

Response: Jo Wilding, University of Brighton and Garden Court Chambers

1. This response deals with the situation in the UK. It is based on my recent research on the situation of unaccompanied children in the UK as part of a four-state study on unaccompanied children in Europe (France, Austria, Slovenia and UK) named “MinAs”. The MinAs project has prepared a separate response dealing with the comparative situation in the four countries. I am now carrying out research on issues around quality of asylum legal services more specifically and am on an extended sabbatical from practice as a barrister specialising in immigration and asylum cases. This response draws on insights gained from all of these, as well as recent visits to the camps at Calais and Dunkirk. For the full UK MinAs report, see <https://www.brighton.ac.uk/crome/research-projects/minas-unaccompanied-minors-rights.aspx>

Question 1: Are there reliable data on the number, age, gender, nationality and immigration routes of unaccompanied minors in the EU? What implications do these factors have for policy?

2. The UK has reasonably reliable data on the number, age, gender and nationality of children arriving in the country and entering the care system. There are children who do not enter the care system, for whom there would not be data. It also has data on the number of children who claim asylum, which is the majority of unaccompanied children since they are channelled into the asylum process.
3. One aspect of my research was using Freedom of Information requests to ascertain where in the UK unaccompanied children were living because it emerged from my interviews that there was no clear understanding of the distribution of children. This revealed a very uneven distribution, as shown in the attached table, with very high numbers in Kent and Croydon, high numbers in Surrey, Northampton and Essex and low to medium numbers in most other authorities. One fifth of local authorities had no unaccompanied children in their care.
4. The reason this is problematic is that the concentration of children, particularly in Kent but also in other port areas, causes unmitigated pressure on social workers and makes it impossible to find foster care and educational places close to accommodation. In Kent this is exacerbated by the attitudes or practices of some academies or local education authorities and by funding cuts to ESOL (English for Speakers of Other Languages) in colleges. This arguably makes it impossible or at least unlikely that the children’s best interests can be addressed in those high intake areas.
5. As to the implications of this for policy, the crisis in Kent led to the County Council making a request for other local authorities to voluntarily assume responsibility for some children. There were few positive responses and the government is intending to introduce a process for “dispersal” of unaccompanied children in the new immigration bill. The term “dispersal” is problematic because it is irrevocably connected to the harsh system of dispersal for adult asylum seekers and I prefer “responsibility sharing” as a term which reflects the care responsibility taken on by the local authority. It is essential that whatever the policy is for moving the children within the UK, it is infused with the spirit as well as the letter of the consideration of the child’s best interests. Movement must be effected with minimal delay and with adequate support – social, educational and legal – in the receiving area. The child’s views should be taken into account, particularly where there are established national

communities, churches / mosques, extended family members in one part of the UK and not others.

6. There are some concerns that the highest intake authorities are more likely to age assess children as being older than they say they are or as being over 18 because of the unmitigated pressure on their services. It is important to note that this is not empirically proven (and unlikely to be possible to test empirically). The authorities in question believe their age assessments are fair but it is a frequently-expressed concern of organisations and individuals supporting children.
7. Data about age assessment and age disputes is inadequate. My Freedom of Information requests showed that the majority of local authorities were unable to clearly state how many young people have their ages disputed, let alone the eventual outcome. The Chief Inspector of Borders and Immigration had already highlighted a similar lack of accurate and comprehensive information held by the Home Office.

Question 2: What are the key challenges faced by unaccompanied minors in the EU? Are there common issues across Member States?

8. The overall response of the EU states and of local authorities within the UK may be characterised as “someone else’s problem”. Each state is too willing to leave unaccompanied children to pass through its territory without providing care or support. Children fear contact with the authorities because of the belief that they will be fingerprinted and forced to return to a country which they previously passed through.
9. Unaccompanied children I have met have told me about being beaten in Greece and told to leave the country. They have moved across Europe without anyone taking responsibility for them. A number have spent time in camps in Calais before making it to the UK and have continued travelling because of the hostile treatment they receive in every country they passed through.

2a) Reception (this may include the accessibility and quality of legal representation, and age assessment procedures)

Asylum process

10. The UK research identified a number of aspects of the asylum process which were harmful or contrary to the children’s best interests:
 - Child interviewees and experts both regard the asylum process as hostile, interrogatory and lacking in adequate procedural safeguards for the child.
 - 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, meaning the purported “best interests consideration” accompanying refusals is frequently inadequate and fails to touch on the individual child’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.

Age assessment

11. Although the UK has a “holistic” age assessment procedure which does not permit the use of non-therapeutic x-rays or bone density scans, I was told by social workers, NGO workers, lawyers and children about pervasive disbelief and reasoning for disbelieving children about their age which did not stand up to scrutiny (for example, the child chose the most expensive brand of hair gel). Yet the court procedure for challenging age assessment is fiercely adversarial in practice and involves children being subjected to cross examination about multiple aspects of their identity such that lawyers told me it was often not in the child’s best interest to put them through the process of challenging a disputed age assessment, despite the disadvantages of being assigned an older age.

Quality of legal advice

12. There are a number of concerns about legal representation specifically for children which are set out in detail in the MinAs national report for the UK. In addition I was the case file reviewer for the recent Quality of Asylum Legal Services report commissioned by the Solicitors Regulation Authority and Legal Ombudsman. That report was not focussed on unaccompanied children but the problems identified are common to children as well as adult asylum seekers. 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.
13. 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.

14. 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 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.
15. 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.
16. The cuts to legal aid have driven a number of good quality providers out of legal aid asylum services. Perverse incentives in the legal aid contract appear to reward poorer quality work and create obstacles to good quality work. This is something which I am continuing to investigate in my research.
17. Further, because children are cared for in whichever local authority they first come to attention, they are not always able to access good quality (or indeed any) legal representation close to their home area. As an example, children in Kent have been referred to a legal aid provider in Brighton because those in Kent have no more capacity. The provider in Brighton is also very stretched in its ability to provide for all those needing its services, despite prioritising children’s cases.

2b) Protection (this may include issues of accommodation, availability of foster care and accessibility of appropriate medical attention)

18. The high concentration of unaccompanied children, mentioned above, appears to be 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.
19. Overall the research suggested that foster care was the best available type of accommodation and care for most unaccompanied children, but semi-independent accommodation (living alone or with other young people, with off-site or floating support from adults) was the default for those aged 16 and 17 in some areas. Children who were or had been in semi-independent accommodation described it to me as being hard, isolating and interfering with their ability to concentrate on education. By contrast, those in foster care felt they had learned English more quickly and had better support to cope with the asylum process. It is, however,

important to recognise that this research did not evaluate in detail the relative merits of different types of accommodation.

2c) Integration (this may include access to appropriate education and leisure facilities, longer term care, family tracing and reunification procedures).

20. 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 by the local authority, despite this being a statutory entitlement. In some cases, the children had developed a relationship with an adult who had voluntarily taken on 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. (See the evaluations of guardianship in Scotland.)

Question 3: How has the EU response to the refugee crisis, including emergency measures such as relocation schemes and the establishment of ‘hotspots’, affected unaccompanied minors?

21. I recently spoke to a number of unaccompanied minors in the camps in Calais and Dunkirk who had a relative lawfully present in the UK. These children wished to join the relative in the UK and the relative had expressed a willingness to receive and look after them: often the relative was an uncle but in some cases it was a sibling and in one case, the child’s father, who was regularly visiting him in the camp. The Dublin III Regulation, which determines which member state is responsible for an asylum claim, provides that a child should be reunited with a relative and have their asylum claim considered in that member state. This procedure appears to be routinely ignored by the authorities of both the UK and other member states, which do not appear to be diligent about making take charge requests. This remains the case even after the UK courts in various cases recognised the difficulties for unaccompanied children in accessing asylum procedures in France, Italy and Greece, among others. The EU response has made unaccompanied children even more vulnerable and has placed far too much reliance on control, deterrence and exclusion, at the expense of the children’s best interests.

Question 8: There are growing concerns about unaccompanied minors going missing from reception centres and care facilities across the EU. What steps should the EU and its Member States take to address this problem?

22. During the process of the research I was told about one incident where an unaccompanied child had gone missing from an informal fostering arrangement. An NGO worker supporting the child said that police and social services failed to implement normal missing persons procedures. An outreach worker with an accommodation provider told me they had had children go missing from their care but that they had had robust procedures in place. However, their organisation had lost its contract to provide accommodation and she did not think that the new contractor had such good protection provisions in place. Shortly after the research was finished I was told about a similar event by a foster carer, where procedures were not implemented. I was then contacted about cases in Sussex where eight Vietnamese children had disappeared shortly after arrival and five remained missing, a fact which only came to light by chance. (The press report can be found here:

[http://www.theargus.co.uk/news/13931944.Five teenage immigrants missing for months from care/\)](http://www.theargus.co.uk/news/13931944.Five%20teenage%20immigrants%20missing%20for%20months%20from%20care/)

23. The very high rate of disappearances from care of Vietnamese children and the fact that they usually only reappear if they are detained in raids on cannabis factory indicates that all lone Vietnamese children should be seen as at high risk (probably across Europe). Yet this does not appear to translate into robust procedures for newly arrived Vietnamese children. If even these very high risk children are not identified and protected, it is likely that children from lower risk backgrounds receive even less protection.
24. Member states need to create and follow a much more robust action plan which involves practical steps not only policy steps. These should include a presumption against prosecuting young people found in cannabis factories, identification of risk factors across Europe and deliberate interventions to protect children at high risk.

Question 9: The UK has not opted in to the second phase of the Common European Asylum System, and does not participate in the Family Reunification Directive. What, if any, are the implications of this for unaccompanied minors in the UK?

25. The UK has opted into the more control-oriented measures and out of the more rights based ones. The implication for unaccompanied children is that they have no prospect of reunion with family members even after their claims for asylum are accepted and even when they are very young. 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.
26. This is out of line with even the limited family reunion rights for adult refugees, who have the right to reunion with their unmarried minor children. For the children interviewed in the research, this had varying effects. Since some had no contact with their family members, a right to family reunion would have made no difference. Others, however, were in touch with their families and had been recognised as refugees, so would have benefitted from family reunion rights in line with those for adults. Several children talked about the loneliness of living without their families, particular when they were not in foster care.
27. 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 (probably higher) costs of social worker input and providing leaving care services. Thus there is an economic case as well as a moral case in favour.

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