

State of Children's Rights in England 2017

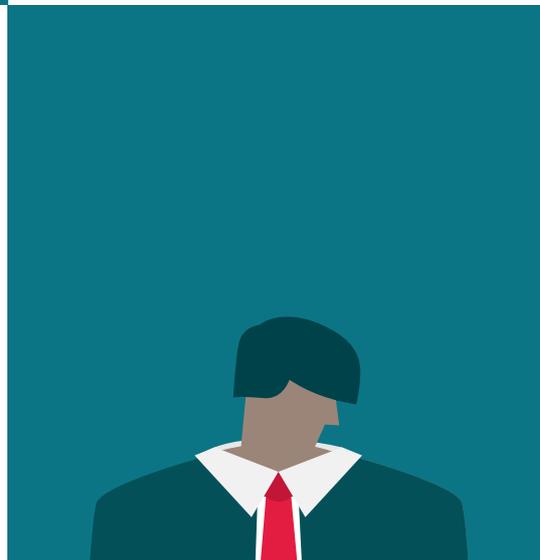


Children's
Rights Alliance
for England



5

Briefing 5 Immigration, Asylum and Trafficking



Briefing 5

Immigration, Asylum and Trafficking

ARTICLE 10 Families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

ARTICLE 19 Children have a right to be protected from all forms of violence.

ARTICLE 20 Children separated from their family should be well cared for.

ARTICLE 22 Children who are seeking refugee status are entitled to special protection and the other CRC rights.

ARTICLE 32 States Parties should protect children from economic exploitation and any harmful work.

ARTICLE 34 States Parties must protect children from all forms of sexual exploitation and abuse.

ARTICLE 35 States Parties should make sure children are not abducted, sold or trafficked.

ARTICLE 39 Children who experience any exploitation should receive the help they need to recover and reintegrate into society.

Optional Protocol to the CRC on the sale of children, child prostitution and child pornography

States Parties shall prohibit the sale of children, child prostitution and child pornography, recognise the vulnerability of child victims, protect their privacy, provide support and ensure their safety.

Definitions and glossary

Children: All children and young people under-18 as set out by article 1 of the UN Convention on the Rights of the Child (CRC).

Separated children: Children under-18 who are outside their country of origin and have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. We use the term "separated children" to include unaccompanied children seeking asylum in the care of local authorities.

Unaccompanied children: Unaccompanied children seeking asylum in the care of local authorities, often referred to as "UASCs" by the Government.

Dublin III regulation: A European Union (EU) law, which determines that EU Member States examine an asylum seeker's application for international protection. It requires refugees to claim asylum in the Member State in which they first arrive and allows for family reunification for children.

Undocumented children: Children who do not have a regular immigration status, in that they do not have permission (leave) to enter or remain in the UK.

National Referral Mechanism (NRM): A framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support. It is also the mechanism through which the Modern Slavery Human Trafficking Unit (MSHTU) collect data about victims.

About this briefing

The UK ratified the UN Convention on the Rights of the Child (CRC) in 1991. This means that all areas of government and the state including local government, schools, health services, and criminal justice bodies, must do all they can to fulfil children's rights.

This briefing is part of CRAE's *State of children's rights in England 2017* and assesses the progress made in England towards implementing the UN Committee's recommendations on immigration, asylum and trafficking, which is an area of Special Protection Measures in the CRC. It highlights areas of progress and concern since last year's *State of children's rights in England 2016* was published in December 2016. It is based on written and oral evidence from CRAE's members and additional analysis of recent laws and policies, newly published research, official statistics, and responses to Freedom of Information (FOI) requests.

What is the CRC?

The CRC applies to all children aged 17 years and under, and sets out the basic things that children need to thrive: the right to an adequate standard of living, to be protected from all forms of violence, an education, to play, be healthy, and be cared for. Children's rights should act as a safety net, meaning children always receive at least the minimum standard of treatment whatever the changing economic climate.

The CRC has four guiding principles (General Principles) which are rights in themselves, but also the framework through which all the rights in the CRC should be interpreted. They are: non-discrimination (article 2), the best interests of the child (article 3), survival and development (article 6), and respect for the views of the child (article 12). England's compliance with these General Principles is covered in Briefing 2.

Concerns of the United Nations

In June 2016 the UK Government was examined by the **UN Committee on the Rights of the Child** (the UN Committee) on its compliance with the CRC for the first time since 2008. The UN Committee made a number of recommendations (Concluding Observations) for change.¹ In May 2017 the UK was examined on all its human rights treaties, including the CRC, by the 193 member states of the Human Rights Council as part of the **Universal Periodic Review (UPR)**.² This is a process where states can reiterate previous recommendations made by UN Committees and can be used by civil society and parliamentarians as an additional advocacy tool. The Government can choose whether to "support" (accept) recommendations or "note" them (reject or not agree). We are very disappointed that the Government has only supported 28% of the recommendations relating to children's rights, compared to 42% of all the recommendations it received. Below are the relevant UN Committee and UPR recommendations for this briefing:

- Conduct age assessments only in cases of serious doubt through multidisciplinary and transparent procedures **CRC**
- Establish statutory independent guardians for separated children **CRC**
- Cease the detention of asylum seeking and migrant children **CRC** **UPR**
- Review its asylum policy in order to facilitate family reunion for unaccompanied and separated refugee children, within and outside of the State Party, including through implementation of the EU Dublin III regulation **CRC** **UPR**
- Strengthen the NRM for identifying trafficked and exploited children, which is embedded in existing child protection procedures **CRC**
- Establish mechanisms and procedures to protect the rights of child victims of offences, including establishing a clear obligation of non-prosecution, and ensuring that they are treated as victims rather than criminals by the law enforcement and judicial authorities **CRC**

Key to UPR recommendations:

UPR Supported **UPR** Noted

Introduction

The Government has committed to a number of positive steps in 2017 to improve practice and policy to safeguard unaccompanied children, given the increase in numbers. However, long-standing concerns of the UN Committee have still not been addressed in relation to age assessments, child detention and the treatment of undocumented children. Family reunification for children both coming to, and already in, the UK was a key issue raised by the Human Rights Council in this year's UPR and remains an ongoing concern. The UK's forthcoming exit from the EU also raises worrying questions for children of European nationals living in the UK.

Where have we made progress?

The publication of the first joint *Safeguarding strategy for unaccompanied asylum seeking and refugee children between the Home Office and Department for Education (DfE) to safeguard and promote the welfare and specific needs of this vulnerable group is welcome.*³ As part of this, the Government has committed to regularly review the amount of money that councils receive for unaccompanied children, and provide training for 1,000 foster carers and support workers, backed up by a £200,000 fund until 2019. An additional £60,000 has been set aside to revise guidance and provide best practice guides for social workers. A commitment to provide comprehensive information for unaccompanied children to ensure they understand their rights and entitlements is also a positive development.

Alongside this, the Government has published revised statutory guidance on the *Care of unaccompanied migrant children and child victims of modern slavery*. This contains new information on healthcare and education, family reunification and pathway planning, plus stronger guidance on the social worker's role to access: '*specialist asylum and/or immigration legal advice and representation for all unaccompanied children.*⁴

Increased efforts to improve the Dublin III process have also resulted in much greater numbers of children being reunited with their families than in 2015. The Government has pledged to commission new research on the effectiveness of existing support.⁵

The Government has also made a series of long-awaited announcements regarding trafficked children. The national roll out of the Independent Child Trafficking Advocates Scheme to provide specialist support and act in the best interests of trafficked children is very welcome, given the Committee's long-standing calls to implement this (it was introduced in the Modern Slavery Act 2015).⁶ This is backed up by a new £2.2 million fund to support trafficked children.

Where do we need to improve?

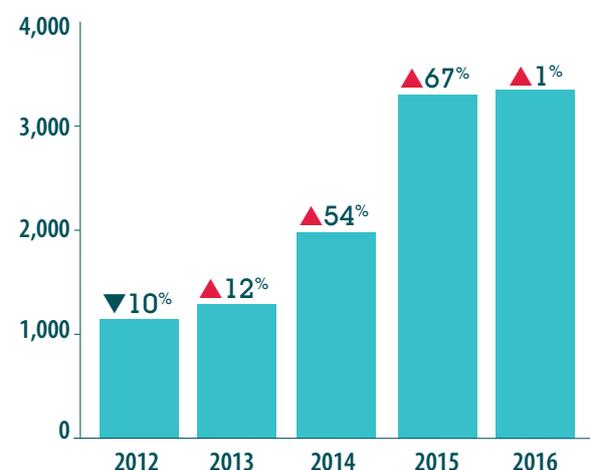
Immigration and asylum

No durable solution for unaccompanied children

After a large increase in 2015, the numbers of unaccompanied children seeking asylum in the UK have remained high but stable: 3,290 in 2016—a 1% increase on the previous year.⁷

In 2016, there were significant increases in the number of children seeking asylum from Iran, Iraq and Sudan. Only 30% of unaccompanied

Graph 1: Asylum applications from unaccompanied children



Source: Home Office Immigration Statistics⁸

Table 1: Unaccompanied children's status and nationalities in 2016

	Total	Refugee Status	Humanitarian Protection	Discretionary Leave	UASC Leave	Family or Private Life	Refusals
Afghanistan	406	83	1	6	269	0	47
Eritrea	328	143	31	0	120	0	34
Albania	228	2	0	0	173	0	53
Iran	215	54	0	4	108	0	49
Iraq	160	35	16	0	76	0	33
Syria	64	50	1	1	7	0	5
Vietnam	61	36	0	0	22	0	3

Source: Home Office Asylum Statistics⁹

children were granted refugee status in 2016. Although this is a small increase compared to last year (22%), the majority (50%) were still refused asylum and were granted a temporary form of leave (UASC leave), compared to 52% in 2015.

Such temporary leave is rarely in children's best interests as it does not provide them with a durable solution.¹⁰ See Briefing 2 for more details.

Applications from Afghanistan increased in 2015 and 2016 after several years of decreasing. As the table below shows, there is great variation in asylum acceptance rates between nationalities. Albania is the country with the highest refusal rate. Compared with pre-2015 figures, there was a large reduction in the number of applicants from Eritrea who were granted refugee status, from 95% to 44%.

Ongoing concerns about National Transfer Scheme

The National Transfer system (NTS), a new voluntary transfer arrangement between local authorities for unaccompanied asylum seeking children, has now been operating for over a year.¹¹ However concerns are still being raised including: delays in transferring children, lack of best interest assessments, delays in access to vital statutory services, poor communication with children and foster carers, lack of clarity on age assessments, and confusion over the continued voluntary nature of the scheme.¹² The scheme also means that more children are in "legal deserts" than previously.

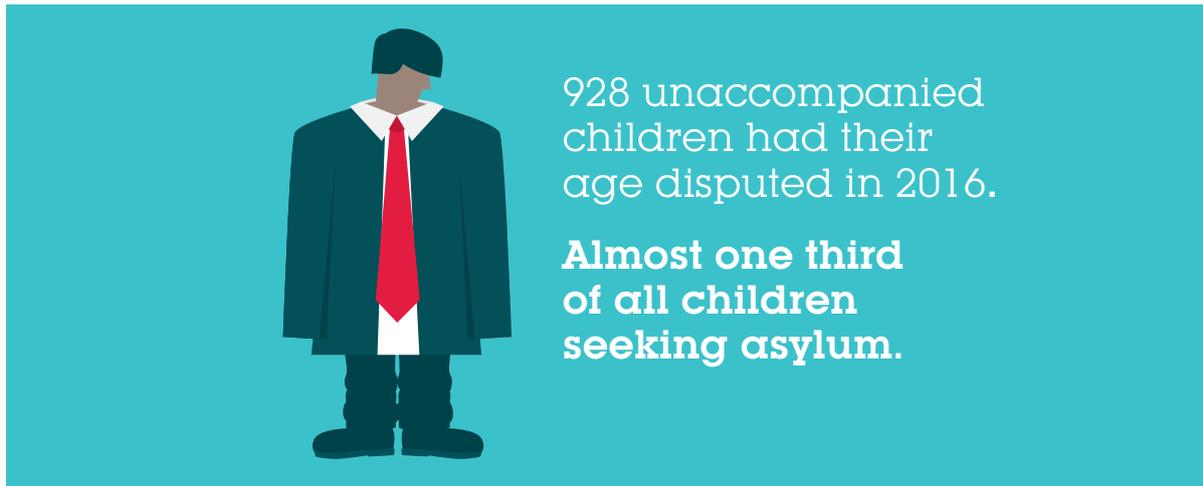
The Government has consulted on the scheme's voluntary interim transfer protocol, but are yet to publish the final version.¹³ Some local authorities

have estimated that, despite an increase last year, Home Office funding is only meeting around 50% of the true costs of supporting a child for already stretched local authorities.¹⁴ This has resulted in some local authorities pulling out of the scheme.¹⁵ However the Government have just announced to regularly review this funding.¹⁶

Child detention continues in worsening conditions

In 2016, 103 children were locked up in immigration detention compared to 128 in 2015, with 42 under the age of 11.¹⁷ Last year the Government closed the specialist family detention unit, Cedars, and has started detaining children in a new family unit at Tinsley House Immigration Removal Centre, a secure detention centre. It is particularly concerning that this is now run by security company G4S, who have been criticised by the Home Affairs Select Committee for providing: '*disgraceful standards of asylum accommodation*',¹⁸ and that the children's charity Barnardo's will no longer provide welfare support.

Cedars was built as part of the Government's pledge in 2010 to end the detention of children for immigration purposes, therefore closing it is a retrograde step. Since Cedars closed in October 2016, five children were housed in Tinsley House. However the family unit was closed for refurbishment in the last quarter. Another 19 were held in other centres since Cedars closed.¹⁹ Although the numbers of children detained are decreasing, this still breaks the Government's promise. This year, members of the Human Rights Council reiterated the UN Committee's oft repeated call to end immigration detention for children.



Source: Home Office statistics

Numbers of age disputed children continue to rise

In 2016, 928 unaccompanied children had their age disputed—almost one third of all children seeking asylum.²⁰ This is an 18% increase on top of the 148% last year, but may be attributed to the increase in overall numbers, as the proportion has stayed stable. This shows that children are still constantly disbelieved about how old they are and face harmful, protracted age disputes despite calls from the UN Committee, which states: *'age assessments should only be conducted in cases of serious doubt.'* Again, children from four countries (Afghanistan, Iraq, Iran and Eritrea) account for 73% of age dispute cases.

The Home Office's *Assessing Age* policy allows for individuals claiming to be children to be treated as adults if their appearance/demeanour: *'strongly suggests they look significantly over 18'*²¹, despite the inherent difficulties in judging age based on appearance. Evidence from our members and recent case law suggests this means they are frequently denied education, local authority support as a child, and housed or detained with adults.²² This is despite statutory guidance on unaccompanied migrant children, which states: *'where the age of a person is uncertain and there are reasons to believe they are a child, that person is presumed to be a child'*²³. Age assessment guidance by the Association of Directors of Children's Services (ADCS)²⁴ also states that children should have access to local authority support as a looked after child whilst the age assessment process continues, as set out in recent case law.²⁵

Data from the Refugee Council reveals that the number of children who are being detained as adults on the basis of their appearance has reduced this year (attributable to recent case law), but shows children are still being wrongly detained on the basis of physical appearance.²⁶

Slow progress on Dublin III

A child's right to reunite with their family is enshrined in article 10 of the CRC. The Government has made some progress in reuniting unaccompanied children with family members already in the UK under Dublin III: **700 children from Europe were reunited in 2016 compared to very few in 2015.**²⁷

However, the Council of Europe and British Red Cross have documented that the length of time taken to complete the Dublin process²⁸ and the lack of information available to children (particularly after the clearance of the camp in Calais in October 2016) meant that vulnerable children were left at risk in informal refugee camps in northern France,²⁹ or were taking risky journeys in the hands of smugglers, even when they had family connections in the UK.³⁰ In addition, there is no clear or consistent Best Interest Determination process to aid in children transferring to the UK.³¹

When the UK leaves the EU, the Dublin III regulation will become inoperable. This will prevent unaccompanied asylum seeking children joining their parents or other relatives residing in the UK. The UK has no comparable provisions to allow a child to enter the UK and have their protection claim determined here, and provides only for the reunification of parents and children

where the former are recognised as refugees. There are many cases where children remain separated from their family members.

Closure of scheme to relocate children from Europe

We were extremely disappointed that in February 2017, the Government decided to close the scheme to relocate vulnerable unaccompanied children from Europe to the UK under S67 of the Immigration Act (the “Dubs amendment”), citing local authority capacity as a key reason for the closure.³² The scheme has so far only welcomed 200 children, with a cap of total places at 480, and introduces a cut-off date of March 2016 for children to have been present in the EU.³³ Organisations have expressed dismay that this is just a fraction of the amount they expected—or that the Government originally pledged.³⁴ Discussions are ongoing with France, Greece and Italy over eligibility criteria and timeframes, but as a result, very few additional children have been relocated to the UK since.³⁵

Unaccompanied children still separated from their families

The UK, unlike almost every other country in the EU, still does not allow children with refugee status to sponsor their parents to join them. This is despite the fact they have been through an asylum determination process in the same way as an adult. Echoing a recommendation from the UN Committee, the members of the Human Rights Council urged the UK to: *‘establish family reunification for child asylum seekers relocated to the UK or who have been recognised as refugees.’*

Brexit a threat to EU children’s residence rights

In 2016, 679,000 European national children under the age of 18 resided in the UK.³⁶ A significant proportion of these children live here long-term and around 258,000 (38%) were born in this country.³⁷ **Brexit poses significant risks for the rights of EU national children.** The Government has set out plans where the right to stay is based on demonstrating five years of continuous and “lawful” residence.³⁸ Many children will be denied residence rights, because they are reliant on their parents to demonstrate lawful residence or to complete the application for the new settled status, which children have

no control over. There are no impact assessments on how this will affect vulnerable families, nor recognition of the need to consider the child’s best interests, and the impact of European children being placed in care or being separated from their parents.³⁹ Current application rates for non-EU citizens are complex and expensive with no free legal aid.⁴⁰

Case study

Just for Kids Law (Let us Learn) 17 year old prevented from securing legal status

Femi* was born in Nigeria and brought to the UK by his mother when he was 10 years old on a six month visitor visa. He has lived with his aunty since then. Femi is now 17 and still does not have any lawful status in the UK. He is head boy at school and coaches the year 8 football team. He has also completed National Citizens Service (NCS).

‘I have spent seven years of my childhood years here, I have found a place to call home, and I want to continue to be an important asset to my community as I’ve just been elected as youth board member at NCS.’

Femi first accessed legal advice via a pro-bono service (as he is not eligible for legal aid) when he was 16 and realised he didn’t have any status. He was advised to make an application for leave to remain before he turned 18. However his application costs £993, plus £170 for a Nigerian passport and £500 for the NHS surcharge.

‘It’s very hard and tough as I’m deprived from a lot of the things which my friends can do, such as go abroad for holidays. My aunty and my cousins are British citizens and it’s upsetting to be the only one in the house without it.’

Sadly Femi has been unable to raise the money for the application. He has no right to work and does not have any financial support from family or guardians.

‘If I could work, it would mean I could help out and afford things for myself.’

If he turns 18 before he makes this application, Femi will not be eligible to apply for lawful status (leave to remain) until he is 22 years old. He is studying A Levels and wants to go to university to study either Architecture or Sports Physiotherapy, which will not be possible without status.

'It doesn't help me to think about my 18th birthday at the moment, as I feel like this should be a pivotal time in every teenager's life, as you become an adult...'

*Not his real name

Poor routes to regularisation for undocumented children

There are approximately 120,000 undocumented children in the UK—65,000 of whom were born here.⁴¹ They are living in precarious situations because they are unable to secure permanent status in the UK and their rights are being breached in many ways.⁴² Without documentation a child cannot work, open a bank account, or access sources of support (such as housing), and are cut off from college and university, often leaving them vulnerable to poverty and exploitation.⁴³ **Less than 15% of the population of undocumented children in the UK have been able to regularise their status (or have left the UK), meaning thousands are still living in legal limbo.**

These children face a number of barriers: complexity of law and policy, lack of awareness and understanding about their status by social and education services, lack of free, quality legal representation (see Briefing 2), very high application fees with very limited fee waivers, and long delays to regularise status.⁴⁴ Fees to regularise their status are prohibitive at £1,000-£8,000 over a ten year period, increasing every year with no parliamentary scrutiny and making a profit for the Home Office.⁴⁵ The current system is not fair, accessible or in the best interests of children, and pushes them into undocumented status. Crucially it breaches children's rights to develop and fully participate as citizens in the country that they know as home.

Trafficking

NRM still not embedded in child protection systems

The year-long pilot of a revised National Referral Mechanism (NRM) model involving multi-disciplinary panels was a positive step. The Government has published the evaluation of the NRM,⁴⁶ but it still contains no plans to implement reform in line with the UN Committee's recommendation that the NRM be: *'embedded in existing child protection procedures'*.⁴⁷ However the commitment to explore how best to make the NRM decision making process *"child friendly"* is encouraging. We also welcome the Government's pledge to publish statutory guidance on *Victim identification and support* in line with section 49 of the Modern Slavery Act 2015.

A new survey with frontline professionals found a worrying 40% of respondents said that the NRM never or rarely ensures an appropriate safeguarding response for children.⁴⁸ Only 6% of respondents felt that there was good awareness of the NRM amongst frontline professionals who work with children.⁴⁹ And only 4% felt decisions about identification should not be multi-agency – as is the case in the Government's recently announced changes to the system whereby Home Office officials in a new department will make identification decisions about all victims, including children.⁵⁰

High numbers of trafficked children going missing from care

New research based on FOI data from local authorities has revealed that more than a quarter of all trafficked children and over 500 unaccompanied children went missing at least once from September 2014 - 2015, and that 207 had not been found.⁵¹ It revealed a worrying lack of consistency in the way local authorities identify and record the risk of trafficking and exploitation, with no national process for identifying and recording children who may have been trafficked and who have gone missing. However we welcome measures set out in the new *Safeguarding unaccompanied asylum seeking and refugee children strategy* to work with local authorities who have high numbers of missing



Source: Missing People and ECPAT UK (2016) *Heading Back to Harm: A study on trafficked and unaccompanied children going missing from care in the UK*

unaccompanied children, to understand and identify risk factors and effective responses, and to pilot a standardised process for police when they first encounter an unaccompanied child.⁵²

Shortcomings in “non-punishment” provisions for child victims of trafficking

New research has found extreme variations in awareness of the “non-punishment” provisions and how they can ensure that children who may have been trafficked are not criminalised, falling short of the UN Committee’s recommendations.⁵³ Where there is a proactive approach to identifying children by police and prosecutors, the provisions are making a difference. However, the research found few safeguards against arrest or prosecution at early stages of the criminal justice process, and very low levels of awareness of the non-punishment protections for children among prosecutors, police, defence solicitors and frontline practitioners. There was also little monitoring of the use of the presumption against prosecution or the statutory defence provision (introduced by the Modern Slavery Act 2015) for children across the UK.

Recommendations

1. The Government should ensure that local authorities accepting unaccompanied children under the National Transfer Scheme are sufficiently trained in supporting the needs of these children, and that they have sufficient access to services and high quality independent immigration advice and representation, and that a best interests assessment is an ongoing process. The new protocol must make clear that transfer should not be pursued where it would not be in the child's best interests.
2. The Government should renew and fulfil its commitment to ending the immigration detention of children, and conduct an independent review of conditions in Tinsley House Family Unit to ensure it meets the highest safeguarding and welfare standards.
3. Age assessments should not be based solely on visual appearance, and if a local authority has decided to assess the age of a child, the child should be looked after under Section 20 of the Children Act 1989 during the age assessment process. These points are set out on the DfE's statutory guidance *Care of unaccompanied migrant children* and the ACDS' *Age assessment guidance*.
4. Where it is not possible to directly incorporate existing EU regulations that rely on multilateral agreements, such as Dublin III, the Government must endeavour to replicate the agreements and guarantee that negotiations to do so will protect existing children's rights.
5. The Government should consult with local authorities on an individual basis in regards to Section 67 of the Immigration Act.
6. The Government should be flexible in relation to the 20 March 2016 cut-off date, to ensure that the most vulnerable children are able to access this scheme from a range of European countries, as originally intended.
7. The Government should review and amend the Immigration Rules for unaccompanied children so that they are in line with adults who are granted refugee status or humanitarian protection and can bring family members to the UK to join them.
8. The Government should allow European nationals in the UK with permanent residence, or who are able to show five years' residence (including all EEA family members and those with derivative rights), indefinite leave to remain through a simple process that is easy to administer with no application fee, and ensure that all children who have been in the UK are able to apply for settled status in their own right.
9. The Government should introduce a shorter route to permanent status for long-resident children with lower application fees that does not make a profit for the Home Office.
10. The Government should restructure the NRM by creating a network of local authority based, multiagency child protection actors in a Multi-agency Safeguarding Hub.
11. Mechanisms should be put in place by the prosecuting agencies and Government to properly monitor the implementation of the non-punishment principle across the UK. Further training and awareness-raising should be made available for police, prosecutors, judges, legal representatives and practitioners on the protections from prosecution available for trafficked children.

Endnotes

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- 26 The Refugee Council received 12 referrals from detained individuals who claimed to be children but who were being treated as adults. Of these, eight were supported; 3 of them were assessed to be children and 5 are in the care of children's services pending the outcome of their assessment. AA v the Secretary of State for the Home Department [2016] EWHC 1453 (Admin)
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- 29 Refugee Rights Data Project (2017) *Six months on: Filling information and gaps relating to children and young adults in Northern France after the demolition of the Calais camp*
- 30 British Red Cross (2016) *No place for children*
- 31 UNICEF UK (2017) *Family reunification and failing protection study in Dunkirk*
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- 33 Home Office (2017) *Policy statement: Section 67 of the Immigration Act 2016*
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- 47 Finch, N. (2017) *Lighting the way: Steps that lawyers, legal guardians and child trafficking advocates in the UK can take to better identify and protect children who may have been trafficked* ECPAT UK
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About CRAE

The Children's Rights Alliance for England (CRAE) works with 150 organisations and individual members to promote children's rights, making us one of the biggest children's rights coalitions in the world.

We believe that human rights are a powerful tool in making life better for children. We fight for children's rights by listening to what they say, carrying out research to understand what children are going through and using the law to challenge those who violate children's rights. We campaign for the people in power to change things for children. And we empower children and those who care about children to push for the changes that they want to see.

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