the date of the workshop.

Figure 4 indicates the country of origin of the young people engaged in the workshops. Just over two thirds were from Afghanistan while the remaining third were from four different countries. These figures are roughly consistent with the profile of unaccompanied children applying for asylum in the UK over the last few years.

**Figure 4: Country of origin of the young people involved in the workshops**

Country of origin	No. of young people
Afghanistan	23
Albania	2
Eritrea	4
Iran	1
Somalia	2
<b>TOTAL</b>	<b>32</b>

Figure 5 represents the self-reported age of young people participating in the workshops. One of the young people was being treated as older than they claimed to be. In two cases data on age was not provided.

**Figure 5: Self-reported age of participants at the date of the workshop**

Age of the Young Person at the time of the workshop	No. of Young people
16*	1
17	4
18	9
19	6
20	1
21	5
22	2
23	2
<b>TOTAL</b>	<b>30*</b>

\*Age disputed so treated as older by LA and Home Office

\*Data on age not provided in two cases

Figure 6 represents the position of each participating young person at the time of the workshop further to having their initial application for asylum refused by the Home Office. The largest group (just over one third) are represented by those who were waiting to hear the outcome of their application to have their Discretionary Leave extended. Just under half had had their application to extend their Discretionary Leave refused and were either in the process of appealing that decision, were not able to proceed with any further claim and had become appeal rights exhausted or were attempting to make a fresh claim but had not yet been told whether the new claim had been accepted as valid.

12.5% of the sample had previously been ARE but had provided sufficient new evidence about their claim to successfully lodge a fresh claim for asylum and were therefore now waiting for a further decision from the Home Office on their application.

**Figure 6: Position in relation to immigration status at the time of the workshop**

<b>Immigration status of the young person at the time of participation in the workshop</b>	<b>No. of young people</b>
Asylum claim rejected by the Home Office <b>and</b> has not been given Discretionary Leave to Remain as a child <b>and either</b> no appeal made to the court <b>or</b> appeal turned down by the court.	0
Asylum claim rejected by the Home Office <b>but</b> given Discretionary Leave to Remain until 17 and a half <b>and</b> now over that age and waiting to hear whether Discretionary Leave will be extended or not.	13
Request to Home Office to extend Discretionary Leave rejected <b>and</b> has lodged an appeal with the court and either; waiting for the appeal to be heard; waiting for the result of the appeal hearing <b>or</b> appeal determined and refused.	4
No further appeals to the court available but legal representative has lodged a fresh claim for asylum on the young person's behalf and waiting to hear if the fresh claim has been accepted as a valid new claim.	5
No further chances to appeal and have no outstanding application for a fresh claim.	6
Previously Appeal Rights Exhausted but now back in the system as a result of having a fresh claim accepted.	4
<b>TOTAL</b>	<b>32</b>

## Appendix 2: Literacy, language and durable solutions for asylum seeking children

At the same time as the research was being conducted for this report OCC became aware of a programme operating in Kent called Positive Futures.<sup>48</sup> The aim of the Positive Futures programme was to provide Afghan former unaccompanied children with an academic term's worth of skills training through a local further education college provider to equip them better for a voluntary return to Kabul. The young people would have to sign up to Assisted Voluntary Return (AVR) in order to access the training. Unfortunately, the programme failed to recruit anyone onto it. It will be important to evaluate the reasons for this including the barriers that young people themselves perceive to departing voluntarily.

The young people we talked with during our research suggested a range of barriers that made it difficult or impossible for them to contemplate returning to their country of origin. Rather, the majority appeared prepared to embrace the risk of remaining unlawfully in the UK with all its attendant difficulties. Those that discussed what they would do if they were forcibly returned often mentioned that they would simply leave again and return to Europe. Research evidence suggests that this is not an uncommon response to enforced return. This raises a question about how durable an enforced return really is.

A striking finding from OCC's research was that many of the young asylum seekers who arrive in the UK are illiterate in their own mother tongue. This appendix considers this and asks whether assisting young people with the building blocks of literacy through learning to become literate in their own mother tongue might assist in realising a range of durable solutions to their situation.

### **The aims of education: Article 29 of the Convention on the Rights of the Child**

Article 29 (1) of the Convention on the Rights of the Child is described by the Committee on the Rights of the Child as being of far-reaching importance. This is reflected in the fact that the Committee saw fit to have Article 29(1) as the subject of their very first General Comment (2001).

Article 29(1) (c) is of particular relevance to unaccompanied and separated asylum seeking children who are likely to spend a portion of their formative years in the UK whether or not they eventually gain settlement.

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<sup>48</sup> A report with the same title was commissioned by the South East Strategic Partnership for Migration in recognition of the problems faced by young people in the care of Kent County Council Social Services who were classified as Appeal Rights Exhausted.

## **Article 29**

1. *States Parties agree that the education of the child shall be directed to....*

*(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.*

The aims of education set out in Article 29 (1) promote, support and protect the core values of the Convention: the human dignity innate in every child and his or her equal and inalienable rights. The five sub-paragraphs of Article 29(1) are all directly linked to the realisation of the child's human dignity and rights taking into account the child's special developmental needs and diverse evolving capacities.

The goal of Article 29(1) is to empower the child by developing his or her own skills, learning and other capacities, human dignity, self-esteem and self-confidence. Sub-paragraph (c) is specifically concerned with promoting an enhanced sense of identity and affiliation.

The Committee on the Rights of the Child stress that the curriculum must be *of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs* [emphasis added] (General Comment 1, 2001). The inclusion of literacy in mother-tongue in the broad curriculum of unaccompanied and separated children's education is of relevance to both their present and future needs.

In General Comment No.6 (2005) concerning the treatment of unaccompanied and separated children outside of their country of origin, the Committee note, in regard to the right to full access to education, that:

*All unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language.*

### **Building literacy by maintaining and developing mother tongue**

*Efforts to find durable solutions for unaccompanied or separated children should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated (General Comment 6, 2005).*

General Comment No 6 aims to address the fate of unaccompanied or separated children by identifying a durable solution that addresses all the child's protection needs and takes into account the child's view (and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated). Whether the durable solution identified is reuniting the child with its parents,

inter-country adoption, resettlement in a third country, returning the child to its country of origin or integrating the child into the UK (or other host state), maintaining and developing the child's mother-tongue is likely to assist any of the durable solutions identified.

This aligns with the broad educational goals articulated in Article 29:

*The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. 'Education' in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society (paragraph 2).*

There is research evidence to suggest that English as a second language students (ESL) in international schools learn English more quickly and effectively if they maintain and develop their proficiency in the mother tongue.<sup>49</sup> Unlike ESL students in international schools, many unaccompanied and separated children will not be able to read or write in their own mother tongue when they first arrive in the UK.

However, as they are able to *speak* their mother tongue, learning to read and write in it is a more straight forward task than trying to learn the building block skills involved in all reading and writing for the first time in a language they are unfamiliar with. Where a child is able to develop good reading skills in their mother-tongue, he or she is likely to be able to apply these skills when learning to read a second language such as English.<sup>50</sup> It is therefore likely to help with becoming literate in English if children can be encouraged to master reading and writing in their own language alongside the learning of English.

A further reason for developing literacy in the mother tongue is that some children may be planning or may be required to return to their country or origin at some point and may wish to continue their education there or obtain work involving a requirement to be able to read and write in, as well as speak in, their own language. Separated and unaccompanied children who are immersed in the culture of the UK for several crucial years in their development may also suffer from problems of identity loss or alienation from their parents, other family members and culture and community more generally.

If the child's future is determined to lie in the UK rather than the country of origin the acquisition of literacy in the mother tongue is by no means wasted and can assist with integration into the UK and provide employment opportunities unavailable to those without such skills such as interpreting and

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<sup>49</sup> Because many skills acquired in the first language can be transferred to the second language – see for example Krashen, 2004.

<sup>50</sup> One useful reading skill is the ability to guess the meaning of unfamiliar words from context. Another one is the ability to decide which new words in a text are important to look up in the dictionary and which words can safely be ignored.

translation work, serving others in their community and business opportunities in an increasingly globalised world. There would also be enhanced employment opportunities in such professions as social work, teaching and international development.

### **Young people's reflections on their language, literacy and culture (taken from OCC's recent research)**

The young people who spoke to us had a great deal to say about the importance of their cultural identity and the loss of that identity as they become assimilated into the culture of the UK:

*Most of us have lived here throughout our teenage years. Some of us even younger. So imagine. We leave our country behind, everything, culture, even the language, everything. So you leave that place, learn new things, adapt to new things. You come to a society and learn many things in that society and you become a part of that society....It's a very severe case here. Something has to be done to this problem, cos my seven years – almost five of them here – is just wasted. Now I'm imagining what I could have done in those five years.*

*If things got better, obviously, all of us would want to go back, cos there's nothing like home. Imagine speaking your own language, having your own... practicing your own religion, culture, everything, you know. Even the smell of it, you know, the beauty of it – there's a beauty of it. So, I don't think anyone wants to live in another country, really.*

*[In the UK] I made a lot of friends... I start going church, I practice my religion and so on, and then, in some part of the middle of it they just say, "You know what – stop here, you go back". Then you have to make another life again.*

Specifically in relation to their literacy skills, some young people mentioned the lack of literacy in their mother-tongue as a barrier to return:

*If I go back to my country I don't even know my language. I know how to speak it but I don't know anything about writing or reading. I started my education with English so it (returning) wouldn't work for me.*

*The thing is when I was in my country, I didn't go school, I didn't go nowhere. So I don't have an education from there – nothing at all. I don't even know how to write my second name. I just know how to write my first name.*

It is not suggested that enabling and facilitating newly arrived asylum seeking children to develop literacy skills in the mother tongue will overcome all of the perceived barriers to an eventual return. Many will retain a subjective fear or feel that they are now too far removed from their roots for return to be realistic. It is suggested that in reaching adulthood and in contemplating

where their futures lie former unaccompanied children may be more likely to consider or accept return if they felt there were opportunities available to them were they to make that choice.

Whether developing literacy in mother tongue is realistic for newly arrived asylum seekers may be challenging. Research suggests that the mind set of young people who arrive seeking asylum is to consider the present first, the future next and the past last of all (Kohli, 2006). We have seen from the Positive Futures initiative – without wishing to pre-empt the evaluation – that young people were reluctant to participate in an initiative that was explicitly linked to a contract to return.

It is not the case that the suggestion to facilitate the development of literacy in mother-tongue has actually been put to any newly arrived asylum seeking children and given what is known of their mind set it may appear counter-intuitive to them to invest time in this. However, there are selling points in respect of assisting with become literate *per se* and in how this will assist with literacy in the language they need to learn immediately – English or in any language they may wish to learn in the future. The potential for classes in their mother-tongue may also appeal from a social aspect – meeting others from a culture that speaks the same language. There are also expanded employment opportunities that could result from becoming bi-lingual. These potential selling points remain speculative until they are tested against real newly arrived children.

Beyond literacy, there is the issue of learning to apply a language in the context of training for something, so mother tongue development is also about skills and knowledge acquisition. Therefore, education connects them with a past in terms of culture and religion, as well as a viable future in terms of professional trajectories. Providing education in mother-tongue literacy alongside the more traditional curriculum taught to young asylum seekers may have a broad as well as a tapered benefit.

## Appendix 3: Full list of Asylum applicants considered to be unaccompanied minors

Area	2008	2009	2010	2011	2012	Up to Sept 2013
Sweden	1,510	2,250	2,395	2,655	3,580	:
Germany	765	1,305	1,950	2,125	2,095	:
Belgium	485	730	1,080	2,040	1,530	:
Austria	695	1,040	600	1,005	1,375	:
United Kingdom	4,285	2,990	1,715	1,400	1,125	835
Italy	575	420	305	825	970	:
Switzerland	595	415	220	310	495	:
France	410	445	610	595	490	:
Denmark	300	520	410	270	355	:
Poland	375	360	230	405	245	:
Hungary	175	270	150	60	185	:
Finland	705	555	330	150	165	:
Romania	55	40	35	55	135	:
Malta	20	45	5	25	105	:
Norway	1,365	2,500	890		105	:
Greece	295	40	145	60	75	:
Croatia	:	:	:	:	70	:
Bulgaria	15	10	20	25	60	:
Slovenia	20	25	25	60	50	:
Ireland	100	55	35	25	25	:
Cyprus	70	20	35	15	25	:
Spain	15	20	15	10	15	:
Luxembourg	0	10	20	20	15	:
Portugal	5	0	5	5	10	:
Czech Republic	35	10	5	10	5	:
Lithuania	0	5	10	10	5	:
Slovakia	70	30	5	20	5	:
Iceland	0	0		0	5	:
Estonia	0	0	0	0	0	:
Latvia	5	0	5	0	0	:
Liechtenstein	0	15	0	0	0	:
Netherlands	725	1,040	700	485	0	:
European Union (28 countries)	11,715	12,245	10,845	12,350	12,715	:
European Union (27 countries)	11,715	12,245	10,845	12,350	12,645	:
<b>Total</b>	<b>13,680</b>	<b>15,175</b>	<b>11,955</b>	<b>12,660</b>	<b>13,320</b>	<b>:</b>

(Data sourced from the Home Office and Eurostat)





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