



University of Brighton

Whose best interests?

Exploring Unaccompanied Minors' Rights
through the Lens of Migration and Asylum
Processes (MinAs)

The UK National Report

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Executive summary

- Eleven unaccompanied children or former unaccompanied children and seventeen experts were interviewed in the context of this research.

Asylum process

- Both sets of interviewees regard the asylum process as hostile, interrogatory and lacking in adequate procedural safeguards for the child. The asylum process is contrary to the children's best interests.
- In contrast to the provisions for children in criminal justice processes, the appropriate adult safeguard is ineffective in the asylum process and does not prevent oppressive, confusing or repetitive questioning by interviewers.
- The asylum process fails to gather information relevant to determining children's best interests.
- Despite it being the mechanism best suited to safeguarding many children's best interests, the category of humanitarian protection is virtually never considered for unaccompanied children, let alone granted. This is to the detriment of children, especially those aged or nearing age 17.5.
- Where judges complied with guidance for children's cases, appeal hearings were a benign or positive experience for young people, but where judges failed to implement guidance, children were denied the right to effective participation in the proceedings.
- There is no alternative to the asylum process for unaccompanied children seeking some form of protection in the UK.
- Significant problems remain with age assessment, including assessments which do not appear to comply with the legal requirements and a lack of clarity about the number of assessments and disputes arising.

Care system

- Freedom of information requests showed that seven out of 150 local authorities in England look after 43% of all unaccompanied asylum seeking children in the country.
- The high concentration of unaccompanied children appears detrimental when it leads to children:
 - being allocated to social workers with higher caseloads and thus less time for any one child in their charge
 - having limited access to good quality legal representation
 - having lower chances of entering foster care
 - having delayed access to or long journeys for receiving education
 - being less likely to receive money to access places of worship and leisure activities vital for their physical and mental well-being
- With no system of guardianship in England for unaccompanied children seeking asylum, the formal support system existing for these children is fragmented and certain roles remain unfulfilled in practice.
- None of the young people interviewed had been allocated an Independent Visitor, despite this being a statutory entitlement.

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- In some cases, children develop a relationship with an adult who takes a significant role in their life, with tremendously positive impact. This happens on an *ad hoc* rather than a systematic basis, highlighting the need for a guardianship system.
- Legal aid cuts and the Legal Aid Agency's contracting practices have created some serious obstacles to accessing good quality legal representation.

Recommendations

- The outcomes of this research suggest a need for the UK government to:
 - Develop a child-friendly method of sharing responsibility for unaccompanied children around the UK so that children are not disadvantaged by being concentrated in a few areas (subject to the caveat that this process must respect the children's opinions and best interests and must not resemble the adult dispersal system).
 - Apply the guidance from the Police and Evidence Act for appropriate adults in criminal justice cases to those in asylum cases.
 - Amend the asylum process to respect the best interests of children throughout, including the method of information gathering and the type of information gathered.
 - Make better and wider use of humanitarian protection in children's cases as a means of implementing durable solutions which are genuinely in the individual child's best interests.
 - Reinstate legal aid for all children's cases, whether asylum or not, and amend the legal aid contract to permit / better incentivise good quality representation.
 - Amend the immigration rules to allow for family reunion for children recognised as refugees.
 - Pilot a system of guardianship for all unaccompanied children.

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Please note that this report supersedes an earlier draft, dated 25/09/2015. Only this version of the report, dated 14/10/2015, should be used or quoted.

1 Introduction

To the government, especially the Home Office, they made me cry five years. I was crying every day, every day, for five years. Hussein, 18

This report examines the best interests of unaccompanied children seeking asylum in the UK through their own experiences. While a sophisticated framework of rights exists on paper, there are longstanding concerns, supported by this research, that children are often denied these rights in practice for a variety of reasons. The importance given to their asylum-seeking status, over and above their being children, has meant that their rights as children have had to be fought for through campaigns and legal cases.

Recent years have seen an explosion of literature about unaccompanied child migrants, perhaps compensating for several decades in which the phenomenon of child migration was largely ignored. Charities, refugee NGOs, children's rights organisations, lawyers' groups, academics from diverse fields including law, health and social care, as well as statutory organisations and the Parliamentary Joint Committee on Human Rights have examined the subject. This report largely avoids reiterating the findings of other work as it examines the issues from a different perspective. It is based primarily on the accounts of young people themselves and of experts working directly with unaccompanied children – the views of policy-makers have not been sought. It is not a review of the UK's compliance with the UNCRC but does take the CRC rights as a useful framework for aspects of the best interests of children.

This research comes at a time when public spending cuts and "austerity measures" are adversely affecting many services, including local authority social work departments, education, legal advice, the Home Office and the courts. Nevertheless, it presents a longer view, with young interviewees' experiences spanning twelve years, and seeks to identify both best practices which should be adopted more widely and significant obstacles to the determination or implementation of unaccompanied children's best interests.

This report on the UK situation is part of the comparative project, "In Whose Best Interest? Exploring Unaccompanied Minors' Rights through the lens of Migration and Asylum Processes", also carried out in France, Austria and Slovenia. In the following sections the parameters of the field work are set out, followed by a brief overview of the country context, including the institutional framework and the numbers and patterns of unaccompanied children entering and living in the UK. The bulk of the report consists of the findings of the field work, divided into legal status and procedures (section 4.1) and care provisions and day-to-day life (section 4.2), followed by consideration of determination of the best interests of the child (section 4.3) and durable solutions (section 4.4). It concludes with recommendations arising out of the research, focussed on improving the process of determining and implementing those best interests.

2 The parameters of the field research

An ethical protocol was drawn up and approved by the University of Brighton's Research Ethics and Governance Committee. The interviews were conducted by reference to the question guide agreed upon by the four research teams participating in the MinAs project. An early decision was made to focus on England since the scope of the project would not have made it possible to explore the differences between England, Scotland, Wales and Northern Ireland.

Seventeen experts were interviewed. All have direct experience of working with young asylum seekers and refugees. They come from different perspectives, including social work, legal representation, NGOs and charities, teaching, foster care, accommodation provision, statutory bodies and community safety. While the interviewer (Jo Wilding) was professionally acquainted with five of them, seven were contacted through key organisations such as the local authority; the remaining five were suggested by earlier interviewees. These interviews lasted between one and two hours, except for five whose aim was to provide the researcher with specific information on discrete issues.

Despite difficulties in accessing unaccompanied children and former unaccompanied children for interviews, it became possible to interview eleven unaccompanied children and former unaccompanied children. Of these, ten were male and one female; three under 18 and eight aged 18 or over; four had been in England for less than a year. They came from five countries: Eritrea, Afghanistan, Iran, Ivory Coast and DRC. Five of these interviews were conducted during a group session of the "gatekeeper" organisation (e.g. a youth club), with those young people willing to discuss their experiences leaving the group activity for the time of the interview. Six interviews were arranged through a professional (always one of the adult experts interviewed) acquainted with the young person. An adult connected to the gatekeeper organisation was present during all interviews conducted with persons under 18.

The original research plan had been to hold three meetings with each young person: a short and informal meeting followed by two interviews. This structure proved unworkable, because it was felt to be undesirable to disrupt the children's leisure time at group activities repeatedly – especially as many young people were irregular attenders. Also, since the majority of young people interviewed did not need an interpreter, interviews went more smoothly than had been originally anticipated. Further, given the outputs required, it was not considered ethical to ask young people for more information than could be used within the research. Interviews lasted between 35 and 90 minutes.

All interviewees were provided with an information sheet on the MinAs research project, phrased slightly differently for experts and young people. These sheets were prepared in English for the use of the four research teams. The one for young people was translated into the most common languages for asylum seeking children in the UK, namely Albanian, Tigrinya (Eritrea), Pashtu and Arabic. The UK team also prepared consent forms for each group of interviewees. Their terms were carefully explained to all interviewees, but especially the young people. With the latter, emphasis was put – and reiterated during the interview – on the fact that there was no obligation to answer any question and that the young person could stop the interview at any time. Interviews were recorded when specifically agreed by the interviewee. Confirmation of understanding was sought in

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relation to each point covered in the consent form, but no signature was required (so as to distinguish this interview from interviews conducted in the context of legal proceedings).

The protocol included a plan in the event that an interviewee became distressed, although in some cases the “gatekeeper” was able to give a briefing on matters which might cause a particular interviewee distress. In the event, one interviewee began to cry while recounting experiences with the Home Office but expressed a wish to carry on and quickly recovered. Another described suicidal feelings, for which long term support from a therapist was already in place, but was not distressed at the time of the interview and continued with group activities at the end of the interview. The researcher had a follow-up conversation with the therapist, at the interviewee’s request.

The majority of interviews were recorded. They are securely stored and were transcribed. For the non-recorded interviews, including some carried out by telephone, contemporaneous notes were taken. In a number of cases, the researcher was able to interview more than one person involved in the same situation (young person and related social worker/s; solicitor, social workers and foster carer working with the same authority; young person and significant adult in their life) thus offering some degree of triangulation on the material collected.

Interviews were mainly held in three locations. The county of Kent was selected because it has one of the largest cohorts of unaccompanied children in the UK due to it incorporating the port of Dover. London, the second selected location, also has high numbers of unaccompanied children and many of the key organisations working with this group are based in London. Finally, the city of Brighton and Hove has numbers more typical of English local authorities, and was selected for geographical convenience (being the base of the research team).

All quotations included in this report are from the interviews conducted within this project, except when otherwise indicated. Young people’s names have been changed. This report deliberately does not use the abbreviation “UASC” which is in common usage in both the asylum and the care systems for unaccompanied children in the UK. It is widely regarded by groups advocating for these young people as dehumanising: they are first and foremost children. “UASC” is used in this report only where it is a direct quotation from an interview or an official document such as the immigration rules. The term “unaccompanied children” is used since it is the one most widely used in the UK care, asylum and legal systems, though some commentators prefer “separated” or “separated and unaccompanied children”.

Every local authority has different policies and working practices, and policies and duties imposed by central government change relatively frequently. The data collected cannot therefore be assumed to be valid beyond its location and period. It nonetheless highlights some of the best practices and main difficulties encountered in the field.

3 Overview of the UK national context

3.1 Institutional framework

The UK's legal framework differs somewhat from most other EU states in that it has not opted in to the more rights-oriented recast directives adopted by most EU member states. It remains bound by the original European Directives on asylum procedures, qualification, reception conditions and temporary protection adopted between 2000 and 2005. It has however opted into the more control-oriented recast EURODAC and Dublin Regulation directives.

The UK ratified the UN Convention on the Rights of the Child (CRC) in 1990 and withdrew its immigration reservation in 2008. However the CRC has never been fully incorporated into domestic law so it does not have direct effect in UK law. Domestic laws must nonetheless be drafted and interpreted in ways which comply with the CRC and other international obligations. The obligation to treat a child's best interests as a primary consideration arises in domestic law in the following legislation:

- a) The Children Act 1989 provides at s17 that "It shall be the general duty of every local authority ... to safeguard and promote the welfare of children within their area who are in need". This applies to all children.
- b) The Children Act 2004 provides at s11 that any children's services authority in England and various National Health Service bodies must make arrangements for ensuring that their functions are discharged "having regard to the need to safeguard and promote the welfare of children". This also applies to all children.
- c) For children subject to immigration control, s55 of the Borders, Citizenship and Immigration Act 2009 (BCIA) creates a statutory duty upon the Home Secretary to ensure that the Home Office's immigration and nationality functions be exercised "having regard to the need to safeguard and promote the welfare of children who are in the UK". Case law establishes that this phrase reflects the best interests obligation in the UNCRC.¹ This applies both to policy-making and to individual cases.

In addition to these legal provisions, published government policy documents must be followed unless there are good reasons for departing from them. This includes the immigration rules. Specifically in relation to children, these policies include the "Every Child Matters" framework and documents on a) age assessment, b) processing a child's asylum application, including reception arrangements, c) review of discretionary leave granted to unaccompanied children and d) what happens as the child approaches and turns 18. Each of the policies instructs staff on how to ensure that the best interests principle is given effect in practice. However, in practice, the procedural safeguards and care entitlements set out in policy have largely had to be fought for in the courts or by the Office of the Children's Commissioner.

The two key governmental institutions relevant to unaccompanied children are the Home Office and the local authority's social services department (referred to as "the local authority" in this report).

¹ ZH (Tanzania) 2011 UKSC 4

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The Home Office is the government department responsible for all asylum applications and immigration matters. As will be seen in section 4.1.1, there is no formal procedure for determining the child's best interests within the immigration and asylum procedures.

The vast majority of unaccompanied children arriving in the UK apply for asylum. The procedure is discussed in more detail in section 4.1.1. When asylum is granted, it brings refugee status and five years' leave to remain, after which indefinite leave can be applied for. There is a hierarchy of protections: asylum, humanitarian protection, subsidiary protection and "UASC" leave until the age of 17.5 for children who are not entitled to any other form of protection but for whom there are no satisfactory reception arrangements in the country of origin. Where asylum is refused, the decision maker should proceed through the hierarchy, examining whether the next level of protection should be granted.

In fact, very limited use is made of humanitarian and subsidiary protection in children's cases, even where they may be the more appropriate form of protection. In 2014 less than 1% of all lone child applicants were granted humanitarian protection and only 1.5% of those who had been refused asylum. In 2013, only 0.5% of unaccompanied children refused asylum received humanitarian protection. Of those who reach 18 before a decision is made, only one has obtained humanitarian protection in the past three years, suggesting that decision makers view humanitarian protection as almost coterminous with asylum.

[It] seems like [Home Office] staff don't know or haven't been trained that if a child comes into the asylum system it's often because they have no other way of claiming any kind of protection ... They need to recognise that there may be rights for the child to stay that aren't asylum but nor are they just discretionary leave. [It should be] an international protection procedure and not necessarily the asylum procedure. NGO worker 6

A more broadly focussed determination of the child's best interests could lead to a grant of humanitarian protection instead of simply "UASC leave" where the asylum definition is not met. The data therefore suggest a need for better training of Home Office staff to gather relevant information and consider whether the child's best interests in fact suggest a grant of humanitarian protection.

In respect of social care, the Children Act 1989 mandates that a child for whom no one has parental responsibility must be looked after by the local authority, through its social services department. A person who claims to be a child should be treated as a child unless assessed as an adult within the age assessment framework. A looked-after child must be accommodated by the local authority and provided with education and other services according to need. Care arrangements must be reviewed regularly.

The responsible authority is the one for the geographical area in which the child first comes to attention. The local authority which looks after the child is responsible for assessing and meeting the child's needs in accommodation, education, health, safeguarding and so on. It does so through the same social work practices as apply to any child in the authority's care, though there are concerns, discussed in the relevant sections, that resource issues or discrimination affect the opportunities available to unaccompanied children in practice.

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Aside from the Home Office and local authority, the Office of the Children's Commissioner (OCC) is a national public sector organisation whose purpose is to promote and protect children's rights in accordance with the UNCRC and other legislation as appropriate. There is a Commissioner for each of the four countries in the UK: England, Scotland, Wales and Northern Ireland. The role was created by the Children Act 2004 and amended by the Children and Families Act 2014. The 2014 Act gave the OCC a statutory power to monitor the implementation of the UNCRC in England with particular focus on those at greatest risk of having their rights infringed. The OCC publishes reports on issues affecting children's rights and advises policy-makers and practitioners. Some of the OCC's reports have had a rapid and significant effect, such as the 2012 *Landing in Dover* report which prompted the Home Office to stop the practice of returning children who did not immediately claim asylum. There are a number of non-governmental institutions which are important and civil society organisations have been active and effective in advocating for unaccompanied children's rights.

3.2 Contextual country information

The UK has developed ever-tightening immigration controls, particularly from 1999 onwards, leading to the current Conservative government's position of deliberate hostility towards migrants, including asylum-seekers and refugees. It set a target of reducing net migration to less than 100,000 per year and has placed border controls in France and Belgium in an attempt to minimise unauthorised access, including for those wishing to claim asylum. These controls have contributed to a drop in numbers of asylum-seekers reaching the UK since around 2008 but at the time of writing, numbers are again increasing, as in the rest of Europe.

The Home Office publishes quarterly statistics for all asylum applications and for child asylum applications. There were 1,986 applications by children in the year ending March 2015. The figures show a 46% increase on the 2013 figure (1,265), itself a 12% increase over 2012, following several years of declining numbers since 2008's peak of 3,976. Data from Kent County Council shows a sudden increase in arrivals by unaccompanied children in the second half of 2014, with 211 children arriving in the six months from August 2014 to January 2015 into Kent alone. In April 2015 Kent was responsible for 376 unaccompanied children; by September 2015 it had almost doubled to 730, creating a crisis in Kent's capacity to receive the children.

The Kent data show that the largest number of children are Eritrean or Syrian, with smaller numbers of children from Afghanistan, Iran and Egypt and relatively few from Albania. By contrast Albanian children make up the highest number of lone child asylum applicants for the whole UK: 617 in 2014, compared with 446 Eritreans and 129 Syrians. This reflects travel routes, with Albanian children more likely to arrive by air and the majority of others arriving overland by lorry. Vietnamese children continue to arrive in numbers which are not reflected in the adult statistics and remain a particular concern as possible victims of human trafficking.

It became clear during the fieldwork that there was no clear picture of where in the country unaccompanied and former unaccompanied children were living, though it was known that certain areas had higher numbers. A request was made under the Freedom of Information Act to the 150 local authorities in England, including the 32 London boroughs, for the numbers of looked-after children and care leavers that each authority is responsible for. Each authority was also asked how many of those young people had had their ages disputed. Responses were received from 146 authorities between June and August 2015.

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There appear to be some differences in how data is recorded, e.g. "unaccompanied asylum-seeking children" or simply "unaccompanied minors", which may include more children. Where numbers are low, authorities may report them as "less than five" or "less than ten" to prevent possible identification of individuals. Nevertheless, the data collected does appear to provide the most complete picture that currently exists of where unaccompanied children are looked after.

The data show an extremely uneven distribution: 30 authorities look after no unaccompanied children, 50 have between one and nine, 25 have between 10 and 19, seven have 50 or more and five have more than 100. In April 2015 the top two authorities, Croydon (412) and Kent (376) were looking after 28% of all unaccompanied child asylum seekers in local authority care in England.² The top seven were collectively responsible for 43%.

In light of this, certain questions arise about the implementation of children's best interests. The Children Act framework, whereby children must be looked after by the local authority where they first appear, is undoubtedly beneficial for unaccompanied children. It sets out the authority's responsibilities, applies without discrimination to indigenous and migrant children and prevents children being left abandoned until they find an authority willing to accept responsibility. It has, however, resulted in this very unequal distribution of children across England, reflecting the geographical location of the Asylum Screening Unit (Croydon), the main sea ports (Kent) and, to a lesser extent, airports (Hillingdon, West Sussex) and distribution depots or motorway services which are commonly the first stopping point for cross-channel lorries. Four authorities are designated "Gateway Authorities", being those where the largest numbers of children first come to attention. These are Kent, Solihull and the London Boroughs of Croydon and Hillingdon.³

The reason why this is of concern is that it appears to place significant and unmitigated pressure on the services needed for unaccompanied children, such as foster placements, education places, social workers and good quality legal advice. It also entails high financial costs for care leaving services for those aged 18 and over. This will be discussed in more detail throughout the report in relevant sections and in the closing section on durable solutions.

² On the basis of 730 looked after children, as of September 2015 Kent alone is responsible for around 22%.

³ In fact the numbers of children looked after in Solihull (43) no longer support its treatment as a "Gateway Authority", while other authorities have higher numbers and are not so treated.

4 Findings

This section sets out the findings from the field research. All young people's names have been changed. The findings are broadly split into those relating to the child's legal status and those relating to children's day-to-day lives in the UK. They do not divide neatly into dealings with the Home Office and those with the local authority; rather, it will become clear that the roles of different agencies are interlinked

4.1 Legal status

4.1.1 Asylum/Migration/International protection procedures

The asylum process begins with a claim for asylum being lodged with the Home Office. A short screening interview is normally conducted at the same time or shortly after the claim for asylum is made (depending on whether the claim is made at port or in-country and on the practices of the particular port). Later the Home Office conducts a detailed asylum interview with any asylum claimant aged 12 or over. Those granted asylum receive five years' leave to remain in the UK. If refused, there is a right of appeal to the Asylum and Immigration Chamber of the Tribunal.

i) Home Office asylum interviews

Eight young people interviewed for this project had undergone asylum interviews with the Home Office.⁴ All experienced the interviews as difficult, primarily because of the conduct of the interviewers:

I felt like I was being attacked and intimidated and they were mean! So they would just ask all these nasty questions and be really really horrible and I would sit there crying answering the questions and whoever was there interrogating that day would not even have a blink of remorse or say ok, she's just a kid. Mercy, 23 (14 at date of Home Office interview)

Two said the interviewer made them feel like criminals. Two found the interviewer's technique confusing, consisting of multiple repetitions of the same question in different ways:

The thing was, one question, they asked me in the first place and that's the same question they asked me after 20 questions again, just to catch me if I'm going to answer in the same way or not. Hussein, 19 (13 at date of Home Office interview)

A foster carer who has attended a number of interviews felt that interviewers "can be incredibly confrontational, they shout at them, flummox them." In her experience children are accused of lying if they mention something at a second interview that they did not mention the first time. It is clear that Home Office interviews are not intended to be and do not provide an opportunity for children to express their opinions. The interviews were a series of questions which they were required to answer:

⁴ Of the other three, two had been granted asylum on the basis of their Eritrean nationality and one was still waiting for an interview.

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They asked me too many questions, they could see I was very young and when they asked me that many questions, I was very unhappy about it [but they said] if you want to get status in this country, to be safe, so you have to answer. Bashir, 18 (13 at date of interview)

Cultural assumptions made in the interviews were criticised by both young people and expert interviewees. Nasim described being asked about the currency in his home country and the side of the road they drove on. He said he lived in the mountains and there was only one road:

I never sat in a car – if there was one car in the street there would be 20 people running after it because there are very few cars. Nasim, 18 (13 at date of interview)

Young people found the length of some interviews difficult, a complaint also made by expert interviewees, and the practice of offering breaks did not mitigate this:

The second one was from 11am until 5pm. There were breaks but it went on and on and I was under pressure and scared. As you can hear, I stutter and that day I stuttered more. Ahmed, 19 (Aged 17.5 on arrival but 18 by the time of the Home Office interview)

They asked me [whether I needed] breaks but I said I don't need a break, I can finish, because I was panicking, I wanted to finish as soon as possible, I wanted to go home. I mean they quickly asked me questions and I had to quickly answer them. Hussein, 19 (13 at date of interview)

No consideration appears to have been given to modifying the interview procedure, even for the children who were as young as 13. One expert interviewee referred to a modified procedure sometimes used in trafficking cases, whereby police, solicitor and other relevant agencies carry out a joint interview at a venue which is familiar to the child, saving the need for re-telling of the same account. This is clearly best practice and somewhat resembles the Achieving Best Evidence procedures used in criminal and some family proceedings where a child is a witness.

The data raise questions about whether it is possible for children to give an adequate account of their experiences in the particular setting of the Home Office interview as currently conducted. It is impossible from this research to gauge the scale of the problem of interviews being inappropriately conducted. However the data strongly suggest that the information gathered in the interview process does not equip the Home Office to determine or properly consider the child's best interests.

ii) Appropriate adult safeguard

There is a right for children to be accompanied by an "appropriate adult" at the substantive asylum interview (taking place after the Home Office screening interview). None of the interviewees, expert or young person, considered the appropriate adult role to provide an effective safeguard for a child in an asylum interview. This raises a significant concern about whether proper and effective safeguards are present for children in this adversarial process. One adult who has acted as appropriate adult in both the criminal and asylum contexts explained:

As appropriate adult you're never allowed to intervene in the interview. At the police station as appropriate adult you can intervene, but at the Home Office you are just an observer. Accommodation provider 2

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The same applies to the legal representative:

One of the main [obstacles] is that the Home Office's interview procedure still states very clearly that you cannot say anything during the interview ... And sometimes you get Home Office interviewers who really won't let you intervene, which is crazy, because there's a misunderstanding and if you're not allowed to intervene the misunderstanding just goes wild ... it's just such a waste of time and so confusing and so confrontational. Lawyer 1

Young interviewees confirmed this:

[M]y social worker ... was allowed to be in the room but he couldn't talk ... So even if they say something that's really bad, he's not allowed to say a word, you had to deal with that yourself ... even though you have those people around, you're just on your own. I felt like I was a criminal or something. Mercy, 23 (14 at date of interview)

Within the criminal legal system, the role, rights and responsibilities of the appropriate adult are set out in the Police and Criminal Evidence Act 1984 (PACE). The guidance for those acting as appropriate adults emphasises that they are not mere observers and that they must intervene if necessary, for example if they consider the police questioning to be confusing, repetitive or oppressive. By contrast the Home Office guidance on interviewing children says it is for the interviewing officer to decide the role of the appropriate adult. This Home Office policy or practice, which renders the role ineffective, is likely to be unlawful and is certainly contrary to the child's best interests. The PACE guidance for appropriate adults should be extended to apply to unaccompanied children, in respect of interviews, personal searches, fingerprinting and all other aspects of the asylum process.

iii) Interpreters

Three of the eight children had difficulties with the interpreter, finding that the interpreter made mistakes which caused misunderstandings:

Some interpreters, sometimes, they're saying something in Pashtu but they directly put it in English, say something in English, a word he probably can't say in Pashtu so he says it in English. How would I understand? Hussein, 19

Several other problems with Home Office interpreters and those working for solicitors were raised by expert interviewees. A social worker described Home Office interpreters "*show[ing] their disbelief by doing things like rolling their eyes when the young person said something.*" A lawyer explained that the Home Office continue using interpreters who are "*absolutely shocking*" but sometimes the lawyer's own interpreter can feel intimidated about challenging the Home Office interpreter in interview because of community links.

There is no additional accreditation process for interpreters to work with young people and lawyers and Home Office decision makers are not given training on working with interpreters. These appear to create an obstacle to best practice. This is an area which requires urgent improvement, given the importance placed on the smallest discrepancy.

iv) Delays in the asylum process

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Delays were an issue for several of the young people interviewed. One, who had been in the UK six and a half months, had not yet had a substantive asylum interview. Another experienced a delay of several months between arrival and his substantive interview and decision, as a result of which he was no longer considered as a child. One child waited two and a half years to receive papers confirming the grant of limited leave made when he was 13 years old. Shortly after receiving his papers, he had to apply to extend his leave, leading to another period with no papers while a decision was made. Two, having applied to renew limited leave when aged 16, had a two-year delay before receiving a refusal of their applications. They therefore spent two years as children with uncertain immigration status at a time when the only decision that could lawfully have been made was the granting of further discretionary leave (as it then was). This uncertainty cannot have been in their best interests. Four young people talked about the adverse effects of the uncertainty at the stage of applying to extend leave while still a child or at the age of 17.5. The same effects arose from delays in the court process. The young person who expressed thoughts of suicide had spent more than a year in the appeal process: his appeal was allowed in the First-tier Tribunal then the Home Office appealed to the Upper Tribunal and the decision was overturned so that his case was awaiting a third hearing.

v) Court process and the right to be heard

Four young people described a positive or at least benign experience in court, describing a process which was consistent with the guidance for tribunal judges. This is not universally the case in practice: one described a first hearing in which he was asked no questions, had no opportunity to speak and did not feel respected or heard by the tribunal. Another felt that the first tier judge did not listen to him, borne out by the judge's written refusal on grounds which did not appear to be lawful. Factors which led young people to speak more positively of their court experience include: support from the adults involved, being given an opportunity to speak, limited cross examination, being addressed directly by the judge, feeling respected by the judge and Home Office representative and, unsurprisingly, a positive decision from the judge.

4.1.2 Age assessment procedure

i) Overview

A great deal has been written about age assessment in the UK context, much of it highly critical of the process.⁵ This research project overall confirms these observations, on the basis of what experts and three young people, whose ages were or had been in dispute, reported.

One boy in Kent was accepted to be a child. However, he was treated as being 17 instead of 15, as he declared. He had been placed initially with a foster family. He was removed from there to the assessment and induction centre at Millbank. Once assessed to be 17, he was placed in semi-independent accommodation. This assessment reduced his daily support rate, his educational opportunities and access to other activities. He did not fully understand the process or reasons. He wanted to challenge the assessment but was unable to obtain evidence from his home country because of the dangers to his family if they sought official documents on his behalf. It is concerning that he was moved from the foster family to Millbank, which is for those aged 16+, before the age assessment was completed, suggesting the outcome had been pre-judged.

⁵ Joint Committee on Human Rights (2013), Office of the Children's Commissioner (Brownlees and Yazdani, 2012), Refugee Council (Dennis, 2012).

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A second boy in Kent was accepted to be 15, having previously been assessed at 17. The re-assessment occurred because of advocacy by a solicitor he accessed through a charity.

A third, in London, had been assessed as over 18 and was attempting to challenge the assessment but had two key difficulties: first he had been asked for money by a solicitor to challenge the assessment. The solicitor then failed to progress the case and it was only by coincidence that the boy spoke to the Refugee Council just before he missed the deadline to challenge the assessment. Secondly, it was unclear which local authority was responsible for his age assessment and therefore who to challenge. The boy had no understanding of what was happening with his case.

Anecdotally, some “gateway authorities”⁶ were identified as age assessing very large numbers of young people. As the the two highest intake areas, Kent and Croydon would be expected to assess more children but experts were nonetheless concerned that the resource pressures, particularly the financial cost of leaving care services (see section 4.2.1), created an incentive to assess children as older or as over 18. A former social worker in London identified attitudes of some social work managers as an obstacle to fair age assessment:

[T]here would be other managers who would come in and say, oh that kid's definitely over 17 and then expect you to conduct a balanced [neutral] age assessment.

Dental x-rays used to be considered a method of choice to age assess. However this proved controversial as the medical and legal consensus is that they are not helpful to determine age (see for example JCHR 2013). In the UK, the use of x-rays for determining age is no longer permitted. Despite this context, a senior manager interviewed for this research explained that social services continue to come under pressure from some in senior education and policing roles who would like to see a return to using x-rays in the belief that this would prevent young people from being accepted to be younger than they are. This suggests that the irrelevance of x-rays for age determination has not yet been universally accepted beyond medicine, social work and the legal profession. Equally importantly, it indicates the conflicting pressures under which social work departments function, especially in the higher intake areas.

ii) *Merton* compliance

There is no set process for assessment but it must comply with certain principles for holistic assessment known as *Merton* compliance.⁷ The age assessments of the two young interviewees still involved in age disputes did not appear to have been *Merton* compliant as the interviewees themselves described them. Several children were unsure whether an interview they described was an age assessment or an asylum interview, a matter which in itself calls into question the *Merton* compliance of the process.

Two interviewees were concerned that children were subjected to continuing observation for assessment in a reception centre and not informed that they were being assessed. One said:

⁶ This term refers to authorities where large numbers of children first come to attention.

⁷ A list of principles for holistic assessment of age set out in the case of *B v London Borough of Merton* [2003] EWHC 1689 (Admin).

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They [reception centre] have consistently been in breach of Merton guidance ... They do the observations of them. They don't tell them that they're age assessing them and then on the last day of the two weeks they get told in a meeting with someone that they may have never met before ... that they're 18, or over, they're given a pro forma sheet with ... [brief and formulaic] reasons. Lawyer 2

Since the reception centre is only allowed to accommodate those aged 16 or over, some interviewees expressed the view that children who claimed to be younger but were accommodated in the reception centre were unlikely to be accepted to be under 16. A number of interviewees echoed the “concern that funding pressures could be incentivising local authorities to assess children either as adults, or as older than would otherwise be the case”, to quote Parliament’s Joint Committee on Human Rights (2013).⁸ These are strong allegations. While individual cases can be challenged in the courts, the overall allegations remain to be examined and either substantiated or refuted by the relevant authorities, perhaps by reference to an audit of cases and processes, thus requiring more in-depth research than could be conducted within the context of this report.

In addition, across the country, the supposedly "holistic" assessment often involves a child being asked very detailed questions about the journey, life history or asylum claim which have limited relevance to age.

Two expert interviewees, including a former social worker, said there is a “culture of disbelief” in the conduct of age assessments. This corroborates a finding by the Joint Committee on Human Rights (2013).⁹ A foster carer described age assessments as “more confrontational” than other dealings with the local authority, such as Looked After Child reviews. One expert described the process as “really horrible” while another called it “quite arbitrary” and, as such, damaging to the relationship between the child and the local authority as corporate parent.¹⁰

On 20 March 2015, the Home Office imposed new timescales on local authorities for completion of age assessments, described by a senior manager as “challenging”. Since the Merton principles require assessments to be carried out by two workers, at least one of whom must be a qualified social worker, and consist of at least two lengthy interviews, in the presence of an appropriate adult and usually an interpreter, age assessment is a resource intensive process. This suggests that, if a responsibility sharing model is developed, as recommended by this report, allocation of children should happen before any age assessment process, not after, to relieve the resource pressure on gateway authorities.

iii) Availability of information

The Freedom of Information requests sent to local authorities in the context of this research project included the question: *How many individuals claiming to be unaccompanied children were deemed to be an age other than their claimed age by this local authority?* One hundred and forty-six authorities responded. Of those, 115 were looking after at least one unaccompanied looked-after child. Of those, 22 (including Croydon) were unable to answer the question because the information was not

⁸ Paragraph 92

⁹ At p. 4

¹⁰ The notion of the “corporate parent” reflects the local authority’s role as exercising parental authority for the child. Elected members of the council and the Children’s Services department are collectively referred to as the corporate parents of a child in care.

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stored or not collated and could not be provided without going through individual files at a cost disproportionate to Freedom of Information requests.

It also became apparent that there is a lack of shared terminology. Some social workers referred to age assessment as part of the overall social work assessment that begins when the child first comes into contact with the authority, rather than a discrete process. Lawyers and NGO workers on the other hand saw age assessment as specifically the process which occurs when the authority doubts the age given by the child or young person. Thus it was far from clear that responses were directly comparable. For example one response stated that:

For the financial year 01/04/2015 – 31/03/2015, 62 asylum seekers were visually age assessed. 32 of the asylum seekers were deemed to be over the age of 18. (Cambridgeshire County Council)

Being "visually age assessed" is inconsistent with undergoing a holistic *Merton* compliant age assessment, so it is unclear what this means. It may refer to the initial view a person's "appearance and demeanour *strongly* suggest that they are *significantly* over 18" (emphasis in original),¹¹ which is the test for immigration officials to decline to treat a person as a child. However this is far from clear. This lack of a standard way for local authorities to collate information about age assessments and disputes adds to the lack of clarity about age assessment identified in the Home Office by the Chief Inspector of Borders and Immigration (2013). This vagueness about the prevalence and outcomes of age assessment is not commensurate with the very great importance of accurate assessment for the young person's care, accommodation, education and legal options.

iv) Detention

There are no adequate safeguards for children detained as a result of an incorrect age assessment:

[T]hey don't come to the attention of a local authority unless you've got a detainee support group spotting it, the Refugee Council spotting it, someone in the charitable sector flagging it up. It doesn't get picked up in Rule 35 reports,¹² it doesn't get picked up in the detention estate safeguards. Lawyer 2

This is supported by a report by HM Chief Inspector of Prisons,¹³ whose remit includes immigration detention centres and who found that children were being age assessed by immigration officers instead of social workers and were being unlawfully assessed in detention instead of released for assessment. In the first six months of 2015, five children, three aged 16 or less, were held in one detention centre. There is a clear need for more effective safeguards to detect cases where detainees may be children and ensure their rapid release for age assessment.

4.1.3 Care/guardianship appointment procedure

There are no formal procedures such as court orders for the child to become looked-after; rather the local authority accepts responsibility by providing services to the child.

¹¹ Home Office: *Asylum Instruction - Processing an asylum application from a child*.

¹² Rule 35 of the Detention Centre Rules lays down the requirement that a medical practitioner must make a report on any detainee whose health is likely to be adversely affected by detention or for whom there are concerns that they may have been a victim of torture.

¹³ HM Chief Inspector of Prisons for England and Wales (2015) *Annual Report 2014–15*. House of Commons

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There is no guardianship system for unaccompanied children in England. Scotland continues to pilot a guardianship scheme, while child victims of trafficking in England are to receive specialist advocates under the Modern Slavery Act 2015. The government's position in respect to England is that all the functions a guardian would fulfil for an unaccompanied child are already undertaken by other people so that a guardian would simply become yet another person responsible for the child. However, expert interviewees considered coherence and "joining the dots" to be particularly important. Reported problems regarding the present situation included the social worker having no understanding of the asylum process, so that the young person's understanding was also limited to what they recalled from meetings with solicitors; frequent changes of social worker; the social worker being too busy to see the child frequently enough or deal with issues promptly; loneliness and isolation; police failing to implement missing persons procedures when a young person disappeared; and children instructing poor quality legal representatives without understanding that the representative is providing a weak service.

The cost saving from providing poorer or less services can be a false economy because the young person goes off the rails or has problems as a result. Accommodation provider 2

The kids aren't neglected but [other than their teachers] they see an adult for a few hours a week ... I think that aspect is very impersonal. NGO Worker 5

Perhaps the strongest illustration of the crucial importance of guardianship is in the cases of young people who have had a "significant adult" involved in their lives as a volunteer. Six interviewees had benefitted from having such a person taking a personal and sustained interest in them. The significant adult was the foster carer in only one case, and this carer happened to be particularly knowledgeable about the asylum process. The significant adult took it upon her or himself to understand the youngster's situation and explain it to them, and/or to resolve specific problems. Sometimes this person attended legal appointments and court hearings with the young person. In three cases, the significant adult had referred the youngster to a new legal representative, bringing to an end the previously poor handling of their case. The significant adult did not suddenly withdraw their involvement when the young person turned 18 and became a care leaver. Their attention, advice and input was instrumental in changing the life of the young people for the better.

She has been the person who has been there for me, like from the beginning of moving to independent living until now. She's been really helpful with everything and even in the community, with English culture, all of it. For example we had a graduation party ... I wanted to be like everyone else, because I felt awkward to go there alone and see all the young people there with their parents so I didn't want to feel that way. She came with her husband which I think was great and I can't forget. I can't take back what she did, it's impossible. I can't describe her. Hamid, 18

In one case, the significant adult had chased the young person's status papers for which he had waited two and a half years, referred him to a new solicitor who succeeded in obtaining refugee status for him, provided him with sporting opportunities, helped him access the Duke of Edinburgh award scheme and volunteering opportunities, provided access to driving lessons and was helping him to resolve complex accommodation and financial issues during the move out of foster care. Another youngster had also become involved in volunteering through his significant adult, greatly enhancing his skills and offering new opportunities and friendships.

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Those who did not have such an individual struggled to understand their own position, access information and support, and have their opinions taken into account. Several young people seemed unclear about the roles different individuals and institutions played in the decision making process, which appeared to be the result of the lack of a single individual in a guardianship role.

The role of these adult volunteers in unaccompanied children's lives cannot be overstated, yet it is wholly a matter of chance whether a child finds such an adult or not. This research suggests that it is very strongly in the best interests of unaccompanied children to have a guardian, who might take on some of the functions of existing workers. The best model of guardianship for unaccompanied children in England should be investigated without further delay.

4.1.4 Transition to 18

At the age of 18, a person ceases to be a looked-after child. If they received services as a looked-after child for the 13 weeks before their 18th birthday they are entitled to leaving care services from the local authority until the age of at least 21 and up to 25 if they are in education or training. That includes provision of a personal adviser, maintaining and reviewing a Pathway Plan and ensuring that the young person has suitable accommodation (though not providing accommodation). Unaccompanied children should receive leaving care services on the same basis as indigenous care leavers, but only after a court judgment has established that they are entitled to this.¹⁴

Those with UASC leave until the age of 17.5 must apply for further leave before the existing leave expires. If they do not, their presence in the UK becomes unlawful. Of the young people interviewed, three had made the transition to 18 without permanent status, having had leave previously. Each waited two years for a decision on their application for further leave: all three were refused, two succeeded on appeal and one was still in the appeal process. They experienced increased emotional stress and practical difficulties. Thus one young person described moving out of foster care into semi-independent accommodation at the same time as “tumbling” back into the asylum process, with such severe effects on his mental well-being that he was unable to sleep, was referred to a psychiatrist, and failed his exams having previously achieved excellent results.

Expert interviewees were similarly concerned about delays in resolving status. One social worker and one lawyer separately reported that it was common for young people to wait until the age of 20 or 21 for a decision on their application for further leave. Throughout this time they cannot start most educational courses, since they do not have leave for the duration of the course. One young person told me he could not think about university because he did not have leave. Another knew someone who had disappeared two weeks previously to work illegally in London after his appeal rights were exhausted, despite not in fact having had an appeal.

A young person whose appeal rights are exhausted may be denied leaving care services if a Human Rights Assessment concludes that stopping services would not breach their human rights. Kent had begun carrying out assessments in earnest to reduce the number of young people receiving care leaving services because of a financial deficit.¹⁵ In 2013 Kent had around 110 young people receiving care leaving services whose appeal rights were exhausted. Due to human rights assessments, the number is now 37. Around one fifth of those assessed continued to receive leaving care services

¹⁴ *R (on the application of SO) v London Borough of Barking and Dagenham* [2010] EWCA Civ 1101

¹⁵ See section 4.2.1

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because withdrawal would cause a breach of their human rights. This has made a minimal difference to the deficit.

A former social worker in London explained that, in the department where she worked, there was a reluctance to give advice to young people about how to survive if they chose to disappear once appeal rights were exhausted or support was stopped. A local authority Community Safety Officer described working with social services to ensure young people receive accurate information:

I make sure I keep Children's Services up to date with resources that are out there – for example you can get a hot meal at this place on Mondays, a food parcel there on this day. Ninety-nine percent of the time it's in vain but reminding them about Assisted Voluntary Return, voluntary departures, etc. – I try to keep that conversation alive because you have to – but if for example a young Iranian is here and still feels unsafe and feels that working illegally and the risks in Britain are better than going back to Iran then you don't get far. Those migrant solidarity groups are really valuable – if the best thing that can be done for someone is a spare room for a bit and they're not under the care of the local authority then that's better than the street.

Thus at this stage there is a very significant difference between migrant and indigenous young people leaving care. Experts criticise the failure to contemplate the “lifetime beyond 18” as part of a best interests consideration for children.

A further concern is that young people have been taught life skills relevant to the UK, not their countries of origin. Both young people and experts from a variety of disciplines used the word “Westernised”. A social worker pointed out that the vulnerability of one young man is mitigated in the UK by having the local authority as “corporate parents” specifically supporting him to become independent in this culture, not in the dangerous and volatile country in which he has not lived for several years. This demonstrates how far removed the asylum process is from the assessment of the best interests of a child transitioning to adulthood as considered by the social worker.

4.1.5 Return procedure

In general, no children are returned to the country of origin while they are still children. If refused asylum or other protection they receive a grant of “UASC leave” until the age of 17.5. The grant of leave is supposed to reflect the presumption that it is in the child’s best interests to return to the home country but that, since satisfactory reception arrangements cannot be ensured, the grant of temporary leave protects their best interests until they are almost adults.

Currently there is a pilot scheme to return Albanian children who have been refused asylum where satisfactory reception arrangements are available. This involves contacting Albanian social services to make an assessment of the return environment. No returns have yet taken place but as of March 2015, seven cases of children aged 12–16 had been referred to Albanian social services.¹⁶ There are concerns that children are being told, by letter, that they have ten working days to respond, without any independent advice mechanism. There are also concerns about human trafficking, possible complicity of parents in trafficking cases, and lack of capacity of the Albanian authorities to deal with trafficking cases. A previous pilot to return children to Albania was stopped precisely because of

¹⁶ National Asylum Stakeholder Forum minutes March 2015

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concerns about trafficking. This is the latest in a series of pilots to return children to countries of origin, including Afghanistan, which have been opposed on the basis that they do not take account of the children's best interests or opinions, among other issues.

4.2 Care provisions and day-to-day living

4.2.1 State funding and financial arrangements

The local authority which is responsible for the child receives funding from the Home Office at the following rates:

- under 16 years old: £95.00 per day
- 16–17 years old: £71.00 per day
- Those aged 18 years old and above are “care leavers”. For the local authority's first 25 care leavers who arrived as unaccompanied children, there is no payment from the Home Office. Above that threshold the Home Office pays the local authority £150 per week per young person.

Social workers say the money for under-18s is enough, though it appears that children entering the UK at 16–17 years old are significantly less likely to be placed in foster care than in other, cheaper, forms of accommodation. Some social workers, even at quite senior levels, were not aware of when the funding started or how much it was for under 18s, indicating it was not a significant issue for them. But for over 18s, the flat rate of £150 per week is insufficient and causes a large financial deficit in areas with large numbers of care leavers. For Kent, the actual cost averages at £266 per week per young person.

What it means is that the resources to fund this are coming out of the [local] taxpayers' pocket and that is a very challenging thing for the council to be able to explain to local people. Senior Manager 1 (Gateway Authority)

This interviewee argued that the payments no longer reflect the authority's duties, which have “changed beyond all recognition”. Previously the service was funded by a Gateway Grant to four authorities with higher numbers (Kent, Croydon, Hillingdon and Solihull) which covered the service infrastructure plus a per capita payment. The Gateway Grant was replaced by a higher per capita payment but it amounts to a significant cut.

[T]hese departments need to talk. They have to because the DfE [Department for Education] are asking us and requiring of us to do this and the Home Office are really saying, well yeah that's fine but you'll get £150 a week. Senior Manager 1 (Gateway Authority)

The interviewee considered this future funding deficit to be the biggest obstacle to the possibility of other authorities being willing to share the responsibility for unaccompanied children when they arrive.

4.2.2 Accommodation and access to food

i) Accommodation

All unaccompanied children are accommodated under s20 Children Act. None of the young people interviewed had been without accommodation for any period in the UK. There are however reports

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that some children, unable to access enough community support or places of worship, have left the local authority area (particularly in Kent where there is little ethnic diversity), moved to another location (London) where they did not receive support at all and became homeless, sleeping in churches.¹⁷

Some authorities place unaccompanied children in children's homes. None of the young people interviewed had experienced this, but expert interviewees referred to it as a negative experience for children. Both expert interviewees and young people indicated that foster care is the preferred type of accommodation. Local authorities differ as to whether they place children in foster care or other forms of accommodation and for how long they remain in foster care. Several young people found semi-independent accommodation very difficult.¹⁸

Several young people expressed positive views about their time in Millbank, an induction centre in Kent where unaccompanied children spend one to three months when they first come into contact with the authorities in Kent. It appears the young people's positive view was due to 1) the fact that they received single rooms, support from staff, hygiene facilities and three meals a day, after an often arduous journey; 2) the presence of large numbers of other young people in a similar position; and 3) the fact that their later experiences of semi-independent accommodation were significantly harder.

By contrast, expert interviewees felt there were flaws, some serious, with Millbank. At the time this fieldwork was conducted, the centre was due to close but the high numbers of new arrivals in summer 2015 have called the viability of closure into question. The problems reported by experts include lack of facilities, particularly for leisure; financial inefficiency when the centre is not full; and conflicts between groups of newcomers from different religious groups.

ii) Access to food

None of the children and young people interviewed had any issues over access to food *per se*, though there were some issues for those in semi-independent accommodation who were unable to cook a sufficient range of foods to eat a healthy diet.

Breakfast eggs, lunch eggs, dinner eggs. No change. Robel, 15 (age deemed to be 17 by the authorities)

Others relied on friends in the accommodation to help them cook. Several found that they were short of food by the end of the payment period.

4.2.3 Access to physical and mental health care

i) Access to physical health care

All children who become looked after by a local authority should be taken to register with a general practitioner (GP) and receive checks from dentists and opticians. Both young people and expert interviewees confirmed this actually occurred. Some young people found it difficult to follow through

¹⁷ However, if a young person presents to a new authority as homeless, the original authority is notified and re-accommodates the child or care leaver.

¹⁸ Note that the same accommodation options apply to British children entering care as "late entrants" at 16 or 17 years old and there is a broader discussion about the best accommodation type for such children.

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the practicalities of accessing a doctor if they were not in foster care. An NGO worker described attending the surgery with two young people who had been refused registration because the receptionist had misunderstood the basis of their entitlement to register. Thus advocacy services were sometimes important in realising the right to access health care. One young interviewee had been told by the pharmacy that he had to pay for prescription medication, which is incorrect for asylum seekers, and he therefore was not accessing medication.

Other young people said they found it difficult to get appropriate treatment for symptoms which they attributed partly to stress or uncertainty linked to their situation:

I've seen hard things ... and they give me a very bad headache. It's been for the last six years. I've been too many times to the GP, they give me all these tablets which don't help that much. Bashir, 19

Uniquely, however, in Kent, a social work interviewee identified difficulties in accessing primary health care for new arrivals:

[W]e have seven Clinical Commissioning Groups here in Kent who are responsible for provision of health care services for looked after children, or funding them. And one of the seven lead on it but getting the right medical people to do those initial health screenings is a challenge ... [A]side from our asylum seeking population there is very little indigenous experience in Kent of the sorts of health problems that present in this cohort. That would look very different in the London boroughs or some of our colleagues up in the north where they've got much greater mixed ethnic populations [than] we have got here in Kent.

As with other issues, this must be viewed in the context that Kent receives very high numbers of child asylum seekers compared with other areas.

ii) Access to psychological health care

Responses varied as to the availability of mental health care. Several expert interviewees said there is limited treatment available for young people with mental health issues generally, long waiting lists and a high threshold for severity of problems before help is available. On the other hand a foster carer, an accommodation provider and a social worker said they generally had no difficulty accessing counselling for young people in their care.

Psychological health care is available through:

- the Child and Adolescent Mental Health Service (CAMHS), part of the National Health Service
- charities, which are heavily relied on to fill the gaps in NHS provision
- schools, which can choose to use the Pupil Premium¹⁹ to arrange counselling for children.

A solicitor said that some young people she represents have “slipped off the radar” for counselling when it is not readily available and have later received minor convictions for anger-related offences which she thinks are likely to be related to their experiences but are nevertheless held against them in any consideration of further leave to remain.

¹⁹ Extra funding given to the school for certain pupils including those looked after by the local authority.

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For the young people interviewed, there appeared to be a relationship between psychological well-being and certainty of immigration status. One young person expressed suicidal thoughts, described symptoms of depression and relied on a psychotherapist for support. He had had no immigration status for his entire two year stay in the UK. He said the uncertainty of his situation, lack of money and fear of return caused his mental state, which has a knock-on effect on his ability to progress in education.

A second had nightmares and constant fears until she was granted refugee status on appeal, around two years after she arrived. For a third, the expiry of his discretionary leave to remain caused a decline in mental health:

I went tumbling through the whole process again, so much that I messed up my A-levels and ended up not going to university because of it ... My social worker referred me to a psychiatrist because she was worried about my health, because I was not sleeping. The psychiatrist was helpful – I was able to rationalise things with that help ... Stefan, 28

Two other young people described the effects of stress and uncertainty: one said he cried every day while the other felt his educational progress had suffered. Both attributed debilitating headaches partly to the stress of their situations, yet neither had been offered psychological support. Their comments made clear the extent to which their well-being had depended on getting immigration status. One said that, having been recognised as a refugee, all the other problems he faced around money, headaches, and so on did not merit being regarded as ‘complaints’ any longer.

Of the five young people described above, four were eventually granted refugee status, suggesting that their initial refusal decisions were flawed. This calls into question the efficacy of a process which causes prolonged uncertainty, leading to mental health problems and the need for psychological health care. It is contrary to the child's best interests but also appears to create unnecessary financial costs.

iii) Sexual health / sex education

Social workers in Brighton identified a sex education project run by their team's nurse as a best practice example:

We've got a nurse attached to the team who provides a fantastic service ... and just a particular example of that was the group she and a male sexual health nurse arranged, a group work so it was six weeks for a group of fifteen, sixteen young men from Afghanistan, Iran, Iraq, Kurdistan, just basically around sexual health and their responsibilities as young men and it was a real success and that group stayed engaged with that for six weeks. And some of them, I think the majority of them hadn't had any sex education in their country of origin ... So that was a real positive.

Elsewhere it was left to charities to provide teaching about “healthy relationships”. In some instances, no sex education or advice was provided until a significant problem arose, such as a young person being accused of sexual misconduct, with some cases proceeding to criminal charges and therefore likely to involve serious implications for both the young person and the recipient of the alleged conduct. Since most unaccompanied children arrive at an age later than sex education is provided in schools, those who did not receive it in their home countries are at particular risk of

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missing out. It may therefore be necessary for sex education to be given greater priority for unaccompanied children by local authorities.

iv) Conclusion

The data suggest that 1) access to health care is generally robust for unaccompanied children, apart from problems arising from misunderstanding of entitlements, but 2) sex education is essential and not always provided, 3) access to mental health care is uneven and 4) Home Office delays and uncertainty about the process or outcome have such a strongly adverse effect on mental health that they must be considered contrary to the child's best interests.

4.2.4 Access to education

i) Overview

The right to education is set out in article 28 of the UNCRC and the goals of education are at article 29. In the UK education is free and compulsory up to the age of 18. Between the age of 16 and 18, this can include apprenticeships or other training. The local authority must offer a school place for all children of compulsory school age regardless of nationality and immigration status.

All schools must consider and give priority to looked-after children but they can decline to accept a particular individual when they do not have the resources or expertise to meet the particular child's needs. The UK has seen a growth of so-called free schools and academies that are state-funded but privately controlled. They have much greater rights to select their pupils than other state-funded schools. Some experts felt that their expansion represents an obstacle to unaccompanied children's access to education. Schools are ranked in league tables by results in public exams taken the year a child turns 16, called GCSEs,²⁰ which was identified as a reason why schools are reluctant to admit migrant children. The grades of pupils who arrive in the UK within two years of sitting public exams can be disregarded for the purposes of league tables. This has mixed effects:

In some ways, this is helpful, as it's obviously unfair to penalise the school for a newly arrived child, who is new to English, not achieving A–C grades ... It takes about five years to reach proficiency, depending on previous educational level and things like that ... However, on the flip-side the school then does not necessarily benefit from spending a lot of money on kids, who don't help the league tables ... they don't matter – it's not in the school's interest to put money into courses that don't count. Teacher

ii) Delays in first access

Several of the young people interviewed had experienced delays in getting access to education, even where their age was accepted and even when they were under 16. One had waited nearly a year to get into school, from December to November, when 13 years old. Another waited six months, when aged 13. Both of these children were in London boroughs. They did not receive English lessons during this time. One child in Kent who said he was 15 but was assessed to be 17, was still waiting after seven months. An NGO worker in Kent said that a number of young people in semi-independent accommodation had asked him for support with getting into education having been in the UK for several months. Although each child would have had an allocated social worker, frequently they said

²⁰ General Certificate of Secondary Education

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they did not know who their social worker was, making it impossible for them to get the help they could otherwise have sought.

It may be foster carers, accommodation providers or social services who take on the primary responsibility for getting children a place at school. Two expert interviewees involved with accommodation provision explained that they take the responsibility for accessing education places for young people they support. English language lessons may be a preliminary step before mainstream school or a stop-gap: the structure of courses makes it difficult to access anything other than English for Speakers of Other Languages (ESOL) provision until the next September start date for people aged over 18.

The data suggest a significant divide between areas. Informants in some local authorities stated that there were no difficulties in getting children into schools and colleges.²¹ A foster carer, two social workers and a lawyer in Brighton and Hove said that children have easy access and are well-supported in schools and colleges in the local area. The local authority first funds their attendance at courses in specialist language schools (a major industry in Brighton) in which asylum seeking children meet other children from all over the world. This was contrasted with Kent:

The few kids I've got from Kent, have got into some kind of trouble [for minor criminal offences], perhaps because of being kind of left. Lawyer 1

These difficulties in accessing education in Kent (before the doubling of numbers in summer 2015) were confirmed by a social work professional:

[We] had a college ... that created lots of places and was very inclusive of this cohort. It was obviously an attractive place for us to place these young people as we knew it was a good college, the more so since it also happened to be an area of the county where accommodation was more readily available. However, the relevant district council became quite disturbed about community cohesion and the college no longer does ESOL ... It is difficult. [Name] is another very progressive college but there are tensions growing there for the same reason ... So we have to try and make sure that we've got suitable educational places because that's a duty that is put on us, but there are unforeseen consequences to that.

The problem appears to arise from a combination of two factors: first, the demand for educational places is higher there than in other places due to Kent being responsible for a larger number of asylum-seeking children; second, some colleges which were previously inclusive have stopped providing ESOL courses meaning that they no longer meet the needs of many of these young people, creating a *de facto* exclusion. This appears to follow political discontent over the numbers of asylum-seeking young people attending the colleges.

Academies in the Kent district of Thanet are reported to have refused to accept any looked-after children who are not indigenous to Thanet. As a consequence, it is known that some young people in Kent are travelling between 1 and 1.5 hours by train each way to access education. An NGO worker in Kent added that other young people are receiving truncated education from charities.

²¹ In the UK, many schools only take children up to the age of 16, after which they go to Further Education (FE) or "Sixth Form" colleges until the age of 18 or 19.

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iii) Education that meets needs

In a mainstream school, a non-English speaking child should receive support from an English as an Additional Language (EAL) teacher, who may be permanently employed in the school or may work for the Local Education Authority and provide support to multiple schools. Support varies from school to school, from a teaching assistant helping the child during mainstream lessons, to withdrawal lessons with an EAL teacher. The number of support periods per week varies according to the child's needs and the school's resources but it can be as little as one period (50–60 minutes) per week.

An EAL teacher explained that in her school the younger non-English speaking pupils receive two lessons per week of induction classes, while one-to-one help can be given to needier children. Those aged 14–16 are permitted to drop one subject and replace it with three EAL lessons per week. A homework club after school supports all such pupils. But she felt that emotional support was as important as the educational content of lessons:

It's a daunting thing, school – it depends how much support they have. I bend over backwards – they're my babies so they do well. They come in in the morning to say hello and they come in to say bye at the end of the day. There's always someone in my room crying, not always refugee kids ... EAL teacher, London

One young interviewee who started school aged 14 received one to one assistance during lessons, extra support from teachers working with her after school to catch up with exam work, was given extra time in her final exams, as well as having other pupils assigned as buddies to help her and counselling arranged through the school. She credits the school's support, as well as her own determination, for the fact that she passed five GCSE exams a little over a year after arriving.

These examples from the EAL teacher and the young person could be regarded as best practice respectively for areas with higher and lower numbers of unaccompanied children.

The national curriculum was criticised as inflexible, limiting the ability of schools to meet children's needs. Schools (for those 16 and under) cannot teach ESOL English as Further Education colleges can, despite that being potentially a better option than the "long shot" of GCSE English. For those aged 16 or more, there were converse concerns that the inflexible curriculum was too limited around English language:

I've had young people go to secondary school and they've really struggled because they don't have the intensive English support so it's kind of throwing them into classes and expecting them to follow the classes but they don't even have the basic language ... they used his Pupil Premium for a mechanics class that he wasn't going to be able to sit the exam because he didn't have the English. NGO worker, London

[If] you arrive here when you're 16 all you get at best is an ESOL course of ten hours a week which is not the greatest, you know learning English is necessary but it's not everything a 16 year old might want to do education-wise. NGO trafficking specialist, London

iv) Effects of immigration status on education

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There are two main ways in which immigration status impacts on education: first, access may be stopped in practice as a result of uncertain or time-limited status at the age of 18 or once appeal rights are exhausted, despite the young person not being removed from the UK; second, the uncertainty, stress and practical demands of attempting to secure permanent status affect young people's ability to concentrate and progress.

The latter issue provoked perhaps the most comment from the young people who were interviewed, aside from delays in accessing (age-appropriate) education:

I have a lot of worries and life is not treating me well which is affecting my studies and I am not progressing as well as I expect from myself. Ahmed, 18

I went from the best student to the worst. After I left the [foster] family there were a lot of things going on, independence and everything else, but also the Home Office ... My results were not good at all. Some days I didn't go, I think the will power was not there like before. Stefan, 28

In year 9 my attendance was 100%, in year ten it was 95, 96% which was good and then in year 11 my attendance went to 75%, because I had problems with my documents and stuff, everything and I was thinking if they send me back to Afghanistan what am I going to do. That's why I got headaches, every day. I had to miss school. Hussein, 18

[This] year I had lots of problems, especially due to the Home Office and I have to go to see my solicitor a lot and to see doctors and especially I had bad news from back home so I couldn't even concentrate on my studies because I had too many problems and I was trying to solve my problems first. Bashir, 19

The latter two cases affected young people who had already experienced a long wait for their first access to education. The young people's views are reflected in this expert's assessment:

I find that the emotional well-being of the kids is just as important, if not more than their learning because the latter cannot take place without the former. If the kids feel safe, supported, have somewhere to go for help and someone to talk to, then they tend to be more resilient, form friendships and get over the hurdles quicker ... and if the school recognises this, then things tend to go well. If not, the child will struggle more and the immigration woes will be that much more difficult to cope with. EAL teacher

This is yet another argument in favour of guardianship.

4.2.5 Access to paid work

A child who obtains either refugee status or UASC leave until the age of 17.5 is entitled to paid work on the same terms as a British national of the same age.²² Provided that the child applies to extend leave before the existing leave expires, the right to work continues until all appeal rights are exhausted. A young person whose appeal rights are exhausted or who has not been granted leave to

²² Home Office, Full guide for employers on preventing illegal working in the UK, May 2012 at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/comprehensiveguidancefeb08.pdf?view=Binary>

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remain is not permitted to work. All asylum seekers are allowed to do voluntary work and may receive in-kind payments such as travel expenses and lunch.

4.2.6 Formal support experiences

This section details the support from social services and legal representation. Other contacts with the authorities, interpreters and the responsible adult are dealt with in section 4.1.1 on the asylum and immigration process. All unaccompanied children are entitled to be looked after by the local authority under s.20 of the Children Act 1989. Each child should have an allocated social worker, an independent reviewing officer who reviews their care and access to an advocate provided by the local authority. This advocate is not a lawyer but a person who speaks to social services on the child's behalf on a particular issue at the child's request. The advocacy services may be contracted out to a charity or other organisation and some concerns were raised over the independence of advocacy providers who were contracted to the local authority, though this study has not investigated that issue in any detail.

i) Social workers

Expert interviewees overwhelmingly identified social workers as key individuals in the care and support of unaccompanied children. Interviewees cited high staff turnover and great variability between social workers and social work teams, with some described as committed and caring and others considered case-hardened and cynical:

Some kids get good allocated social workers, who are conscientious and do their job and some don't. Lawyer 2

[It] feels a little bit like a lottery in terms of which social worker is conducting the age assessment. NGO worker 7

One kid had three social workers in nine months, then he absconded. They seem to change often. EAL teacher

It was widely recognised that social workers were overworked and this could have an adverse impact, for example on foster placements, promptness of dealing with problems, access to education or the amount of support given to the child. A foster carer praised Brighton and Hove local authority for making efforts to ensure a good match between the foster carer and child which had resulted in positive experiences for both. A former social worker in another authority identified insufficient attention to making a good match as a cause of problems.

Of the young people interviewed, one (in Kent) did not know who his social worker was and one (in London) did not have a social worker at all as a result of an age dispute. A charity worker in Kent had "at least five cases" where his organisation was assisting children who did not know who their social worker was, which made it difficult for them to seek help. One young person felt her social worker was excellent, always there when she needed him, that he kept her in his case load throughout, ensuring consistency, and was interested without being intrusive. She knew other young people who found their social workers difficult to contact and felt they asked too many personal questions. Several young interviewees mentioned low levels of support when they moved into semi-independent accommodation.

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Most, if not all, local authorities have restructured their social work departments so that there are no longer specialist teams for asylum-seeking children. This applies even to the authorities with high numbers of asylum-seeking children. Social workers who formerly worked in asylum seeking children's teams were concerned that the disbanding of specialist teams would lead to a loss or dilution of expertise regarding asylum, with the risk that the child would not be advised of important steps or deadlines. At the same time, several interviewees including charity workers and social workers felt that the creation of joint looked-after children's teams dealing with both migrant and indigenous children increased the chances of children being treated as children more than as migrants.

Outsourcing of various functions to private companies or charities increases the variability in quality. There is a lack of clarity about training for outsourced roles and about the criteria for contracting:

West Sussex social services, although their social workers are great, everything about the children has now been outsourced to other organisations, so while the social worker will still take an interest, on the whole it's the outsource agencies who do the day to day care ... It's incredible how little diversity training a lot of these people obviously have. For example I've heard one young key worker, a delightful young person, telling me that the Afghan children are like something out of the dark ages and have disgusting habits and are backward and it seems extraordinary to me that this person feels able to express this so freely in front of me.

Lawyer 1

The ethics and effects of outsourcing in this area require more focussed research.

ii) Independent visitor

There is a statutory entitlement to appointment of an Independent Visitor (IV) for any child in care for whom it would be in their best interests (s7 and Sch.2 Children Act 1989 and s.16 Children and Young People Act 2008). This was particularly conceived as a benefit for those children receiving infrequent or no visits from a parent or parent figure, which would apply to most, if not all, unaccompanied children. However, in 1998, less than a third of local authorities had an IV scheme at all (Knight, 1998). There are no up-to-date figures on how many authorities run an IV scheme but none of the young people interviewed for this research said they had an IV. One expert interviewee had attempted to be appointed as IV for a particular young person but was informed that the authority did not have a training scheme. When the interviewee attempted to do the training in a neighbouring borough she was refused a place because she proposed to visit a child in another borough and it was that borough's statutory responsibility to provide its own training. At the time of interview she had just been appointed as a "mentor" for a young person whom she already supported, albeit without training and with apparently limited support.

The evaluations of IV schemes have been positive (Hurst and Peel, 2013) and it seems that the role, which is firmly premised on the child's best interests, could be a useful one for unaccompanied children (albeit arguably less useful than statutory guardianship), with limited costs since IVs are usually volunteers.

iii) Refugee Council Children's Section

All unaccompanied children should be referred by the Home Office to the Refugee Council Children's Section as a source of advice. Three expert interviewees, a lawyer, a charity worker and an

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accommodation provider, believed that the referrals were no longer made and said their clients were not referred, though the Refugee Council confirmed that referrals should still be routinely made. The Independent Chief Inspector of Borders and Immigration raised this issue in an inspection of Home Office handling of children's cases:

[The] mandatory requirement to notify the Refugee Council within 24 hours of a child's asylum claim was being done in only 39% of files we sampled, and only at Croydon and Heathrow. Vine (2013: executive summary paragraph 7).

iv) Legal representation

All asylum applicants are entitled to free legal advice and representation. Legal aid is no longer available for non-asylum immigration cases, which means that a child who has been in the UK for several years, who no longer has a strong asylum claim but has a strong claim under Article 8 ECHR (right to respect for family and private life), may be unable to access any legal representation. Social workers, teachers and NGO workers described extreme difficulties in finding non-asylum legal advice for children and young people in their care.

In some areas of the country there is very limited availability of free legal advice because very few providers remain in the market as a result of legal aid cuts. In other areas there is limited access to good quality representatives because of limited supply and high demand. In Kent, for example, expert interviewees state that there are two good representatives and one poor one, taking around one third of cases each. Experts had one clearly preferred representative for Brighton, East Sussex (including the cross-channel sea port of Newhaven) and West Sussex (including London Gatwick airport). Yet this organisation's continued operation is under threat due to legal aid cuts.

Expert interviewees explained that some firms provide a significantly better service to children than others. Examples of poor representation I was given during the interviews with the young people include:

- a) Failure to take a proper statement from children for their asylum application.
- b) Failure to advise children of the right of appeal, or failing to do so before the appeal deadline; in one case requiring a child to sign a form waiving this right, without proper explanation of the consequences of doing so.
- c) Failure to either obtain or pass on the child's status documents for two and a half years.
- d) Asking for money from a young person who was entitled to legal aid, then failing to take appropriate steps to progress the case.

Examples of best practice emerging from the same interviews include praise for representatives who ask the young persons about every aspect of their experiences, thus allowing them to tell their stories; clearly explain the process and their cases to them; show determination in fighting their cases, for example, putting in an out-of-time appeal to the First-tier Tribunal or continuing the appeal through the Upper Tribunal when necessary.

Expert interviewees explained that it is extremely difficult to move a child from a poor representative to a good one once legal aid has been granted to one representative because of the fee "ceiling" and the refusal of the Legal Aid Agency to pay for a second representative to redo some of the work already done. Yet the Legal Aid Agency persists in contracting with firms which provide poor quality

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representation and, by limiting the number of cases any firm can take, forcing a certain percentage of applicants to rely on the poorer quality firms.²³

Another concern is the practice of “touting” for clients for particular solicitors firms by interpreters finding clients at the initial accommodation centres and taking them to the firm’s office for a fee from the client. It is difficult to remove the children from those firms or to prove that the firm knew of the touting, particularly as the children are often reluctant to make statements about it.

These concerns illustrate the need for a person with an understanding of the quality of legal representation to either instruct a representative on the child’s behalf or give the child advice before the child can instruct their own choice of representative. This could best be done by a guardian. Despite the existence of numerous excellent and dedicated asylum law firms across the UK, the combination of legal aid cuts and the contracting practices of the Legal Aid Agency deny a percentage of children access to good quality representation.

v) Formal Support: conclusions

It is apparent from this section that the formal support structure which exists is too often ineffective or is not implemented in practice. It is also fragmented. The role of guardian could replace those of Independent Visitor, advocate and some of the work of the social worker, as well as providing a bridge to effective legal representation.

4.2.7 Informal support network and social life

School, college, sport and voluntary work were reported to help young people to make friends with British young people. Two young people were in foster care but also had good levels of contact with other children in care or semi-independent accommodation, who were in a similar position to them or a little further along the process. This created a good balance of family and peer support. In one case this was facilitated by the foster carer; in the other, by the local authority.

i) Family in the country of origin

There are no provisions for family reunion for child refugees. Although an adult refugee has the right to reunion in the UK with a spouse and unmarried minor children, a child recognised as a refugee has no right to be joined by parents or minor siblings. There is a presumption that it is in the best interests of children to be looked after by their parents but to date this has not translated into a recognition that family reunion is likely to be in the best interests of unaccompanied refugee children, nor have the government or courts explained what countervailing factors would outweigh that interest.

The Home Office had not attempted to trace the family members of any young person interviewed, despite the legal duty to do so. The Eritrean children interviewed all had telephone contact with family members, although this was sometimes complicated by concerns for the family’s safety. One young person from Afghanistan had been in phone contact with family members who then disappeared and he was informed by others in the area that they had vanished following targeting by the Taliban. Others had contact with family members who were no longer in the country of origin. Two young people had found family members once in the UK – one had an older brother who had

²³ See further Warren and York (2014) on ways in which legal representation can affect the outcome of children’s cases.

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been in the UK for many years but with whom contact had been lost; another became separated from a younger brother while travelling and they were reunited more than five years later.

ii) The "significant adult"

As discussed in section 4.1.3 on guardianship, several young people had benefitted from the involvement of a "significant adult" who provided support voluntarily and played an important support role in their lives. It seemed largely to depend on luck whether a young person found this crucial support or not.

4.2.8 Leisure

Volunteers and charities played an important role in providing access to sport and leisure opportunities, such as the Red Cross providing access to swimming, Young Roots providing youth groups and cooking lessons, a volunteer from the Refugee Council providing the Refugee Cricket Project and the Baobab Centre enabling a client to access a gym. Several young people described these or playing football with friends as their only leisure activities.

Two young people were engaging in voluntary work in various settings which increased the range of opportunities available to them and also enabled them to improve their English. Both had received support from a volunteer or other advisor in accessing these volunteering activities and depended at least in part on their travel expenses being paid by other organisations. One young person had joined an African drumming and dancing group which opened up friendships with other African ex-pats and British families and individuals. Another was able to access arts and leisure activities thanks to a local cinema and theatre which works with young people and provides free access for asylum-seekers. School is an important gateway to accessing sport and other hobbies which can be enjoyed in spite of language barriers.

Age disputes and problems with payment of support money stopped access to leisure activities for three young people. Another had just experienced a sudden increase in his opportunities because he was accepted to be under 16 and he moved into foster care:

In spare time I go to the library and read in English. I play football, go swimming. I have to pay for swimming, [I have] money from the foster carer now. When I lived with the friend it was harder, Red Cross sometimes took [us] swimming. George, 15

George's experience demonstrates how limited leisure opportunities may be for children aged 16–17 if they are placed in semi-independent accommodation, which applies to the vast majority of those in the areas with the highest numbers of unaccompanied children.

4.2.9 Cultural orientation

This section collects together themes around how children maintain their own cultural identity while also learning to live within a new culture and understand what is expected of them.

i) Access to places of religious worship

Of the young people interviewed, six were Muslim and said they had no difficulty practising their religion. Two were Eritrean Orthodox Christians, as were a number of other young people whom the

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interviewer met but did not formally interview. These young people were fasting for the Orthodox Lent but had difficulty accessing a church as they were living in Kent; the nearest church was in London and those in semi-independent accommodation said they were not given money to travel there, even for Easter which is the most important festival in the Orthodox calendar.²⁴ A charity attempted to arrange transport for them for the Easter services but was unable to do so. Another young person had been having difficulty accessing the specific church he required until he managed to obtain additional financial support through the personal adviser to travel there. The remaining two were Christians and had no access difficulties.

ii) Cultural orientation

There were concerns that children were not given any systematic guidance on cultural expectations and customs “*until there’s a big cultural faux pas*” [NGO worker 1]. As outlined in section 4.2.3(iii), this may be around sexual relationships and behaviour and may have very severe consequences, with criminal charges being brought on occasions. Some organisations have devised orientation programmes which teach topics about living in the local area. One innovative programme focusses on rights and entitlements, the asylum process, multiculturalism, healthy relationships and practical aspects of life in the UK such as shopping, budgeting and travel. In practical terms it was clear that many young people had never used diaries or calendars and arrived in the UK with limited understanding of the concept of making and keeping appointments.

iii) Multiculturalism

An interesting theme of several interviews was the difficulty some young people have in adapting to the multicultural life of the UK:

The kids are much more happy to integrate with white people in general and with Christian people even if they’re Muslim because they feel like this is England, I’m happy to do that. They’re less happy to mix with other people from other backgrounds, much more dubious ... There is this kind of belief that if people are brown or they’re from another country then they’re not going to have any sort of bias against other people from other backgrounds but of course that’s not true at all. NGO worker 5

Three expert interviewees described tensions in Millbank Induction Centre: from previously having been overwhelmingly Afghan, its population was now relatively evenly split between Eritreans and Syrians, who formed two distinct religious groups (Orthodox Christian and Muslim, respectively). Likewise, it was reported that tensions had arisen when groups of Afghan and Albanian young people, who were practicing different versions of Islam, had been accommodated together.

The interviewee who was teaching multiculturalism to young people found that they readily understood and agreed with the idea of different cultures and religions coming together in the same country and with the concept of tolerance of difference. However, a day outing which involved visiting a religious place, revealed that the reality was more complex than the theory:

²⁴ It should be noted that the local authority does attempt to ensure children have money for such events and provided travel warrants for a number of children, though it concedes that some children may have missed out. The South Kent service, which has a high number of Eritrean children, runs regular minibus excursions to the Eritrean Orthodox church.

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[W]hen it came to particularly the religious aspect, they felt affronted, they felt insulted, really uncomfortable, they felt they were doing something wrong in entering a Sikh temple, they felt that they were sinning ... [T]hey feel as if some of [their religious identity] is being taken away from them or part of their identity is being questioned ... I think it's their comfort zone perhaps. NGO worker 5

These were not seen as insurmountable problems but rather required time and effort to overcome: one youth group found that the children commonly bonded once they played football together. This is an argument in favour of intensive support for young people to ensure that they have the opportunity to consider issues around tolerance and multicultural living in the way most British young people (should) do in Personal, Social and Health Education lessons in schools.

4.2.10 Life plan perspectives

Of the young people interviewed, the majority had clear plans and ambitions. Two, in their early twenties, had set up their own businesses. One explained that he had not gone to university because his status had been so uncertain at the time when he would have gone that he could not think about university. Two who had recently obtained refugee status, intended returning to education in the next academic year with clear plans for studies and then careers. Another with refugee status, who was studying for public exams, had a clear plan for university.

Two young people talked about a future intention to look after other family members. One had changed his life plan as a result of finding his younger brother after a five year separation. He was motivated to show that he could look after himself well enough to be allowed to look after his brother and, with that in mind, had planned a career which would give him more stability. Another hoped to find and financially support a sibling who was believed to be in the home country.

Three young people, whose status was undetermined, were not in education and felt so uncertain that they had no real plans for the future and found it difficult to focus on ambitions. Immigration status was not the sole factor however: one young person who was still in the appeal process had managed to register for college despite limited support and a lack of documents, having proved his previous level of education in the home country and passed preliminary tests in maths and English, and had a clear plan for university and a professional career. He saw his ability to register himself without support and his refusal to become depressed by months without education as important aspects of his identity. This young person had however arrived with a good level of education, including in English and computer literacy, which enabled him to access information independently. By contrast, another young person who was involved in an age dispute was not in education and was unable to express any wishes for the future.

It appears that the ability to form a life plan depends in part on certainty of status. In particular, several young people laughed when recalling being asked by the Home Office what their “plan” was when they first arrived in the UK.

4.3 Best interest of the child determination

There is no formal process for determination of best interests. At the same time all social work decisions should be informed by a consideration of the child’s best interests. It is the local authority

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which therefore has the day to day responsibility for determining what is in the child's best interests and implementing that in line with available resources.

The Home Office has no formal process for considering best interests in the context of immigration decisions. However, certain presumptions arise in policy and case law. If a child is granted asylum or humanitarian protection, no further consideration of best interests is made. If international protection is refused, there is a presumption that it is in the child's best interests to return to the country of origin but that, unless satisfactory reception arrangements exist, the child's best interests are adequately served by a grant of UASC leave until the age of 17.5. This is widely criticised by both experts and young people as being very far from a durable solution, since it leaves the child with a great deal of uncertainty. Frequently there is no consideration beyond this presumption.

A best interests pro forma document exists for the Home Office to seek information from social workers but it is erratically used:

I was never asked to complete a best interests pro forma from the Home Office. I've never seen the pro forma before so I don't even know how the Home Office is taking into consideration the best interests of the children. [W]hat the Home office determines usually decides how the local authority goes on to managing working with the young person and again it's not their best interests as an individual ... It all seems to be very short term as to what we can offer now but we're not taking into account that this is an individual who's going to have a lifetime beyond 18. Former social worker, London

This failure to collect information about best interests was criticised by another NGO worker, pointing out that in most cases the only information collected by the Home Office for the immigration decision is that collected in the asylum interview, taking no account of the broader scope of best interests.

Expert interviewees identified the political attitudes to immigration as an obstacle to children's best interests being implemented:

[We] still see sort of a double tier system in the attitude social services have toward indigenous children versus what they do for unaccompanied minors. [The same is true of] the attitude of some of the police force. Say for example when a child goes missing, if it's a British child ... things are put in place [but] if it's an unaccompanied minor or a migrant child, then there's almost a set of justifications and excuses ... like, "oh well that's just what they do" ... The migrant and asylum-seeking bit takes precedence over the child bit. NGO worker 2

I think there're other systems that come into place before we negotiate the best interests of children ... The whole asylum and immigration process seems to trump what we would do [regarding the] best interests for young people. I'm talking from a local authority perspective. In the borough where I [used to work] the only thing that would seem to surpass that [perspective] would be severe mental health [problems]. I think that the immigration process seems to overshadow the rights of children or [the fact that it should operate] in their best interests. NGO worker 1

Overwhelmingly, the belief amongst the interviewed experts was that the implementation of unaccompanied children's best interests was determined by a "lottery" in which much depended on

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the individual social worker, foster carer, lawyer or judge, the area of the country in which they arrived and were looked after, whether they were able to get into education, the extent of support provided by the school and whether or not a significant adult or volunteer took on a guardian-like role for them.

4.4 Towards durable solutions

The most common outcome of a child's asylum application is refusal of asylum and a grant of UASC leave until the child is (deemed to be) 17.5 years old. This is not a durable solution but an intentionally temporary one. Humanitarian protection, which may be a more appropriate form of protection than asylum for many unaccompanied children, is underused in the UK protection system, as set out above in section 3.1. It offers a durable solution as compared with the temporary "fix" of "UASC" leave. On a positive note, the past problem of children being unable to appeal a refusal of asylum, or being advised not to do so until after their temporary leave expires, should be erased by new appeal provisions which will give an immediate right of appeal for all asylum seekers.

Information gathering for the purpose of immigration decisions revolves wholly around asylum. It does not include information about the broader best interests of the child necessary to inform a best interests determination. In the immigration context, decisions on best interests are made as an adjunct to an asylum refusal and on the basis of narrow and limited information. What is needed is a broader based information gathering process, which is more collaborative and less interrogatory than the current asylum application procedure. Better training of decision makers and wider use of the grant of humanitarian protection is also required for movement towards durable solutions in the asylum / international protection process to take place.

In respect of care procedures, the system does incorporate planning for durable solutions in the sense that it aims to equip children in care for independence, to secure access to education and training and so on, although there may be failings or obstacles in practice, particularly where immigration decisions take precedence over the child's best interests.

However, as shown in section 3.2, unaccompanied children are largely concentrated in a few areas of the UK. The majority of local authorities have 20 or fewer looked-after children in this category, while seven authorities have more than fifty. Five of these have more than 100 and two have more than 350. This creates a situation of great pressure on education placements (4.2.4), health care (4.2.3) foster placements, other accommodation and quality legal advice, even if local authorities are able to recruit enough social workers. When the children become care leavers at the age of 18, this either creates a financial deficit or demands a dereliction of statutory duties because the funding is insufficient. It creates a pressure, as seen in Kent, to carry out Human Rights Assessments with a view to withdrawing support from those whose appeal rights are exhausted.

It is likely that most local authorities can absorb an extra 20 looked-after children in addition to their indigenous children without undue difficulty. It is much less likely that a hundred or more additional children can receive services and placements which meet their needs, let alone their best interests. It is beyond the scope of this study to fully evaluate the advantages and disadvantages of a more regional approach to care for unaccompanied children or to investigate in detail the operation of the pan-London rota for sharing responsibility for unaccompanied children between London boroughs. The research does however suggest a need for investigation of the idea. More even sharing of

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responsibility is key to creating more durable solutions for children because their educational, social and support opportunities, as well as their access to quality legal representation, are affected by the location in which they are looked after and have a significant impact on the child's long term future.

5 Conclusions

One expert interviewee described the UK as “not the best, not the worst.” This mixed picture is an accurate summary. Children arriving in the UK are given accommodation, access to food, financial support and health care. The sophisticated framework of the Children Acts now unequivocally applies to unaccompanied migrant children without distinction from indigenous children. Duties to children in care and to care leavers have developed over a period of years and, as a result of campaigns and legal cases, those duties apply without discrimination to migrant children. Children should not be detained, although flawed age assessment processes do cause some children to suffer detention. There is a right to access education which meets the child’s needs though, as set out in section 4.2.5, there are significant obstacles in practice including spaces, schools’ resources and political factors ranging from discrimination to concern for the school’s league table ranking if a non-English speaking child’s exam results are to be counted. However this report has highlighted areas in which the UK fails to assess, determine or act in the best interests of unaccompanied children for a variety of reasons.

i) Sharing of responsibility

This research has shown the very uneven distribution of unaccompanied children in England. In authorities with very high numbers it is doubtful whether there is scope for implementation of the best interests of the child, given the lack of resources available. While the behaviour of certain colleges, for example, in creating obstacles for unaccompanied child migrants’ access, is unconscionable, it seems likely that much of the difficulty could be resolved by easing the concentration of children in a small number of authorities, so that children could access education sooner and closer to home.

In addition, in local authorities with very high numbers of unaccompanied children, there may be real difficulties in complying with the duties because of constraints on resources and limits on the number of foster placements and school spaces available. Thus much of the discussion in this report about circumstances in gateway authorities should not be read as a criticism of the working practices of those authorities *per se* but rather as an exploration of the real difficulties of providing care when there are high numbers of new arrivals. Given that the situation in Kent is now being described by some as a “crisis”, leading to real concerns about the quality of care and legal advice available to children there (for example being forced to place children outside the local authority area), there is an urgent need to consider some method of placing children in care across other parts of England. Any amendment to the Children Act needs to be carefully thought through and tightly limited to involve only the placing of new arrivals and to include a mechanism for considering the children’s best interests and opinions.

ii) Asylum process

There is a need for change within the asylum process. First, it should become less adversarial in the cases of children. This research produced four examples of 13 and 14 year old children being interviewed for several hours in an adversarial style at the Home Office premises with an appropriate adult who was not permitted to take an effective role. Interviews which leave children feeling like criminals are contrary to their best interests. Guidance already exists to prevent children being

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interviewed in a hostile way and to caution against holding them to the same standards of memory and knowledge as an adult. Yet the majority of young people interviewed for this research and several expert interviewees considered interviews to be hostile, distressing and confusing.

A straightforward recommendation for relatively rapid improvement is to change the role of the appropriate adult so that it is more in line with that in the criminal system. The current guidance which allows the interviewer to decide the scope of the appropriate adult's role should be amended and replaced with the guidance under the Police and Criminal Evidence Act 1984 (PACE). The appropriate adult would then provide a much more robust safeguard for children undergoing interviews, being able to intervene where there were misunderstandings, where questioning was inappropriate in manner or content, or to facilitate communication.

Consideration should also be given to modifying the interview procedure, particularly for younger children. Best practice examples exist, such as the use in a trafficking case of a single interview at the solicitor's premises involving the police and other relevant agencies. This is more in line with the Achieving Best Evidence procedure for children to be interviewed on video when they are victims of crime or involved in family proceedings. The routine use of video or tape recording, as occurs under the Police and Criminal Evidence Act, would also protect children from disputes over what was said in interview when there are queries over interpretation.

Numerous policy documents for Home Office decision makers and judges and so on set out procedures which, in many (though not all) cases, would fulfil the requirements of the UNCRC and would likely serve the child's best interests. It is clear that what happens in practice does not always fulfil the duties or reach the standards required on paper. There are for example numerous instances of age assessment which do not comply with the *Merton* guidance and of Home Office refusal letters which fail to apply the proper standards for assessment of an asylum claim from a child. It is not entirely clear why some judges and officials deviate from the guidance although possible reasons include poor training, management and monitoring, and deliberate or inadvertent discrimination.

There is a need for the Home Office to make a much more detailed and individual consideration of the child's best interests. The gathering of information currently centres on asylum and whether the child's account engages the refugee definition. The process fails to properly collect the information which would allow a determination of individual best interests to be made and instead applies established presumptions to children who have been refused asylum.

More use should be made of humanitarian protection, which may often be the most appropriate form of protection for children and which is currently underused. A recognition that the child has applied for international protection rather than simply asylum, and a process for gathering relevant information and the child's opinions, combined with guidance and training to Home Office decision makers which clarifies the applicability of humanitarian protection to children's cases, could all assist in ensuring their best interests are met. This in turn would likely reduce legal aid and court costs and potentially eventual removal costs with little, if any, effect on the costs of care provision, representing an efficient and timely way of implementing durable solutions.

iii) Legal aid

Legal aid should be reinstated for all children's cases and for those who arrived as children and are seeking further leave to remain on grounds other than asylum. On numerous occasions expert

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interviewees asked the researcher for information on where to find free or cheap legal advice and on one occasion an appeal right was preserved only because the researcher was able to advise an expert interviewee of an urgent deadline and recommend a solicitor who then acted without payment. Frequently the problem arose where a young person no longer had a strong asylum claim since turning 18 but had a strong Article 8 claim based on private life developed over years of living in the UK. There is an urgent need for cases of this kind to be brought back into the scope of legal aid.

It is clear from the field work that some children receive excellent legal representation while others receive very poor quality representation which does not serve their best interests. Research commissioned by the Solicitors Regulation Authority and due to be published in late 2015 examines the quality of asylum legal advice in England for all applicants, not only children, since asylum is known to be an area in which the clients are particularly vulnerable and the complaints procedures are little used. Although a peer review process exists, it has not eradicated the problem of low quality advice so that in Kent, for example, roughly one third of cases go to a firm widely described as poor. The Legal Aid Agency should consider modifying the contracting procedure.

Legal aid contracts should also be modified to simplify the process of applying for funding for more work to be done on children's cases, removing the barrier of a complex and time-consuming extension application for which representatives are not paid. Likewise the complaint that the Legal Aid Agency will not fund expert reports at the early stages of a case should be given serious consideration: allowing representatives to "front-load" cases, as one lawyer put it, is likely to reduce the number of cases going to appeal and therefore save money in the long term. The current system is not only financially inefficient but also introduces unnecessary stress and fear into the lives of young migrants. Since the interviews with young people suggest that this often triggers or increases mental health problems, a more sensible and humane legal aid system may also reduce pressure on Child and Adolescent Mental Health Services (CAMHS).

iv) Family reunion

The lack of any opportunity for family reunion between refugee children and their parents or siblings is an obvious failure to consider the best interests of children. Since it is well established that it is in the best interests of children to be looked after by their parents, consideration should be given to modifying the immigration rules to allow for family reunion between child refugees and their parents and siblings. While this might, at least initially, involve costs in welfare benefits to newly arrived families, it would reduce the costs of social worker input and leaving care services.

v) Education

It may be necessary to consider extending the time for which newly arrived children's results are not counted for school ranking purposes, taking into account evidence about the length of time it takes to become proficient in English, in order to overcome some schools' reluctance to accept newly arrived migrant children. At the same time, there should be some means of adding to the exam results the attainments of newly arrived children, to ensure there is an incentive for schools to meet these children's needs and help them fulfil their potential.

vi) Guardianship

The government's position is that guardianship is unnecessary and that its proponents have struggled to explain the need for it. This research suggests, on the contrary, that there is a clear and coherent

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set of reasons why guardianship should be implemented for all unaccompanied children. First, guardians could consolidate a number of current roles including advocate, independent visitor and independent adult and take on some of the tasks of social workers, particularly those linked to the asylum process and those not usually needed for indigenous looked after children. This would ease the pressure on social services departments.

Second, guardians could formalise the role filled by the “significant adult” which has been crucial for several of the young people interviewed for this research, but which is entirely *ad hoc*. Third, they could be responsible for instructing the legal representative and ensuring that the child received good quality advice and representation. Fourth, and perhaps most importantly, they would be well placed to gather the relevant information either to make a determination of the child’s best interests or to enable the Home Office to do so.

Further, the creation of specialist advocates for children who are potential victims of trafficking implicitly acknowledges the need for somebody to fulfil such a role in certain cases. Yet there is little difference between the needs of trafficked children and those of children seeking asylum. Both groups may have had traumatic journeys and / or pre-journey experiences, have been separated from their families, are negotiating a complex legal process and are learning to live in a new culture. While trafficked children may also have been victims of crime in the UK or en route, the needs of those who were smuggled to the UK, for example, are not obviously less.

It is therefore recommended that the UK study the Scottish guardianship pilot and other guardianship schemes and implement an effective form of guardianship as soon as possible for all unaccompanied children.

vii) Final word

The overwhelmingly anti-migrant policy trend in central government means that unaccompanied children are treated as asylum seekers rather than children by agencies across immigration, education, accommodation, community safety and social care, despite the protections of the Children Acts and UNCRC. This report demonstrates that many of the necessary changes could be relatively quickly and cheaply implemented. That said, proper care requires proper funding, and the creation of rights on paper has been consistently counteracted by cuts to legal aid, social care and education funding. At present, the primary obstacle to achieving fair treatment for unaccompanied children remains the hostility and suspicion with which they are still viewed simply because of their immigration status.

6 Bibliography

Brownlees, L. and Yazdani, Z. (2012) *The Fact of Age: Review of case law and local authority practice since the Supreme Court judgment in R(A) v Croydon LBC [2009]*. London: Office of the Children's Commissioner for England.

Dennis, J. (2012) *Not a Minor Offence: unaccompanied children locked up as part of the asylum system*. London: Refugee Council.

HM Chief Inspector of Prisons for England and Wales (2015) *Annual Report 2014–15*. House of Commons.

Hurst, C. and Peel, M. (2013) What does the Independent Visitor role offer looked-after children? *Adoption & Fostering* 37(4) 368–379.

Joint Committee on Human Rights (2013) *Human Rights of Unaccompanied migrant children and young people in the UK*. London: House of Commons and House of Lords (21 May 2013)

Knight, A. (1998) *Valued or Forgotten? Independent Visitors and disabled young people*. London: National Children's Bureau.

Matthews, A. (2012) *Landing in Dover*. London: Office of the Children's Commissioner.

Vine, J. (2013) *An Inspection into the Handling of Asylum Applications Made by Unaccompanied Children*. London: Independent Chief Inspector of Borders and Immigration.

Warren, R. and York, S. (2014) *How Children Become Failed Asylum Seekers: Research report on the experiences of young unaccompanied asylum seekers in Kent from 2006 to 2013 and how 'Corrective remedies' have failed them*. University of Kent.

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