



Children's  
Rights Alliance  
for England

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# IMMIGRATION, ASYLUM AND CHILD TRAFFICKING

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STATE OF CHILDREN'S  
RIGHTS IN ENGLAND

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2014

# IMMIGRATION, ASYLUM AND CHILD TRAFFICKING

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 UNCRC 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 UNCRC 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.

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## What does the Convention say?

Asylum-seeking children and child refugees are entitled to special protection and all the other rights in the UN Convention of the Rights of the Child (UNCRC). They must not be the victims of discrimination or stigmatisation. If they arrive unaccompanied by any parents or other family members, they should be well cared for. They should not be deprived of their liberty.<sup>1</sup>

Unaccompanied asylum-seeking children are particularly vulnerable to trafficking, and economic and sexual exploitation. Governments should take every measure to prevent child trafficking, and protect all children from exploitation. They should assist child victims - not penalise them - and help them recover and reintegrate into society.

In 2008, the UN Committee on the Rights of the Child highlighted its concern about a number of areas relating to asylum, immigration, trafficking and the exploitation of children. Among these, it recommended that the UK Government:

- Use detention as a measure of last resort, for the shortest appropriate period of time
- Consider the appointment of guardians to unaccompanied asylum-seeking children
- Give the benefit of the doubt to children in age dispute cases, and seek guidance from experts when determining age
- Ensure that children involved in sexual exploitation and abuse are always considered as victims of crime in need of support, not as offenders
- Ensure child protection standards for trafficked children meet international standards

In 2014, the UN Committee on the Rights of the Child responded to the UK Government's initial report on its implementation of the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography,<sup>2</sup> recommending that the Government:

- Make sure that unaccompanied asylum-seeking children, irregular migrant children and child victims of trafficking receive special protection and care, and that they are provided with safe and adequate accommodation
- Focus on the particular vulnerabilities and needs of child victims through the Modern Slavery Bill and other legislation
- Strengthen the capacity of law-enforcement authorities and judiciary to detect and prosecute trafficking of children for labour, sexual and other forms of exploitation
- Establish a clear non-prosecution principle in the criminal justice system for child victims of offences
- Appoint a competent and statutory guardian to safeguard the best interests of child victims

There are four general principles, which underpin each of the specific rights outlined in the rest of the Convention:

- Article 2 - children should not be discriminated against in the enjoyment of their rights
- Article 3 - the child's best interests should take precedence in every decision and action taken relating to a child
- Article 6 - children have a right to life and develop to their full potential
- Article 12 - children have a right to express their views and have them given due weight

## What progress have we made?

There is no definitive list of indicators which determines whether or not children enjoy their rights. This section presents indicators which have been used to illustrate particular rights issues facing children in England, and is based on a combination of official statistics, published research and additional material gathered through Freedom of Information requests. In addition, it summarises significant laws or policies which affect children's human rights.

Children seeking asylum can arrive alone, with their families, or with other adults. If they arrive in the care of adults, the adult can be the main applicant for asylum or the child can claim in their own right.

<sup>1</sup> UN Committee on the Rights of the Child (2005) General comment no.6 on the treatment of unaccompanied and separated children outside their country of origin.

<sup>2</sup> UN Committee on the Rights of the Child (2014) Concluding observations on the report submitted by the United Kingdom of Great Britain and Northern Ireland under article 12, paragraph 1, of Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. <http://www.equalityhumanrights.com/sites/default/files/uploads/UN%20Convention%20on%20rights%20of%20the%20child.pdf>

## Care for unaccompanied asylum-seeking children

Asylum applications by unaccompanied children make up around five percent of the total number of asylum claims. Unaccompanied asylum-seeking children have a human right to be properly cared for and to be protected against harm. Under the UNCRC, their best interests must always be a primary consideration, and this takes precedence over immigration considerations. The UN High Commissioner for Refugees (UNHCR) has issued guidance on determining the best interests of a child, including unaccompanied children.<sup>3</sup>

In 2005, the UK Government placed a duty on immigration enforcement officials to safeguard and promote the welfare of children under the Borders, Citizenship and Immigration Act 2005,<sup>4</sup> and in 2008 removed its immigration reservation to the UNCRC. All cases involving unaccompanied children should be referred to the Refugee Council's Panel of Advisers, which is contracted to support to child applicants.<sup>5</sup>

The Office of the Children's Commissioner has investigated the initial interview process for asylum-seeking children and found it was being used inappropriately, submitting tired and frightened children who were without support or legal representation to questions that could be used later to assess the validity of the child's asylum claim.<sup>6</sup> In a 2013 review of how asylum applications made by children are handled, the Independent Chief Inspector of Borders and Immigration<sup>7</sup> found that, despite some good practice:

- Staff failed to notify the Refugee Council's Children's Panel within 24 hours of a child claiming asylum
- Decisions were not always based on the best interests of the child
- There was no attempt made to trace the child's family in the majority of cases sampled
- Appropriate adults were not always present at interviews and the information provided on the asylum process was not always clear

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## Age assessment and age disputes

Children claiming asylum may arrive without any identity papers to prove their date of birth or may have been given false documentation which says they are adults. Age assessment is a contentious issue that determines what level of support an asylum-seeking child will receive. Being assessed a child means they will be considered a "child in need" and looked after by local authority children's services. If their age is disputed by immigration officials or the local authority, they can be treated as an adult, lose the additional protections available to children, have their application refused, be detained and removed from the UK.

Accurate age determination is notoriously difficult.<sup>8</sup> It is Home Office policy that applicants without documentation whose age is unconfirmed should be given the benefit of the doubt and treated as children until an age assessment can be done, unless their appearance very strongly suggests they are adults.<sup>9</sup> Nevertheless, in practice a significant proportion of unaccompanied asylum-seeking children are "age disputed" and treated as adults, thereby denying them important protections and access to children's services. This is a denial of their rights under the UNCRC.

For example, in 2010, 26 out of 36 children detained as adults with whom the Refugee Council worked were released after they had been assessed as children. In 2011, 22 out of 38 children detained as adults were released following intervention by the Refugee Council.<sup>10</sup>

3 UNHCR (2008) UNHCR guidelines on determining the best interests of a child. <http://www.unhcr.org/4566b16b2.pdf>

4 Borders, Citizenship and Immigration Act 2005, s.55. <http://www.legislation.gov.uk/ukpga/2009/11/section/55>

5 Home Office (2013) Processing an asylum application for a child. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257469/processingasylumapplication1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257469/processingasylumapplication1.pdf)

6 Matthews, A (2012) Landing in Dover: the immigration process undergone by unaccompanied children in Kent. [http://www.childrenscommissioner.gov.uk/content/publications/content\\_556](http://www.childrenscommissioner.gov.uk/content/publications/content_556)

7 Independent Chief Inspector of Borders and Immigration (2013) An Inspection into the Handling of Asylum Applications Made by Unaccompanied Children, February – June 2013. <http://icinspector.independent.gov.uk/wp-content/uploads/2013/10/An-Inspection-into-the-Handling-of-Asylum-Applications-Made-by-Unaccompanied-Children-FINAL.pdf>

8 Dorling K and others (2013) Happy birthday? Disputing the age of children in the immigration system. [http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday\\_Final.pdf](http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday_Final.pdf)

9 Home Office (2011) Assessing age. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257462/assessing-age.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257462/assessing-age.pdf)

10 Dennis, J (2012) Not a minor offence: unaccompanied children locked up as part of the asylum system. [http://www.refugeecouncil.org.uk/assets/0002/5945/Not\\_a\\_minor\\_offence\\_2012.pdf](http://www.refugeecouncil.org.uk/assets/0002/5945/Not_a_minor_offence_2012.pdf)

UNACCOMPANIED ASYLUM SEEKING CHILDREN <sup>11</sup>	2008	2013
Total number of asylum applications	25,930	23,507
Number of unaccompanied children arriving in the UK	4,285 (16.5% of total applications)	1,174 (5% of total applications)
Number of age assessment completions	-	404
Number of age disputed cases	1,400	324

(In 2012, changes were made to the way in which these statistics were compiled, so the figures are not directly comparable).

The Home Office figures in the table are likely to be an under-estimate since they do not include children who, upon arrival, are simply treated as adults with no age assessment made, or children who approach a local authority without claiming asylum. In response to a Freedom of Information request from Coram Children's Legal Centre, 22 local authorities reported having conducted 697 age assessments over a 21-month period in 2011-12 - so the true annual figure is likely to be nearer 500 age assessments a year.<sup>12</sup>

## Asylum decisions

Each child's best interests must be a primary consideration when the authorities make decisions about his or her asylum claim. In a recent inquiry on unaccompanied children, the Joint Committee on Human Rights found that immigration concerns are too often given priority over the best interests of the child.<sup>13</sup> It recommended that the Government should evaluate the case for setting up a formal Best Interests Determination process.

If the child's asylum claim is refused, they have a right of appeal. If the claim is allowed, they may be given Refugee Status for five years or Humanitarian Protection for five years with review possible at the end of that period. If their application is rejected and there are no adequate reception arrangements in their country of origin, they will be granted "UASC leave", a form of limited leave to remain for 30 months or up to the point when the young person reaches the age of 17½.<sup>14</sup> Children will be "looked after" by the local authority, though those aged 16 or more may be offered more limited support.<sup>15</sup> As children approach 18, the local authority is responsible for working with them to prepare for an uncertain future. Having grown up in the UK, they have to wait, sometimes for months, for a decision to be made about whether or not they can stay. Once their discretionary leave is up, they have no official status. The requirement to report regularly to an immigration office recommences. Their stress levels are high and they are unable to plan for their future.<sup>16</sup>

Although the numbers of unaccompanied asylum-seeking children have fallen, the proportion being granted refugee status has increased, but the proportion of those refused asylum remains the same.

***Each child's best interests must be a primary consideration when the authorities make decisions about his or her asylum claim. In a recent inquiry on unaccompanied children, the Joint Committee on Human Rights found that immigration concerns are too often given priority over the best interests of the child.***

- 11 Home Office (2013) Immigration statistics, Oct to Dec 2013. Asylum tables. <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2013/immigration-statistics-october-to-december-2013>
- 12 Dorling, K (2013) Happy birthday? Disputing the age of children in the immigration system. [http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday\\_Final.pdf](http://www.childrenslegalcentre.com/userfiles/file/HappyBirthday_Final.pdf)
- 13 Joint Committee on Human Rights (2013) Human rights of unaccompanied migrant children and young people in the UK. First report of session 2013-14. <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>
- 14 Home Office (2014) Immigration Rules, Part 11. Asylum. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336950/Immigration\\_Rules\\_-\\_Part\\_11.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336950/Immigration_Rules_-_Part_11.pdf)
- 15 DfE (2014) Care of unaccompanied and trafficked children: statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf)
- 16 Matthews, A (2014) What's going to happen tomorrow? Unaccompanied children refused asylum. [http://www.childrenscommissioner.gov.uk/content/publications/content\\_794](http://www.childrenscommissioner.gov.uk/content/publications/content_794)

	INITIAL ASYLUM DECISIONS ON UNACCOMPANIED CHILDREN AGED 17 AND UNDER <sup>17</sup>		INITIAL ASYLUM DECISIONS ON UNACCOMPANIED CHILDREN WHO HAVE REACHED THE AGE OF 18 <sup>18</sup>	
	2008	2013	2008	2013
Refugee status	285 (10.7%)	238 (28.8%)	50 (7.1%)	50 (26.5%)
Humanitarian Protection	15 (0.6%)	4 (0.5%)	3 (0.4%)	4 (2.1%)
Discretionary leave	1,790 (66.9%)	388 (47.0%)	7 (1.0%)	4 (2.1%)
Family or private life	Data not available	18 (2.2%)	Data not available	2 (1.1%)
Refusals	585 (21.9%)	177 (21.4%)	644 (91.4%)	132 (70.2%)
Total	2,675	825	704	188

## Families with dependent children

The number of children included in asylum applications is increasing, meaning more families with dependent children are seeking asylum in the UK.<sup>19</sup> Under the UNCRC, children have a right to an adequate standard of living that can meet their basic needs; when their family cannot do so, they have a right to help from the government.

*The number of children included in asylum applications is increasing, meaning more families with dependent children are seeking asylum in the UK.*

A 2013 parliamentary inquiry into asylum support heard evidence of how the asylum system in the UK was failing to meet the safeguarding and welfare needs of families with dependent children, leaving some destitute; having to move at little notice; living in poor quality and sometimes unsafe accommodation; disrupting their child's education as they move from school to school; and exposed to hostile public opinion.<sup>20</sup>

Asylum seekers cannot claim mainstream benefits, and in most cases are not allowed to work. Those whose claims are being considered receive accommodation and a weekly cash allowance worth: £72.52 for couples; £43.94 for lone parents over 18; £39.80 for young people aged 16 to 18; and £52.96 for children under 16.<sup>21</sup> Families whose claim has been refused will still receive this support while they have dependent children. Parents who have had children after their claim was determined are not entitled to this support, but may be eligible for accommodation and a prepaid card (no cash) worth £35.39 a week to pay for food, clothing and toiletries. Pregnant women and new mothers get additional credit from eight weeks before the baby is due to six weeks following the child's birth.

*These rates are well below the poverty line in the UK. In some cases, a family needs nearly three times as much as they currently receive on asylum support to be lifted out of poverty.<sup>22</sup>*

17 Home Office (2013) Immigration statistics, Oct to Dec 2013. Asylum tables. <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2013/immigration-statistics-october-to-december-2013>

18 Home Office (2013) Immigration statistics. Op cit.

19 Home Office (August 2014) Immigration statistics. April to June 2014. Table as\_04 <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2014/immigration-statistics-april-to-june-2014#asylum-1>

20 Teather, S and others (2013) Report of the Parliamentary inquiry into asylum support for children and young people. London: The Children's Society. [http://www.childrensociety.org.uk/sites/default/files/tcs/asylum\\_support\\_inquiry\\_report\\_final.pdf](http://www.childrensociety.org.uk/sites/default/files/tcs/asylum_support_inquiry_report_final.pdf)

21 Immigration and Asylum Act 1999, Section 95

22 The Children's Society (2014) From persecution to destitution: section 95 asylum support. [http://www.childrensociety.org.uk/sites/default/files/tcs/asylum\\_support\\_briefing\\_stats\\_july\\_2014\\_finaldraft.pdf](http://www.childrensociety.org.uk/sites/default/files/tcs/asylum_support_briefing_stats_july_2014_finaldraft.pdf)

Clients of Refugee Action report being unable to afford to buy enough healthy food for their children and themselves, or essential items like clothing, shoes, toiletries and non-prescription medicine.<sup>23</sup> Public transport is too expensive to use. In April 2014, in a case brought against the Home Office by Refugee Action, the High Court ruled that the Home Secretary had acted unlawfully when she decided that asylum support levels met the essential living needs of asylum seekers.<sup>24</sup> In August, the Home Office announced that, following an internal review, it would not change the current level of support.<sup>25</sup>

## Immigration detention

In 2010, the government said it would end the detention of children, as recommended by the UN Committee on the Rights of the Child. Although the numbers have fallen, children are still being detained - the majority of them at Tinsley House Immigration Removal Centre or in Cedars pre-departure centre. These detentions should normally last for up to 72 hours but may, in exceptional circumstances and subject to ministerial authority, be extended for up to a total of seven days.

Barnardo's provides family support, social work and welfare services within Cedars pre-departure accommodation, and has recently reported on their experience of working with families there since the centre opened in 2011.<sup>26</sup> In the first two years of operation, approximately 80% of families spent less than 72 hours at Cedars.

IMMIGRATION DETENTION <sup>27 28</sup>	2009	2013
Numbers of children detained	1,120	203
Removed from the UK	Data not comparable	84
Granted leave to remain	-	3
Granted temporary admission	-	119
Age of child		
- Under 5	500	70
- 5 to 11	370	85
- 12 to 16	210	35
- 17	40	13

## Separating children from their family

The UNCRC says that children should never be separated from their parents for the purposes of immigration control. They should only be separated if there is a welfare or safeguarding concern. However, current Home Office guidance allows for the temporary separation of a family as a result of disruptive behaviour where *'it is considered in the best interests of the children to be temporarily separated from their parent(s) in order to safely ensure the family's arrest and return'*.<sup>29</sup> This guidance also allows for families to be separated permanently, where this is considered *'proportionate and legitimate'*.<sup>30</sup>

23 Refugee Action (2014) Briefing on Refugee Action's bring back dignity campaign. [http://www.refugee-action.org.uk/assets/0001/0045/Briefing\\_on\\_support\\_rates\\_legal\\_challenge\\_April\\_2014.pdf](http://www.refugee-action.org.uk/assets/0001/0045/Briefing_on_support_rates_legal_challenge_April_2014.pdf)

24 Refugee Action, R (On the Application Of) v The Secretary of State for the Home Department [2014] EWHC 1033 (Admin) (09 April 2014)

25 Brokenshaw, J (2014) Levels of support to asylum seekers provided by the Home Office. Letter 11 August 2014. [http://www.migrantsrights.org.uk/files/news/Home\\_Office\\_asylum\\_support\\_letter.pdf](http://www.migrantsrights.org.uk/files/news/Home_Office_asylum_support_letter.pdf)

26 Barnardo's (2014) Cedars: two years on. [http://www.barnardos.org.uk/16120\\_cedars\\_report.pdf](http://www.barnardos.org.uk/16120_cedars_report.pdf)

27 Home Office (2010) Control of immigration statistics United Kingdom 2009. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/116016/hosb1510.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116016/hosb1510.pdf)

28 Home Office (2014) Immigration statistics, Oct to Dec 2013. Detention tables. <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2013/immigration-statistics-october-to-december-2013>

29 Home Office (2014) Visa and immigration operational guidance: chapter 45 Families and Children. Section (b) Family returns process operational guidance, p.32. <https://www.gov.uk/government/publications/chapter-45-families-and-children>

30 Home Office (2014) Op cit. Section (c) Operational process outside of the FRP, p.8. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/275019/chapter45outsidefrp.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275019/chapter45outsidefrp.pdf)

Since April 2013, it is no longer possible to get legal aid funding for non-asylum immigration cases, including children's cases.<sup>31</sup> This means that families may not be able to challenge decisions by the Home Office to permanently separate them, even when these decisions are unlawful. Serious concerns have been raised by a number of organisations about the quality of Home Office decision-making in family cases, family separation, and the consequences of the legal aid cuts.<sup>32</sup>

CRAE asked the Home Office for information on the number of requests made by immigration caseworkers to split asylum-seeking families, and how many of these requests were granted. The Home Office replied that it does not hold this data.

## Use of force in immigration detention

All children have a right to be safe from violence. The UN Committee on the Rights of the Child states that restraint or force can only be used on a child when he or she poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted.

In February 2013, the Home Office reinstated its policy that immigration staff must not use force against pregnant women or children, except to prevent harm.<sup>33</sup> Under Freedom of Information law, CRAE asked the Home Office for details of how often force was recorded as being used on children and young people under 18 in immigration detention. Although it was being used in 2008, there are no recorded cases of force being used on children in 2013.

USE OF FORCE ON CHILDREN UNDER 18 IN IMMIGRATION DETENTION	TOTAL NUMBER OF INCIDENTS INVOLVING CHILDREN UNDER 18		NUMBER OF DETAINEES UNDER 18 ON WHOM FORCE WAS USED		NUMBER OF INCIDENTS PER CHILD UNDER 18	
	2008	2013	2008	2013	2008	2013
Immigration removal centres	4	0	3	0	2	0
Short-term holding facilities	0	0	0	0	0	0

The Independent Family Returns Panel has recommended that the Home Office should reconsider its strict limitations on the use of force on children in order to facilitate their removal from the UK.<sup>34</sup> The Home Office has accepted the recommendation of the Independent Family Returns Panel.<sup>35</sup> This would breach the UNCRC.

*Since April 2013, it is no longer possible to get legal aid funding for non-asylum immigration cases, including children's cases. This means that families may not be able to challenge decisions by the Home Office to permanently separate them, even when these decisions are unlawful.*

- 31 Legal Aid, Sentencing and Punishment of Offenders Act 2012. <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>
- 32 Bail for Immigration Detainees (2013) Fractured childhoods: the separation of families by immigration detention. <http://www.biduk.org/162/bid-research-reports/bid-research-reports.html>
- Bail for Immigration Detainees (2014) BID response to Justice Select Committee Inquiry: impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. <http://www.biduk.org/942/news/bid-responds-to-justice-committee-inquiry-on-legal-aid-cuts.html>
- Barnardo's (2014) Cedars: two years on. [http://www.barnardos.org.uk/16120\\_cedars\\_report.pdf](http://www.barnardos.org.uk/16120_cedars_report.pdf)
- UNHCR (2013) Considering the best interests of a child within a family seeking asylum. [http://www.unhcr.org.uk/fileadmin/user\\_upload/docs/UNHCR-Best\\_Interest-screen.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/docs/UNHCR-Best_Interest-screen.pdf)
- 33 Home Office (2013) Enforcement instructions and guidance, chapter 45: families and children, para.13.1 and 13.2. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/335007/Ch45\\_a\\_v3\\_Ext\\_20140716.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335007/Ch45_a_v3_Ext_20140716.pdf)
- 34 Independent Family Returns Panel (2013) Annual report, 2012-2014, Recommendation 4. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/360431/Independent\\_Family\\_Returns\\_report\\_2012\\_to\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360431/Independent_Family_Returns_report_2012_to_2014.pdf)
- 35 Home Office (2014) The Home Office response to the Independent Family Returns Panel report 2012 to 2014. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/360432/Home\\_Office\\_response\\_-\\_report\\_2012\\_to\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360432/Home_Office_response_-_report_2012_to_2014.pdf)



## Undocumented migrant children

There are around 120,000 undocumented children in the UK,<sup>36</sup> who do not have leave to enter or remain in the UK. Their parents may have an irregular immigration status; they may have arrived alone and never applied for asylum; they may be privately fostered; they may be lost in the backlog of immigration case files; or they may be trafficked children. Many young people who arrived as children and claimed asylum may find themselves “unlawfully in the UK” after their leave to remain is not extended. Often their applications have not been properly considered due to poor quality legal representation, poor quality Home Office decision-making, a lack of adherence to guidance by Home Office decision-makers, and a “culture of disbelief” within the Home Office. Following the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the vast majority of children cannot access legal aid for immigration claims.

These children have the same rights under the UNCRC as all children do in the UK, including a right to housing (Article 27), a right to education (Article 28), and a right to health care (Article 24). In practice, however, they and their families find it hard to find a safe and secure place to live, access further education, get hospital treatment, or register with a GP.<sup>37</sup> Under the Immigration Act 2014, private landlords must check the immigration status of new tenants, and may not rent property to adults who require leave to enter or remain in the UK. Health providers may charge migrants for their health care.<sup>38</sup>

## Child trafficking

Children can be trafficked to the UK from other countries, or from within the UK to other parts of the country. In accordance with the Council of Europe Convention on Action against Trafficking in Human Beings, the UK has set up a National Referral Mechanism (NRM) to identify victims of trafficking and ensure they receive the appropriate care.<sup>39</sup> In 2013, 362 children were referred to the National Referral Mechanism.<sup>40</sup> The nature of trafficking means that the statistics are unreliable, and it is likely that there are many more trafficked children who are not known to the authorities. The Home Office is currently reviewing the National Review Mechanism to establish whether it is fit for purpose - specifically whether it is able to support and identify victims of trafficking.<sup>41</sup>

Most children are trafficked for financial and/or personal gain. Some have been abducted, some bound through family debt, some groomed by their exploiters. These exploiters control them through violence, make threats against their families, confiscate personal items including anything that can identify them, keep them socially isolated, and deprive them of money.<sup>42</sup> Children are exploited in a number of ways, including underage forced marriage and benefit fraud. “Labour” can refer to working in sweatshops or cannabis farms, or being coerced into begging or selling drugs for the adults who control them.

TYPE OF CHILD EXPLOITATION IN 2013 <sup>43</sup>	FEMALE	MALE	TOTAL
Labour	33	90	123
Domestic servitude	37	8	45
Sexual exploitation (non-UK national)	78	10	88
Sexual exploitation (UK national)	50	6	56
Unknown	69	69	138

36 Sigona, N and Hughes, V (2012) No way in, no way out: irregular migrant children and families in the UK. Oxford: COMPAS, University of Oxford [http://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/NO\\_WAY\\_OUT\\_NO\\_WAY\\_IN\\_FINAL.pdf](http://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/NO_WAY_OUT_NO_WAY_IN_FINAL.pdf)

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In July 2014, the Home Office launched a public awareness campaign to help free the UK from modern slavery, including child victims who have been trafficked and are being exploited.<sup>44</sup> The Modern Slavery Bill,<sup>45</sup> currently being debated in Parliament, introduces new offences for slavery, servitude, and forced or compulsory labour; and for human trafficking. However, it does not include a separate offence of child exploitation. Nor does it satisfy the recommendation from the UN Committee on the Rights of the Child that there be a clear non-prosecution principle in the criminal justice system for child victims of trafficking and exploitation offences. Similarly, Article 26 of the Council of Europe Convention on Action Against Trafficking in Human Beings, recommends that States *'provide for the possibility of not imposing penalties on victims'* who have been compelled to be involved in unlawful activities.<sup>46</sup>

Trafficked children have been deprived of almost every right: the right to an identity, to health, to education, to be safe, to be free - and are unlikely to be aware that they even have rights. When identified, they need to be supported through child protection services. This support is often compromised by their uncertain immigration status.<sup>47</sup>

One clear recommendation from the UN Committee on the Rights of the Child is for governments to provide independent legal guardians for unaccompanied and separated children, including those who have been trafficked. A successful guardianship scheme has been piloted in Scotland.<sup>48</sup> Instead, the Home Office is trialling a child advocacy service across 23 local authority areas to help child victims of trafficking negotiate their way through the children's services, criminal justice and immigration systems.<sup>49 50</sup> If the trial proves successful, the Modern Slavery Bill has an enabling power that could lead to the national roll-out of the child advocacy service.

## Recommendations

- A child or young person's age must only be assessed via a specialist, multi-agency, holistic approach, involving paediatricians, social workers, teachers, advocates and other support workers
- A durable status should be provided for all unaccompanied and separated children
- All unaccompanied and separated asylum seeking and migrant children should be allocated a legal guardian, who is independent of the Home Office and the local authority, to make decisions with the child, that are in their best interests
- Children should never be separated from their parents for the purposes of immigration control
- Statistics should be published on the numbers of children separated from parents for the purposes of immigration control by detention, removal and deportation
- Unaccompanied and separated children in asylum and all other judicial or administrative proceedings should have free legal representation
- A consistent and comprehensive multi-agency approach to assessing the best interests of separated children should inform a child's immigration decision and all other decisions throughout the process
- Children should no longer be detained for immigration purposes
- The level of asylum support should be raised
- A new child exploitation offence should be introduced
- The National Referral Mechanism should be reformed

44 Modern slavery campaign site. <https://modernslavery.co.uk/index.html>

45 Modern Slavery Bill. <http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0096/15096.pdf>

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CRAE believes that human rights are a powerful tool in making life better for children. We're one charity working with over 100 organisational and individual members to promote children's rights, making us one of the biggest children's rights coalitions in the world. Our vision is a country that values and upholds every child's human rights.

We fight for children's rights by listening to what children 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.

**CRAE has produced an annual State of Children's Rights in England report since 2003. This report is one chapter from the full report State of Children's Rights in England 2014.**

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