



University of Brighton

Whose best interests?

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

UK National Report –
Executive Summary

Authors: Jo Wilding and Marie-Bénédicte Dembour

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.

- 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.