

A photograph of a person's profile, looking out of a window. The person is in the foreground, slightly out of focus, looking towards a brick building in the background. The window frame is visible, and the background is slightly blurred.

Child-sensitive return

Upholding the best interests of refugee and migrant children in return and reintegration decisions and processes in the UK

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unicef 

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LIST OF ACRONYMS

ARE	Appeal Rights Exhausted
AVR	Assisted Voluntary Return
BIA	Best Interests Assessment
BID	Best Interests Determination
BID	Bail for Immigration Detainees (NGO)
CFAC	Children and Families Across Borders
CRC	UN Convention on the Rights of the Child
CTAC	Child Trafficking Advice Centre
CPIN	Country Policy and Information Note
DfE	Department for Education
DfID	Department for International Development
DL	Discretionary Leave
ECHR	European Convention on Human Rights
ECF	Exceptional Case Funding
ECRE	European Council on Refugees and Exiles
ERIN	European Reintegration Network
FEM	Family Engagement Manager
FNO	Foreign National Offender
FRC	Family Removals Conference
HMIP	Her Majesty's Inspectorate of Prisons
HP	Humanitarian Protection
ICIBI	Independent Chief Inspector of Borders and Immigration
IFRC	Independent Family Returns Panel
ILPA	Immigration Law Practitioners' Association
IOM	International Organization for Migration
IRC	Immigration Removal Centre
IRO	Independent Reviewing Officer
JCHR	Joint Committee on Human Rights
JCWI	Joint Council for the Welfare of Immigrants
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act
MEASURE	Mediterranean Sustainable Reintegration Project
MiCLU	Migrant and Refugee Children's Legal Unit
NRPF	No Recourse to Public Funds
OCC	Office of the Children's Champion
PDA	Pre Departure Accommodation
RSN	Refugee Support Network
SCI RDs	Self check-in removal directions
UASC	Unaccompanied Asylum Seeking Child
UKVI	United Kingdom Visas and Immigration
UNHCR	United Nations Refugee Agency
UNICEF	United Nations Children's Fund

DEFINITION OF KEY TERMS

Best interests

Best Interests principle – In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.¹

Best Interests Assessment (BIA) – an ongoing assessment to enable a child’s best interests to be taken into account in decision-making by any professional involved with the child.

Best Interests Determination (BID) – a multi-agency process undertaken within a child protection framework, which collects in-depth information about the child and takes into account the views of all those working with the child (including immigration officials) as well as the child him or herself. It identifies the most suitable durable solution for that child in a timely manner.

Definition of a child & categories of migrant/asylum seeking children

Child – every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.²

Accompanied child – one who is being cared for either by parents or by someone who, by law or custom, is responsible for doing so.³

Separated child – child who has been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.⁴

Unaccompanied child – child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.⁵

Different types of leave granted to asylum seekers

Discretionary Leave – may be granted to unaccompanied asylum seeking children who do not meet the requirements for UASC leave. Normally, it is granted in circumstances relating to human trafficking, leave on medical grounds, cases where return would breach someone’s human rights, and other exceptional circumstances. There is discretion to grant it for non-standard periods which may be shorter or longer than 30 months: e.g. DL for a victim of trafficking is often granted for a year to allow the criminal case to proceed.

Humanitarian protection – to provide international protection where it is needed, to individuals who do not qualify for protection under the Refugee Convention. It covers situations where someone

¹ [UN Convention on the Rights of the Child](#), 20 November 1989, Art. 3

² [UN Convention on the Rights of the Child](#), 20 November 1989, Art. 1

³ Home Office (Oct 2017) [Children’s asylum claims](#), p.9

⁴ UN Committee on the Rights of the Child (2005) [Treatment of unaccompanied and separated children outside their country of origin](#), General Comment No. 6

⁵ Ibid

may be at risk of serious harm if they return to their country of origin but they are not recognised as refugees because the risk is not of persecution for a reason covered by the Refugee Convention.

Private and family life – from Article 8 of the European Convention on Human Rights). Under the UK Immigration Rules, children under 18 are entitled to a grant of leave to remain in the UK if they have lived continuously in the UK for at least seven years and it would not be reasonable to expect them to leave the UK. If they are between 18 and 25 years old, they are entitled to a grant of leave to remain if they have spent at least half their life continuously in the UK.⁶

Refugee status – awarded to someone the Home Office recognises as a refugee as described in the Refugee Convention. A person given refugee status is normally granted leave to remain in the UK for 5 years, and at the end of that period can apply for Indefinite Leave to Remain.

UASC (Unaccompanied Asylum Seeking Child) leave – a form of limited leave granted to a child who is under the age of 17½ and who has applied for asylum but been refused refugee status or humanitarian protection if there are no adequate reception arrangements in the country to which they would be returned. It is granted for a period of 30 months or until the child turns 17½ years old, whichever is shorter.

Returns

Assisted voluntary return – leaving voluntarily with some assistance.

Deportation – return of foreign national offenders who have committed a criminal offence.

Enforced return – required return or ensured return. There is a 28 day restriction on the removal of children and their parent which starts on the day they become Appeal Rights Exhausted (ARE).

Ensured return – this stage follows a family's refusal to return voluntarily, and comprises escorted check-in without further notice (within 10 calendar days without prior notice); escorted check-in with full further notice (72 hours' notice of the removal); escorted check-in with limited notice (setting out that departure will take place within a specified period); return through open accommodation by removing families from their community and placing them in residential accommodation for up to 28 days without any cash support to encourage their compliance with removal directions; or return through pre-departure accommodation for families who have refused to comply with other return options and are placed in secure accommodation for up to 7 days prior to removal. Unlike required returns (see below) escorted check-in means that families are subject to arrest and forcible removal.

Pre-departure accommodation – if families fail to co-operate with other options to leave the UK, they could be required to stay in a secure facility as a last resort.

Required return – the family is offered the opportunity to take 'self check-in removal directions' (SCI RDs), meaning they can still be in charge of their own departure and avoid arrest.

⁶ https://www.echr.coe.int/Documents/Convention_ENG.pdf

Immigration Rule 326B provides that the Secretary of State must take into account Article 8 ECHR right to private and family life when making decisions in respect of the grant of asylum or humanitarian protection





Executive summary

The scope and purpose of this study

There is a growing focus among organisations working on children’s rights, including UNICEF, on the process surrounding the returns of migrant children to their countries of origin. This includes issues such as who returns, how return decisions are taken, the conditions of return of children, and how or whether States assess and monitor a child’s safety after return. To date, there are no harmonised standards on Best Interests Determination nor on return procedures specific to children (including unaccompanied children) among European countries and very limited guarantees on the child rights situation in countries of origin.

UNICEF’s Geneva office, and four European UNICEF National Committees in Germany, the Netherlands, Sweden and the UK therefore have undertaken a comparative research review on the return of asylum-seeking/migrant children – including both unaccompanied and accompanied children, and voluntary and enforced returns. This study – conducted by UNICEF UK – explores the UK’s approach, policies and practices relating to children who do not have a legal right to remain in the UK. The research involved a desk review of relevant UK laws and regulations, key literature and studies on returns; an analysis of public Home Office data; and interviews with key informants.

Key findings

The research identified a pattern of falling numbers of both enforced and voluntary returns from the UK in recent years. A number of examples of both good practice and challenges which emerged from the study are detailed in the two boxes below.

Good practices

Unaccompanied children:

- There is a legal obligation on UK local authorities to provide for unaccompanied asylum seeking children (UASC) in the same way as for any other child in their care.
- The UK does not detain unaccompanied asylum seeking children (except in some age disputes).
- The UK does not currently undertake enforced returns of under-18 year-olds. If an unaccompanied child is not granted refugee status, Humanitarian Protection or the right to remain under Article 8 ECHR (private and family life), they will be granted a form of limited leave if there are no “adequate reception arrangements” in the country to which they would be returned.
- Legal aid is available for asylum cases and, having taken immigration cases out of scope of legal aid in 2013, the government has announced that it will bring immigration matters for unaccompanied and separated children back into scope of legal aid.
- There is a Guardianship Scheme for all UASC in Scotland and Northern Ireland, which makes a positive difference to the support and care that children receive.
- As part of its safeguarding strategy for UASC, the Department for Education (DfE) in England is developing good practice resources on triple planning for social workers – for the young person’s life in the UK pending a decision, for remaining long-term in the UK if some status is granted, or for return.

Accompanied children:

- The UK’s family returns process, which emphasises voluntary return, has led to significant improvements for children in families. The family returns process has resulted in a dramatic reduction in the use of immigration detention of children, and an increase in the relative numbers of voluntary returns.
- The Independent Family Returns Panel – which provides independent case-by-case advice to the Home Office on enforced family returns – plays an important role in promoting children’s best interests in the ensured returns process and in holding the Home Office to account on its duties and responsibilities towards children and families.
- A child with at least 7 years residence in the UK will be granted leave to remain if it would be unreasonable to return him/her.

All migrant/asylum seeking children:

- The Office of the Children’s Champion (OCC) was set up in the Home Office as part of the government’s child safeguarding duty, to provide internal advice or comment on the welfare aspects in individual cases which are referred to it and to provide internal advice on the child safeguarding elements of broader policy.
- There is a dedicated Voluntary Returns Service. Those opting for Assisted Voluntary Return (AVR) can receive assistance with the practicalities associated with returns, as well as some financial assistance.

Challenges

Unaccompanied children:

- UASC (Unaccompanied Asylum Seeking Child) leave is granted for a period of 30 months or until the child turns 17½ years old, whichever is shorter. Whilst this means that UASC are not returned, they are left in limbo at a time when they are trying to enter into adult life. They are removable the day after they turn 18, with no transition period.
- Once UASC turn 18 they face destitution and disappearance as the norm, more often than return.
- There is no guardianship scheme for UASC in England and Wales.
- There are reports of local authorities returning European children who may be victims of trafficking, without assessing their situation or investigating adults they are travelling with who may be a risk to them.

Accompanied children:

- Children in families are often treated in practice as an “add-on” to their parent(s)’ asylum or immigration case, and frequently standard reasons are given for refusals (such as keeping the child with the family) which do not properly assess their best interests nor examine the particular circumstances of the child.
- The UK now has relatively minimal use of immigration detention for children in families, but it is still damaging for those children who experience family arrest and detention, and there is no evidence that it impacts returns numbers.
- Family separations have resulted from parent(s) being detained, returned or deported, including some cases of children being taken into local authority care. The UK policy on family separations is protective of children’s rights, but there are reports of a concerning gap between policy and practice.
- There is a lack of post-returns monitoring and follow-up for children and families – for voluntary or enforced returns.
- Despite the complexity of UK immigration law, accompanied children are not eligible for state-funded legal aid for immigration cases. Some limited legal aid is available via the Exceptional Case Funding scheme, but has to be applied for and can itself be subject to refusal. This poses a major problem for children in families – and results in less efficiency, and ultimately in greater costs to the system including last-minute challenges.

All migrant/asylum seeking children:

- The UK has no formal Best Interests Determination (BID) process. During immigration and asylum application processes, the lack of a formal BID process results in insufficient attention to best interests in decision-making, in a lack of adequate evidence about the child being put before Home Office decision-makers, and in lengthy, distressing and costly appeals. There is a gap between the case law and Home Office policy and practice.
- Asylum and immigration processes are very lengthy and often subject to delay, especially when appeals are necessary.

Recommendations

On the basis of these findings, UNICEF UK proposes the following recommendations.

Best Interests

The UK government should:

- Develop a strengthened Best Interests Assessment and Determination process, undertaken systematically, objectively and in coordination with other government bodies responsible for child protection, that ensures that all of the necessary information about the child's best interests is available to the decision-maker, so that the child's best interests is a primary consideration for the asylum or immigration determination and can inform a durable solution for each child. **(Home Office)**
- Require Home Office caseworkers and decision-makers to provide fully reasoned section 55 decisions (in UASC and family cases) – setting out what they have done to fully consider information about the child's best interests, and including information about what would happen to the child on return. **(Home Office)**
- Extend in-depth training on best interests to all Home Office staff who make decisions about children's asylum and immigration cases – including for children in families, and including Immigration Directorate staff. **(Home Office)**

Support for unaccompanied asylum seeking children:

The UK Government should:

- Strengthen procedures to ensure that all relevant durable solutions are considered for unaccompanied and separated children – long-term settlement and integration in the UK (with the most appropriate form of leave considered on a case-by-case basis), relocation to a third country (whether via family reunion or resettlement) or return to their country of origin. This should include supporting local authorities to plan with a child for the longer-term regardless of the outcome of the immigration decision in order to make sure the child's rights are protected. **(Home Office and Department for Education in England, and Governments of Scotland, Wales and Northern Ireland)**
- Introduce independent guardians for all UASC in England and Wales, recognising their importance to an effective Best Interests process and the vital support they provide to unaccompanied children facing the possibility of return. **(Home Office)**

Access to legal aid

The UK Government should:

- Make immigration cases that involve potential returns of all children, including children in families, eligible for legal aid. **(Ministry of Justice)**

Detention

The UK Government should:

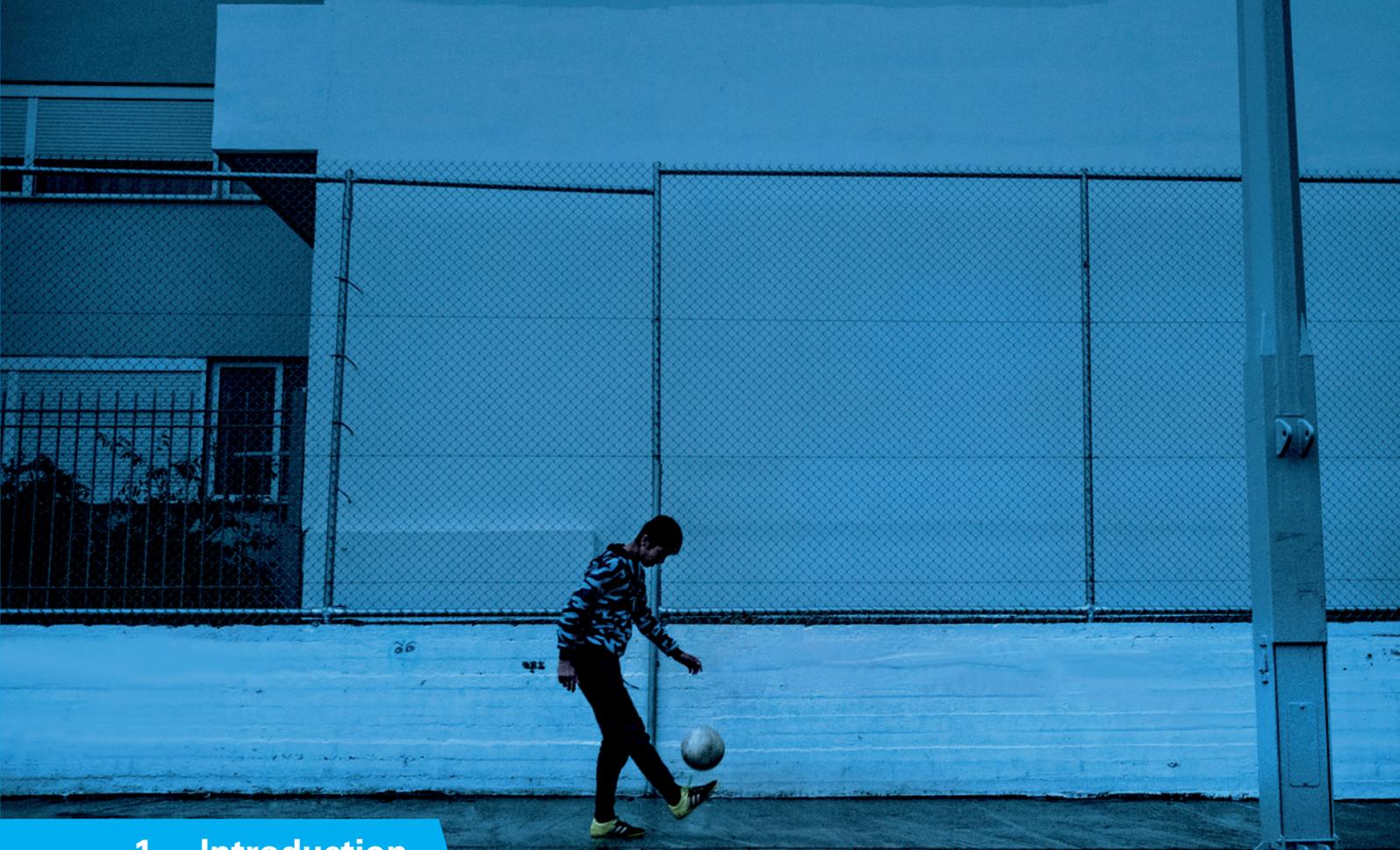
- Review its use of the immigration detention of children based on civil society consultation and full consideration of alternatives. **(Home Office)**
- Ensure that Best Interests Assessments are carried out and referrals to the OCC are made in all cases that could result in children being separated from their parent(s) by immigration detention and/or returns/deportations. **(Home Office)**

Returns support and reintegration

The UK Government should:

- Ensure that the UK's approach to reintegration, based on research by Home Office and DfID, recognises the particular needs of children, and delivers reintegration and post returns monitoring in line with the Best Interests of the Child. **(Home Office)**

**PART I:
INTRODUCTION
& BACKGROUND**



1 Introduction

1.1 Background

UNICEF's Geneva office, and four European UNICEF National Committees in Germany, the Netherlands, Sweden and the UK have undertaken a research review on the return of asylum-seeking/migrant children. UNICEF aims to assess how returns decisions are taken, to what extent child-specific protection and assistance is made available to children in return determination processes and return conditions; how different States consider and determine each child's best interests when making decisions about returns and when returning a child/family; and how/whether different States assess and monitor each child's safety after return.

1.2 Scope

The Home Office seeks to return people who do not have a legal right to stay in the UK. This is overseen by Immigration Enforcement which works to encourage and enforce the return of migrants with no legal status who have exhausted their appeal rights from the UK.

This study explores the UK's approach, policies and practices relating to children who do not have a legal right to remain in the UK. It covers the situation of both unaccompanied and accompanied children. It explores issues related to both voluntary returns and enforced returns. Because the UK does not currently enforce returns of unaccompanied children, the study also explores some issues relating to the situation of unaccompanied children who have turned 18 years old.



2 Methodological approach

The first stage of this research involved a desk review of the relevant UK laws and regulations, by the law firm DLA Piper. Unicef UK then employed two consultants – Lisa Payne and Melanie Teff – to carry out further desk research and interviews with key informants. The further desk research covered public Home Office data and key literature and studies on returns.

Government departments with responsibilities connected to returns as well as other migration-related issues discussed in this report include:

Home Office:

- Asylum and immigration law, policy and operational management is the responsibility of the UK Government. The Home Office is responsible for UK border control, immigration and citizenship (which includes asylum and immigration policies and procedures), as well as public safety (which includes UK modern slavery/human trafficking). Policies are set by the Borders, Immigration and Citizenship Strategy Group, and these are delivered via the Border Force (responsible for securing the UK border by carrying out immigration and customs controls for people and goods at 138 ports and airports across the UK and overseas); UK Visas and Immigration (UKVI) (responsible for considering applications to come to or remain in the UK through asylum applications, visa applications, extension of stay applications, settlement applications, citizenship applications, EU settlement registration, and resettlement programmes); Immigration Enforcement (through the use of detention, voluntary and enforced returns, and deportation); HM Passport Office; the International and Immigration Policy Group; and the Office of the Immigration Services Commission (OISC).
 - The Office of the Immigration Services Commissioner (OISC) is an Executive Non-Departmental Public Body which regulates immigration advisers, ensuring they are fit and competent and act in the best interest of their clients.

- The Migration Advisory Committee (MAC) is an independent, non-statutory, non-time limited, Non-Departmental Public Body that advises the government on migration issues.
- The Independent Chief Inspector of Borders and Immigration (ICIBI) monitors and reports on the efficiency and effectiveness of the immigration, asylum, nationality and customs functions carried out by the Home Secretary and by officials and others on his behalf.
- The Independent Family Returns Panel (IFRP) provides independent advice to the Home Office on how best to safeguard children’s welfare during a family’s enforced return.
- The National Crime Agency (NCA) leads and coordinates the government’s response to organised crime, including modern slavery.
- The Independent Anti-Slavery Commissioner (IASC) is an independent monitoring body of the Home Office, and has a UK-wide remit to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences and the identification of victims.

Ministry of Justice:

- Legal aid law and policy is a devolved responsibility. In England and Wales, it is the responsibility of the Ministry of Justice (MoJ), with legal aid contracts made through the Legal Aid Agency (LAA) which is an Executive Non-Departmental Public Body of the MoJ. In Northern Ireland, legal aid law and policy is the responsibility of the Department of Justice (DOJ), with the Legal Services Agency Northern Ireland (LSANI) responsible for administering legal aid. LSANI is an executive agency within the DOJ. In Scotland, legal aid is the responsibility of the Justice Directorate, with the independent Scottish Legal Aid Board (SLAB) managing the legal aid system in Scotland.
- The MoJ is responsible for the courts system including the Immigration and Asylum Tribunals. The First-tier Tribunal (Immigration and Asylum) is one of seven chambers of the First-tier Tribunal which settles legal disputes and is structured around particular areas of law. It is responsible for handling appeals against some decisions made by the Home Office relating to:
 - Permission to stay in the UK
 - Deportation from the UK
 - Entry clearance to the UK
- The Upper Tribunal (Immigration and Asylum Chamber) is one of four chambers of the Upper Tribunal which settles legal disputes and is structured around particular areas of law. It is responsible for handling appeals against decisions made by the First-tier Tribunal (Immigration and Asylum) relating to visa applications, asylum applications and the right to enter or stay in the UK; and for handling applications for judicial review of certain decisions made by the Home Office, normally relating to immigration, asylum and human rights claims.
- The MoJ funds Her Majesty’s Inspectorate of Prisons for England and Wales (HMI Prisons), which is an independent inspectorate reporting on conditions for and treatment of those in immigration detention facilities.

Children’s social care:

- Unaccompanied asylum seeking children become ‘looked after children’ in the UK, and the delivery of their care is the responsibility of local authorities in England, Scotland and Wales, and health and social care trusts in Northern Ireland. Children’s social care law and policy

is a devolved responsibility. In England, it is overseen by the Department for Education (DfE) through a Department for Children in Care and Permanence. In Northern Ireland, it is overseen by the Department of Health. In Scotland, it is overseen by the Children and Families Directorate. In Wales, it is overseen by the Health and Social Services Department.

Annex 3 provides a diagram of the UK's immigration system.

Interviews were conducted with:

- Government:
 - Home Office Children's Asylum Policy Unit
 - Home Office Projects and Partnership Development Team - Strategy and Planning
 - Directorate, Immigration Enforcement
 - Home Office Voluntary Returns Service

- Independent inspectorates, monitors and panels:
 - Her Majesty's Inspectorate of Prisons (HMIP)
 - Independent Chief Inspector of Borders and Immigration (ICIBI)
 - Independent Family Returns Panel (IFRP)
 - Independent Monitoring Board for Tinsley House

- Local authority:
 - Association of Directors of Social Services (ADCS) Asylum Task Force
 - NRPF (No Recourse to Public Funds) Network
 - Social worker, former British Association of Social Workers

- Civil society and lawyers:
 - Bhatt Murphy Solicitors
 - BID (Bail for Immigration Detainees)
 - Coram Children's Legal Centre
 - CTAC (Child Trafficking Advice Centre)
 - Duncan Lewis Solicitors
 - Govan Community Project
 - ILPA (Immigration Law Practitioners' Association)
 - JCWI (Joint Council for the Welfare of Immigrants)
 - JustRight Scotland
 - MiCLU (Migrant and Refugee Children's Legal Unit)
 - Northern Ireland Independent Guardians Service/Barnardo's
 - Project 17
 - Refugee Council
 - Refugee Support Network (RSN)
 - Scottish Refugee Council
 - Shpresa
 - The Children's Society

- UN Agencies:
 - International Organization for Migration (IOM)
 - UN Refugee Agency (UNHCR)

PART II: DATA & FINDINGS



3 Data on returns of children from the UK

3.1 Data on returns of unaccompanied children

Currently, UK Government practice is not to return unaccompanied under-18 year-olds, except in exceptional circumstances.

A child who is under the age of 17½ and who has applied for asylum but been refused refugee status or humanitarian protection will be granted a form of limited leave if there are no 'adequate reception arrangements' in the country to which they would be returned. This is called UASC (Unaccompanied Asylum Seeking Child) leave, and is granted for a period of 30 months or until the child turns 17½ years old, whichever is shorter.

Official statistics – both immigration and children's social care – focus on unaccompanied asylum seeking children (UASC) specifically. Since there is almost no return of under-18 year-olds, these figures provide the only proxy measure of the numbers of unaccompanied migrant children who may be required to return to their countries of origin/nationality. The proxy indicators are the number of children granted UASC (or temporary) leave, Discretionary Leave, and those whose applications for asylum are refused.¹ See Table 1 in Annex 1 for these numbers.

¹ Refusals include those who the Home Office believes are from countries where it is safe to return children to their families, as well as applicants who were determined to be over 18 following an age assessment

UASC given some form of right/permission to remain has increased since 2015. However, a significant number may still be subject to return when they become adults. In 2018 there were 1,327 initial decisions in applications by UASC. 61.5% of them were granted refugee status, Humanitarian Protection or private/family life leave; 14.3% of them were refused; and 24% of them were granted temporary leave in the form of either UASC leave or the 0.1% granted Discretionary Leave. The numbers refused increase significantly if the young person has reached age 18 before an initial decision has been made. In 2018, 59.6% of initial decisions in applications by UASC who had turned 18 were refused.

Decisions made in relation to children arriving from specific countries fluctuate as the country situation changes. For example, between 2016 and 2017, Home Office country guidance to Eritrea was changed to clarify protection and persecution issues related to compulsory national service, leading to a large increase in the numbers of Eritrean children granted refugee status, mirrored by a significant reduction in grants of UASC leave or refusals. From 2015 to date, the highest levels of UASC leave/refusals have been given to UASC from Afghanistan, Albania, Egypt, Iran and Iraq. See Table 2 in Annex 1 for numbers of UASC leave and asylum refusal statistics and as a percentage of all UASC initial decisions by country of nationality, 2015-2018.

Foreign National Offenders (FNOs) – imprisoned because of committing a criminal offence – who are under 18 may be deported following a recommendation made by the sentencing judge and referral to Immigration Enforcement from custodial staff, though the majority are not deported until they are adults.²

Dublin arrival (take charge) and return (take back) statistics are published annually. Of the 209 returns under Dublin in 2018, fewer than five were under 18.

3.2 Data on returns of accompanied children

In 2018 there were 28 enforced returns of under-18-year-olds. Given the practice of not returning unaccompanied under-18s, these were likely to all be accompanied children. The total number of enforced returns of all ages to all countries in 2018 was 9,474. This is a reduction from 2017 when there were 40 enforced returns of under-18-year-olds, and the total number of enforced returns of all ages to all countries in 2017 was 12,049.

In 2018 there were 1,267 voluntary returns for under-18-year-olds. These were likely to be all, or almost all, accompanied children. The total number of voluntary returns of all ages to all countries in 2018 was 14,415. This is a reduction from 2017 when there were 1,738 voluntary returns of under-18-year-olds, and the total number of voluntary returns of all ages to all countries in 2017 was 20,502. See Tables 3 and 4 in Annex 1 for adults and dependents, and family, statistics by age, sex and country of nationality, and by type of return for 2015-2018.

There are two sets of relevant statistics: Table 4 in Annex 1 lists return statistics which record the age under 18, sex and country of nationality of each individual returned, and the type of return (enforced or voluntary). There are separate figures for family returns (Table 5 in Annex 1).

² Home Office (Jan 2016) [Criminal casework: managing foreign national offenders under 18 years old](#).



The total number of enforced returns has decreased year on year by a total of 30.8% between 2015 and 2018. The total number of voluntary returns has also decreased year on year by 51% between 2015 and 2018.³

³ Home Office (2019) [Immigration statistics, year ending December 2018](#). Table rt_03



4 Main findings

Each section of the following findings begins with information that applies to all migrant/asylum seeking children, and then divides into separate sub-sections for unaccompanied children and for accompanied children, because in the UK the processes for these two groups are different.

4.1 Implementation of the Best Interests Principle

“The Home Office says all their staff have had safeguarding training, and suggests that this is enough for them to fully understand children’s best interests. The Home Office should recognise that they are not the experts on this, and no-one would expect them to be. They should recognise where expertise does lie and have better coordination with them and rely on their expertise.”

– Independent Chief Inspector of Borders and Immigration

4.1.1 Definition of the Best Interests Principle

The Best Interests Principle is set out in Article 3 of the UN Convention on the Rights of the Child (CRC), which states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.⁴

⁴ [UN Convention on the Rights of the Child](#), 20 November 1989, Art. 3

4.1.2 Best Interests in UK law and policy

Best Interests in UK law

The UK ratified the CRC in 1990, but with a reservation on its application to children subject to immigration control. In 2008 the UK removed this reservation, and included a key provision in its Borders Citizenship and Immigration Act 2009. Section 55 of this Act (referred to in this paper as the section 55 duty) requires the Secretary of State to make arrangements for ensuring that any function relating to immigration, asylum or nationality must be discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.⁵ The UK government did not transpose the CRC in its full form into domestic law. But it has stated that: *'The principle of the best interests of the child is enshrined in legislation, policy and practice across the UK.'*⁶ However, it is important to note that the UN Committee on the Rights of the Child does not agree with this assertion. In its responses to UK periodic reports on the implementation of the CRC, the Committee has commented consistently that *'the rights of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters'*, and has called on the UK government to *'ensure that this right is appropriately integrated and . . . applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children'*; as well as to *'develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration'*.⁷

However, the UK courts have concluded that the section 55 duty discharges an international law obligation of the UK Government since it delivers the substance of the Article 3 CRC best interests principle in the context of immigration. In 2014 in the case of *JO and Others (section 55 duty) Nigeria* it was held that: *'There are two guiding principles, each rooted in the duty. The first is that the decision maker must be properly informed. The second is that, thus equipped, the decision maker must conduct a careful examination of all relevant information and factors. . . . These provisions . . . envisage a process of deliberation, assessment and final decision of some depth.'*⁸ In 2013, the Supreme Court stated that, *'[a]lthough the best interests of the child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant.'*⁹

Best Interests in UK policy

Statutory Home Office guidance makes it clear that the section 55 duty applies to all UKVI and Immigration Enforcement staff, and so to all cases where children apply for asylum, through to the decisions made and processes used to return unaccompanied children or families with children. This requires that UK Visas and Immigration (UKVI) and UK Immigration Enforcement – which are the divisions of the Home Office that have authority over the return process – must act in accordance with Articles 3 (best interests) and 12 (right of the child to be heard) of the UN Convention on the Rights of the Child. This means that the best interests of the child is required

⁵ [UK Borders Citizenship and Immigration Act 2009](#)

⁶ UN Committee on the Rights of the Child (2015) [UK government submission to the Committee on the Rights of the Child](#), para. 51

⁷ UN Committee on the Rights of the Child (2016) [Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), paras.26-27.

⁸ [Upper Tribunal \(Immigration and Asylum Chamber\) JO and Others \(section 55 duty\) Nigeria \[2014\] UKUT 00517 \(IAC\)](#), para.11 and 12

⁹ *Zoumbas v Secretary of State for the Home Department* [2013] <https://www.supremecourt.uk/cases/docs/uksc-2013-0100-judgment.pdf>

to be a primary consideration (although not necessarily the only consideration) when making decisions affecting children, and that children should be consulted and their wishes and feelings taken into account wherever practicable when decisions affecting them are made.¹⁰

The Home Office Children's Asylum Claims guidance states that '*A detailed best interests consideration is an important and necessary process when a decision is being made that may lead to an adverse impact on the child such as requiring the child to leave the UK.*'¹¹

It sets out six questions taken directly from the court judgement in *ZH (Tanzania) v Secretary of State for the Home Department*¹² to determine a child's best interests **in the context of considering return**:

1. Is it reasonable to expect the child to live in another country?
2. What is the level of the child's integration into this country?
3. How long has the child been away from the country of the parents?
4. Where and with whom will the child live if compelled to live overseas?
5. What will the arrangements be for the child in that other country?
6. What is the strength of the child's relationship with a parent or other family members that would be severed if the child moves away?

Immigration Enforcement caseworkers are required to '*carefully consider all of the information and evidence provided concerning the best interests of a child in the UK when assessing whether an applicant meets the requirements of the Immigration Rules. Where they do not meet those requirements, you must consider whether there are exceptional circumstances that warrant a grant of leave outside the Immigration Rules.*' Greater weight is to be given to original documentary evidence from official or independent sources rather than '*unsubstantiated assertions about a child's best interests.*' The decision notice/letter must demonstrate that all available information and evidence has been taken into account in this best interests consideration.¹³ When a decision to return has been made, the case is referred to the Returns Preparation Family Returns Unit.

The *Children's Asylum Claims* guidance provides a list of factors which may be relevant to a best interests consideration – again, **in the context of considering return**. This includes:

- Physical and mental health and medical needs
- Level of education
- Emotional and behavioural development
- Family and social relationships
- Self care skills
- The child's views
- The child's age and maturity
- Experience of mental or emotional trauma
- Compassionate factors
- The duration of absence from the home country and level of integration in the UK

¹⁰ Home Office (2009) Every Child Matters change for children: statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children, para2.7

¹¹ Home Office (Oct 2017) Children's asylum claims, p.63

¹² <http://www.bailii.org/uk/cases/UKSC/2011/4.html>

¹³ Home Office (Feb 2017) Returns: case consideration.

- Whether the child is settled in education in the UK and the disruption caused to those arrangements by a decision to refuse outright
- The desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background
- The child's right to preserve their identity, including nationality, name and family relations
- The availability of care arrangements, the safety and security of the living arrangements, and the socio-economic conditions
- The availability of education, work or training opportunities in the country of return

There is no child-focused Home Office guidance for non-asylum applications, although the section 55 duty applies to those applications also.¹⁴

4.1.3 Office of the Children's Champion

The Office of the Children's Champion (OCC) was set up as part of the section 55 duty, and sits within the Public Protection Directorate of the Home Office. It does not make decisions on individual cases, but can provide advice or comment on the welfare aspects being considered in individual cases which are referred to it. All of its advice is internal. When invited, it also provides internal advice on the child safeguarding elements of broader policy.

4.1.4 Training on Best Interests

In 2017, the Home Office introduced internal training on best interests for those working on children's asylum cases. A 2017 report finds that the training is primarily, though not solely, aimed at caseworkers who handle the claims of unaccompanied children.¹⁵ The training package covers best interests to a much greater extent than was previously the case, including looking at psychological factors and what a durable solution represents in different scenarios. The main focus of the training is on the need for a child-sensitive approach and addressing credibility accordingly. The impact of the training is monitored through feedback between Asylum Operations and Asylum Litigation Strategy teams, and feedback is sought from delegates on the Keeping Children Safe Tier 3 case (see below.) A report from the Chief Inspector of Borders and Immigration states that various UKVI staff, including decision makers, are required to undertake e-learning on 'Keeping Children Safe' – a 40-minute package that must be completed every 2 years, as well as 'Keeping Children Safe New Children's Duty' – a 5-minute package that must be completed once. For 'Customer Facing' staff there are two additional 'Keeping Children Safe' classroom-based training packages. The 'Tier 2' package lasts 840 minutes, while the length of the 'Tier 3' package is 'dependent on business requirement'.¹⁶ The Home Office Children's Asylum Policy Unit informed Unicef UK that the asylum decision makers for UASC receive Tier 3 Keeping Children Safe training, which is a 3-day course, one day of which is dedicated to the issue of best interests. This Tier 3 training is being considered by the training team for 'refreshing', with a view to potentially making it more practically-focused. The Home Office informed Unicef UK that the Office of the Children's Champion (OCC) which is the Home Office department overseeing children's safeguarding, used to run a course for each

¹⁴ Gregg, L and Williams, N (2015) Not just a temporary fix: Durable solutions for separated migrant children. The Children's Society.

¹⁵ Matthews, A (2017) Literature review on how the Home Office ensures it acts in the best interests of the child when conducting its immigration, asylum and nationality functions, specifically how it determines, reviews and secures the child's best interests. Prepared for the Independent Chief Inspector of Borders and Immigration, p.18

¹⁶ Independent Chief Inspector of Borders and Immigration (Jan 2019) An inspection of the Home Office's approach to the identification and safeguarding of vulnerable adults February – May 2018

of the different commands – UKVI, Border Force etc. – but these courses are tailored now by each department. It appears that the Asylum Directorate at the Home Office has received more child-specific training than the Immigration Directorate. However, the Home Office informed Unicef UK that all non-asylum caseworkers are trained in applying the Home Office’s obligation on the need to safeguard and promote the welfare of a child in the UK.

4.1.5 Lack of a formal Best Interests Determination (BID) process

There is a strong legal framework and positive case law in the UK with regard to the promotion and protection of children’s best interests. But the UK does not currently have a process for undertaking Best Interests Determinations (BIDs). The Home Office Children’s Asylum Policy Unit told Unicef UK that they take the view that best interests considerations are embedded in their processes and that therefore the UK did not currently consider a formal Best Interests Determination (BID) process to be necessary. Home Office guidance fails to make clear the Article 3 CRC procedural requirement that the views of all those working with the child including those outside the asylum/immigration system should inform the best interests consideration.

Every lawyer and civil society organisation working with children and young people interviewed by Unicef UK expressed serious concern about the impact that the lack of a formal BID process has on the ability of Home Office caseworkers to systematically obtain all of the evidence necessary to make decisions about a child’s case, taking into account their best interests as a primary consideration. Several lawyers interviewed by Unicef UK proposed that a clear statutory definition of children’s best interests would be helpful in guiding caseworkers’ decision-making. They also proposed a requirement for fully reasoned decisions, which should require detailed information about what would happen to the child on return.

4.2 Best interests Principle implementation practices for unaccompanied children

There remains no systematic unifying approach in the UK to assessing and determining best interests for unaccompanied and separated children.¹⁷ Lawyers and civil society organisations expressed concerns to Unicef UK that Home Office caseworkers do not routinely request and receive all of the necessary information.

In 2013 an inquiry by the Joint Committee on Human Rights (JCHR) recommended¹⁸ that the UK Government establish an independent advisory group, composed of experts from voluntary organisations, academia and practice, to provide guidance to Ministers about how to consider the best interests of unaccompanied and separated children most effectively. They further recommended that the Government should evaluate the case for the establishment of a formal BID process. In their response¹⁹ the Government agreed to consider the case for establishing a BID process in the context of the existing immigration and asylum process and confirmed that in doing so they will take into account the views of experts across the statutory and voluntary sector. However, this process has not yet happened.

¹⁷ Unicef UK, UNHCR, What the United Kingdom can do to ensure respect for the best interests of unaccompanied and separated children

¹⁸ JCHR (2013) Human Rights of unaccompanied migrant children and young people in the UK, recommendations 32&33

¹⁹ Home Office (2014) Government response to the First Report from the Joint Committee on Human Rights session 2013-14

The House of Lords European Union Committee report in 2016²⁰ further recommended that: *'the UK Government should develop, apply and routinely monitor national guidance on how to conduct best interests assessments with regard to unaccompanied minors. We call on the Government to revisit its response to the JCHR's 2013 report, and in particular to review the extent to which it has fulfilled its promise to consider the case for establishing a Best Interests Determination process. 'In its response to the above report the UK Government stated that it 'believes the existing process continues to ensure that a child's best interests are taken into account at every stage and it is not clear what information might be provided through a dedicated determination process that is not already available to decision makers.'*²¹

Unicef UK has supported a research project, led by UNHCR, mapping the current approach to the consideration of the best interests of unaccompanied and separated children seeking asylum in the UK, highlighting the current strengths and weaknesses in the UK system. This analysis informs recommendations for strengthening the application of the best interests principle.²²

As noted above, the Home Office Children's Asylum Policy Unit told Unicef UK that the Home Office takes the view that best interests considerations are embedded in their current process, and that the UK is committed to making the whole system work as well as it can for all, considering children's best interests. They pointed out that there is a process in place – a UASC case review – to try to encourage greater communications between the child's social worker and the Home Office caseworker. The child's social worker is required to complete a document known as "Current Circumstances Form Part 1" to let the Home Office know of important issues in the case. They stated that social workers should have collected all of the necessary information about the child, but noted that anecdotally they hear that sometimes social workers are reluctant to share information about a child which they think might undermine the child's asylum case, or which they think might breach confidentiality/data protection. Lawyers and NGOs interviewed by Unicef UK expressed concern that social workers often do not have the time available, nor adequate training on asylum and immigration issues, to adequately collect and provide the necessary information.

The Home Office Children's Asylum Policy Unit further stated that there needs to be acceptance that being in the UK is not always in the best interests of all children. They noted that they are concerned about children and young people remaining in the UK without leave, as this brings many risks for them. Unicef UK interviewed NGOs who agreed with this statement by the Home Office, but they noted that there has not been progress on establishing an effective mechanism to consider whether it is in their best interests to return. They further noted that, in 2014 when the Home Office undertook a pilot programme for returns of Albanian children, it turned out that it was not suitable to return the individual children who participated in the pilot. Some NGOs suggested that if an effective BID process were in place, it would show that it is in some children's best interests to return, and this could gain the support of some civil society organisations if leave were offered to those who cannot be returned.

²⁰ House of Lords (2016) Children in crisis: unaccompanied migrant children in the EU, paragraph 112/ recommendation 20 and paragraph 263/recommendation 21

²¹ Secretary of State for the Home Department (2016) Government's response to the House of Lords European Union Committee report – Children in Crisis: unaccompanied migrant children in the EU, p.9

²² UNHCR (2019) *Putting the child at the centre: An Analysis of the Application of the Best Interests Principle for Unaccompanied and Separated Children in the UK*, UNHCR

4.3 Best Interests Principle implementation practices for accompanied children

Several lawyers and civil society organisations interviewed for this study expressed concerns about a lack of adequate consideration of the child in family asylum and immigration cases, with children being treated as an 'add-on' to their parent(s) rather than as rights-holders. They reported that in the vast majority of cases the Home Office provides 'cut-and-paste' decisions using automatically-generated standard paragraphs from a template, just stating that it is in the child's best interests to be returned with the family. There is no best interests process that the Home Office caseworker has to follow before making this decision. Caseworkers have no method to collect evidence on best interests. The child who is living with their family probably does not have a social worker. If s/he does have a social worker, the caseworker generally does not contact the social worker. It falls to the child's parent or their legal representative (if they have one) to collect the evidence and provide such information. This assessment can be made even more difficult when any best interests consideration for different children in the same family may result in conflicting conclusions.

"I represented a child who suffered from epilepsy, who has spent all his life in the UK, and is at risk of being accused of witchcraft in his country of origin because of his disability if returned. The Home Office refusal letter purports to deal with his best interests, noting that there is a problem because of superstitions in his country of origin about epilepsy-sufferers, but it says that the child and his parents can move somewhere else within that country where there are less superstitions (without stating where that would be), that the child has spent the majority of his life in his country of origin (which is incorrect, as the child had never even been there), and that his parents can help him integrate."

– UK Lawyer

In a 2010-13 audit of asylum decision-making in family asylum claims,²³ UNHCR found that:

- Not all decision-makers who were required to assess and determine the best interests of children in families had received the full training on the principle of best interests
- There was no formal and systematic collection or recording of information that would be necessary and relevant to a quality best interests consideration, including a lack of any mechanism to obtain the views of the child and give those views due weight
- Decision-makers were not always able to identify when, where, and from whom they could and should solicit information as well as what sort of information they should pursue
- The decision-maker's analysis of the child's best interests was often piecemeal, focusing on common elements, like family relationships, whilst neglecting others, like the child's safety
- In some cases, immigration control was brought directly into the determination of best interests

These findings were supported by a Greater Manchester Immigration Unit audit of 34 UASC cases,²⁴ in which they found that there was no mention of a best interests consideration in the refusal letter sent to 24 of the children; and, in those cases where there was evidence that the

²³ UNHCR UK (2013) [Considering the best interests of a child within a family seeking asylum](#).

²⁴ Greater Manchester Immigration Unit (2013) [Children's best interests: a primary consideration?](#)

child's best interests had been considered, no one other than the case worker appears to have been involved in making the decision, and the assessment failed to consider all relevant factors from the list in the guidance.

"We see frequent examples of Home Office decision letters making fleeting reference to best interests with no in-depth considerations of the actual impact on the child. We have seen cases where the refusal letter has simply stated that it is in the best interests of the child to be with their family, and no more."

– Coram Children's Legal Centre

Lawyers and NGOs told Unicef UK that they thought that the Home Office should be required to lay out in writing what they have done to consider best interests. It was suggested that, if return of a child is being considered, it would be best to have a separate independent advocate allocated for the child in court proceedings (as is the practice in family court proceedings)²⁵, or alternatively a state-funded independent social work assessment.

Unicef UK interviewed several lawyers who deal with applications for limited leave to remain for children who have lived for at least 7 years in the UK where it would be unreasonable to return them, and their parents.²⁶ In order to assess the question of unreasonableness of return, in practice the Home Office requires independent evidence about the child, but does not make this clear to the applicants, so typically insufficient information about the child is submitted to enable the decision-maker to assess their best interests. Lawyers proposed to Unicef UK that the Home Office should review its forms for accompanied children in immigration cases²⁷, to ensure that parents are informed of the need to obtain and submit evidence about the child's welfare and best interests. Lawyers dealing with such cases noted that children in families are invisible in immigration cases – no-one undertakes a proper assessment of their best interests or captures their views.

²⁵ Called a Children's Guardian or Guardian ad Litem in different UK jurisdictions. These are independent social workers who, in consultation with the child, their parents and others, prepare a report for the court setting out what they think will be best for the child

²⁶ Under UK Immigration Rules Para. 276ADE(1)(4) for the child; under Appendix FM UK Immigration Rules for the parent of a qualifying child (a British child or a child qualifying under 276ADE(1)(4))

²⁷ Especially for 276ade(1)(4) cases (children who have 7+ years residence cases)



5 Asylum, immigration, and return decision procedures

5.1 Delays

Many argue that delays in the whole asylum process appear to be derailing the system, even at the registration stage: a leaked Home Office report records an increase in delays in asylum registration from 10 to 17 days, and a backlog of asylum claims.²⁸ In general, delays and inefficiencies in asylum decision-making are systemic. Although the initial decision for straightforward cases should be made within six months, appeals can take another year and subsequent legal challenges can stretch on for several years.²⁹ Currently, Islington Law Centre and partners are working on a judicial review challenging delays in decisions of more than a year in unaccompanied child cases.³⁰

“The more time an asylum case took to resolve, the more likely barriers to removal would arise from the formation of relationships, the birth of children and other community ties. It also meant individuals were left not knowing if or when the Home Office might take action to remove them.”

– Independent Chief Commissioner on Borders and Immigration

²⁸ Campbell, C (25 Jan 2019) [UK asylum claim delays unacceptably high, says leaked document](#). BBC News

²⁹ Wood, D (2019) [Controlling Britain’s borders: the challenge of enforcing the UK’s immigration rules](#). Civitas

³⁰ Dugan, E (25 Jan 2019) [The Home Office is being sued over delays in unaccompanied child asylum-seekers’ cases](#). BuzzFeed

On average, the proportion of asylum cases which are ultimately granted is around half, and only around half of those who are refused/appeal rights exhausted are returned. In its 2015 inspection report on returns, the Independent Chief Inspector of Borders and Immigration (ICIBI) commented on finding over 30,000 cases where individuals had not been removed or granted leave to remain over two years after becoming appeal rights exhausted. As lawyers interviewed by Unicef UK noted, the system is so slow that families who may not have had a good case for remaining in the UK at the start of the process often do have a good case by the time of attempted removal, as the child may have more than seven years in the UK by that time and have settled into their schooling and their life in the UK.³¹

5.2 Age disputes and assessments

Refusals of refugee status often relate to age assessments which normally occur at the port of entry or when a child is being screened for asylum. Home Office policy is to give claimants the benefit of the doubt unless their physical appearance/demeanour very strongly suggest that they are significantly over 18 years of age. Following a Court of Appeal judgement in relation to a case of disputed age³², the Home Office updated its guidance³³ to clarify that this means that in addition to there being no credible evidence to the contrary, their physical appearance and demeanour must very strongly suggest that they are 25 years of age or over. In this case they should be treated as adults, which in turn may lead to them being detained and returned. The First Tier Tribunal (Immigration and Asylum Chamber) may set out its own findings about a young person's age as part of an asylum appeal judgment. However, appeals against age assessments primarily go to judicial review, and are referred to the Upper Tribunal (Immigration and Asylum Chamber).³⁴

Local authorities may also choose to undertake an age assessment in order to determine the asylum claimant's eligibility for children's services. The "*Age Assessment – Joint Working Guidance*" published jointly with the Association of Directors of Children's Services states that it '*gives social workers the tools to complete age assessments in a child-friendly way, using best social work practice and ethics and utilising the knowledge of all agencies involved in the life of the child to inform the holistic assessment of a young person's age*'.³⁵ This guidance sets out the views of The Royal College of Paediatrics and Child Health and the British Dental Association which have advised their members that '*x-rays, including dental x-rays, should not be used to assess a migrant child's age unless the x-ray has been taken for a therapeutic or medical reason*'.³⁶ The updated Home Office guidance also provides guidance on instances where public authorities, such as a local authority or school, raise concerns that a claimant is not the age the Home Office has accepted them to be. Appeals against a local authority age assessment decision are referred to the High Court.³⁷

³¹ The Immigration Rules permit a child who has spent at least seven years in the UK to remain if it would not be reasonable to return them

³² *BF Eritrea v Secretary of State for the Home Department*

³³ Home Office (2019) <https://www.gov.uk/government/publications/assessing-age-instruction>

³⁴ *Ibid*

³⁵ ADCS (2015) [Age assessment guidance](#).

³⁶ *Ibid*

³⁷ [R\(A\) v Croydon, R\(M\) v Lambeth](#)

The Home Office publishes quarterly age dispute statistics, though they do not indicate the outcome, just the fact that the assessments were completed.³⁸ The Refugee Council reported that, in 2017/18, 123 (88%) of 139 cases referred to their age dispute project were assessed to be children.³⁹

NJ is a national of Afghanistan who arrived in the United Kingdom as a child of 14 years old. He claimed asylum, but he struggled to answer the questions asked of him, as a child with a lack of understanding of the process and in a new country where he did not speak the language. As a result of the answers he gave, his asylum claim was refused and he was found to be not credible and his nationality was also doubted. An alternate nationality was not suggested although his language is only commonly spoken in one other country. He did not appeal and he is not sure why. He applied for further leave to remain when he turned 17 ½ but this was refused; as is common the Home Office said he could now return to Afghanistan as an 18 year old, relying on previous credibility findings. His case was refused and a judge refused to believe any of his account as he did not accept that he was an Afghan national. No alternate nationality was suggested. NJ was arrested trying to leave the country trying to reunite with his uncle and was detained. He was set removal directions to Afghanistan. His removal was stopped at the last minute. In refusing his fresh claim subsequently the Home Office maintained that he was not an Afghan national. After two judicial review claims, his case eventually went to appeal when his case was refused based on the answers he had given as a child [although his nationality was now accepted]. He has lived in the UK now for over 10 years.

– Case from Duncan Lewis Solicitors

5.3 Access to legal aid

Access to legal advice and assistance and to effective legal representation is extremely important for children facing potential return. The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 removed state-funded legal aid from most immigration cases in March 2013, despite the complexity of UK immigration law. Some limited legal aid is available via the Exceptional Case Funding (ECF) scheme, which is intended to ensure legal aid is accessible in cases where there is a risk of breach of human rights. Legal aid has remained available for asylum cases.

In July 2019 the government announced that it will bring immigration matters for unaccompanied and separated children into scope of legal aid.⁴⁰ There remain difficulties for children in families not being able to access legal aid in immigration cases. For example, the Immigration Rules permit a child who has spent at least seven years in the UK to remain, as well as their parents, if it would not be reasonable for them to return permanently to the country in which they were born. Legal aid is not available (apart from Exceptional Case

³⁸ Home Office (2019) [Immigration statistics, year ending December 2018](#). Table as_10_q

³⁹ Refugee Council (2018) [Age disputes project: end of year report 2017/18](#).

⁴⁰ House of Commons Hansard (12 July 2018) [Justice update. Written statement HCWS853](#)



Funding) in such cases. Even in asylum cases that are in scope for legal aid, in family cases often the problem may be that the best interests of the child in the case is an Article 8 ECHR issue (relating to private and family life), rather than an asylum-related issue, and is therefore not in scope for legal aid.

The mother was from overseas but the child was born in the UK. They had had a difficult time because of domestic violence by the child's father. After the child was 7 the mother did try to sort out their legal status, but legal aid cuts meant that they were not eligible for legal aid. According to the Immigration Rules they should have been able to secure legal status, as the child had lived for more than 7 years in the UK and, given that it was the only country the child had ever known, it would be unreasonable to remove her. The mother borrowed money and got into a lot of debt in order to pay for a lawyer. But her application and appeal were refused. When the girl was 9, the mother received notice from the Home Office that they were being entered into the family returns process. A meeting took place with the mother about potential return. The child was extremely distressed about the threat of being returned. Even though she was not currently in contact with her father because of his violence, she wanted to have the possibility of seeing him in the future, which would be much more difficult if she and her mother were sent overseas and he was in the UK. The family could not afford more legal advice. They went to an NGO, which had an agreement with a law centre and was able to arrange a pro bono lawyer for them. The lawyer was able to instruct an independent social worker report which evidenced the emotional damage that removal would have on the child. Further, the child was about to turn 10 years old, at which point she would be eligible for British citizenship. They were granted leave to remain and the family returns process was stopped. If the pro bono lawyer was not available, the family would probably have been removed.

– NGO, anonymous source

5.4 Return procedures for unaccompanied children

If the unaccompanied child does not qualify for refugee status, Humanitarian Protection, family or private life leave or Discretionary Leave on any other basis, 'the caseworker must consider whether there are safe, adequate and sustainable reception arrangements in the child's home country.'

Current Home Office practice is not to return unaccompanied under-18 year-olds. Nevertheless, Home Office guidance ⁴¹ does set out the process for an unaccompanied child who is to return or be returned. Under this process, if the Home Office is considering return while the child remains under 18 years of age "Current circumstances form part 2" is sent to the social worker who will be advised they have 14 calendar days to complete the form. This form provides the social worker with an opportunity to contribute any information that may be relevant about the child and the proposed return to their home country.

Under the process, the caseworker must meet with the child, who must be accompanied by their social worker (who will also present the views of the child's local authority Independent Reviewing Officer/IRO) and an interpreter if necessary, and may be accompanied by a legal representative or, in Scotland and Northern Ireland, a guardian. The meeting should be used to establish the child's views, needs, wishes and feelings about the consideration and consequences of return; the child's thoughts on the reception and reintegration arrangements following return; and confirm options for departure which can be voluntary, assisted or enforced. The child should have the opportunity to have any questions answered. Contact should be maintained to ensure the child is kept informed about departure plans.

Further requirements under the process are that:

- Advice should be obtained from the child's social worker when arranging transportation and, if applicable, escorts to the airport.
- The social worker should be notified of the final return arrangements.
- Arrangements should be made for a social worker or an appropriately trained Home Office escort to accompany the child during the flight.
- The child should be provided with an information pack on the returns and reception arrangements, with a copy sent to their legal representative and social worker.
- The receiving authority or party in the country of origin should be notified of the travel arrangements.

5.4.1 Returns of Unaccompanied Asylum Seeking Children from Albania

Currently, UK Government practice is not to return unaccompanied under-18 year-olds, except in exceptional circumstances. However, the Home Office has undertaken planning to establish a process for the safe and sustainable return of unaccompanied Albanian children whose asylum claims have been unsuccessful. In January 2017, the UK Government asked other EU countries about their policies for returning Albanian children.⁴² That exercise found that the UK receives the highest number of applications from unaccompanied Albanian children. Asylum grant rates are consistently low across all EU countries which receive applications (e.g., Sweden, Germany,

⁴¹ Home Office (Oct 2017) Children's asylum claims, pp.74-78

⁴² European Migration Network. EMN Ad-Hoc Query on Returning Albanian Unaccompanied Asylum Seeking Children. Requested by UK EMN NCP on 24th January 2017

Belgium, Netherlands). Most offer an assisted voluntary return programme for these children, though forced returns are also possible in the Netherlands. The UK reported only one return of an Albanian UASC in 2016. Lawyers reported to Unicef UK that most Albanian children's cases they see fall into the category of 'refused asylum but not removable'. The Home Office has argued that, given the very low asylum grant rate, in many cases it may be in children's best interests to return rather than wait in limbo in the UK if they have no real hope of getting status. They are in discussions with the Albanian government about possible capacity support for reception conditions.

5.4.2 Returns of European children – at potential risk of trafficking

EU nationals may be returned for not exercising, or abusing, Treaty rights or deported on public policy grounds (such as criminality). This includes children. Table 4 records enforced returns of children – presumably with family members – to Romania and Bulgaria.

In addition, the Children's Trafficking Advice Centre (CTAC)⁴³ reports significant concerns that local authorities are returning EU children who may be victims of trafficking, on occasions without notifying or involving the Home Office. Department for Education (DfE) good practice guidance to local authorities makes it clear that, where adequate reception arrangements are in place in the country of origin, a child who does not qualify for asylum or humanitarian protection will usually have to return. It also states that a voluntary return is preferable, and the local authority may opt to involve Children and Families Across Borders (CFAB) in the return and reintegration of the child.⁴⁴

CTAC reports incidents of European children who arrive in the UK alone or with unrelated adults being put straight back on planes without assessing their situation or investigating the adults they are travelling with who may be a risk to them. CTAC advocates that a multi-agency child welfare assessment is required in each child's case.⁴⁵ If the child has not immediately been sent back, CTAC advocates for the DfE guidance for social workers for foreign national children to be followed – for authorities in the home country to investigate, and for an assessment to take place by social workers in the UK, and if return is decided on, for this to be undertaken in a planned way, with handover of information from UK social workers to social workers in the home country. CTAC reports that this inter-country handover of information between social workers very rarely happens without their involvement.

The 14-year old girl arrived in the UK by plane. She arrived at the airport with an unrelated man who was denied entry and sent back. Border Force contacted the local authority but the young person refused to go with the social workers into care. So, she was held at the airport. Border Force could not hold her for longer than 24 hours, so they contacted the Child Trafficking Advice Centre (CTAC) at the final hour. CTAC contacted the local authority and the young person was accommodated in a foster placement for one night and was returned to Romania the following morning. The local authority did not complete an initial assessment and closed the case once she had been returned. The local authority

⁴³ The Child Trafficking Advice Centre (CTAC) provides free guidance and training to professionals concerned that a child or young person has been or is about to be trafficked into or out of the UK <https://learning.nspcc.org.uk/services/child-trafficking-advice-centre/>

⁴⁴ DfE (2011) Safeguarding children who may have been trafficked: practice guidance.

⁴⁵ CTAC can assist with the assessment by advising on the vulnerabilities and risk indicators for child trafficking in each case

maintained that Border Force had not informed them or the police that they had any trafficking concerns. As well as liaising with the local authority to ensure that the child was accommodated, CTAC contacted the Safeguarding Lead at the Home Office and contacted the embassy for a welfare check to be undertaken by children's services in her home country as a matter of urgency. CTAC had to chase up the embassy for a response and was advised that it typically takes 30 days for the consulate in country to reply about conducting any checks.

– Child Trafficking Advice Centre case

There are no Home Office statistics on this type of return of children. Between 1 January 2016 and 18 March 2019, 140 children from EU countries in the UK were referred to CTAC because of concerns that they had been or were at risk of being trafficked. According to the information given to CTAC, 39 of these children have since returned to their home country through an organised return or by other means. In some cases, children have returned to their home country because they have been moved by unrelated adults/parents/carers and the UK authorities have not been involved in coordinating their return. Some of these cases are children who have been subject to child protection plans and police protection in the UK. It may be that the children are moved back by the adults because they want to evade the UK authorities. Local authorities typically close the case once the child is out of the country. In such cases, CTAC would still advise that the local authority contact the embassy to share concerns, and request a welfare visit and assessment before the case is closed. In all cases, CTAC advises and supports the local authority to ensure that these checks are undertaken. In other cases, the child's return has been coordinated by UK authorities but steps have not been taken to ensure a safe repatriation. Such steps would include sharing child trafficking and additional safeguarding concerns with the embassy who can link with the authorities in the child's home country; requesting that an assessment be undertaken in the child's home country before the child is repatriated; through liaison with the embassy and authorities in-country, ensuring that there is a plan in place to safeguard the child upon return (i.e. social services in-country plan to monitor the child's welfare or accommodate the child on return).⁴⁶ According to the information available to CTAC, out of 15 cases where the repatriation was organised (involving authorities), in 5 cases steps were taken to ensure a safe repatriation. Forthcoming updated guidance to the Modern Slavery Act envisages the establishment of a system of assessment by the Local Authority of whether return is in the best interests of the child in such cases, with input from the Independent Child Trafficking Advocate and with respect for safeguards.

5.4.3 Returns counselling for unaccompanied children

Since UASC are not currently subject to enforced returns in practice, the focus is on planning for return once they reach adulthood. For those granted Discretionary Leave, UASC leave or refused asylum on appeal, local authority children's social care services are responsible for planning for different eventualities including preparing young people for return.

⁴⁶ CTAC notes that it may not have the full information in every case

In England, statutory transitions⁴⁷ guidance notes that: *'Planning may initially have to be based around short term achievable goals whilst entitlement to remain in the UK is being determined.'* Pathway planning should take a dual, or triple planning perspective to be refined as the young person's immigration status is resolved. Planning may be based on:

- a transitional plan covering the period of uncertainty when the young person is in the UK without permanent immigration status
- a longer term plan for when / if the young person is granted long term permission to stay in the UK (for example, through being granted refugee status)
- planning for return to the country of origin at any appropriate point or at the end of the immigration consideration process, should that be necessary because the young person decides to leave the UK or is required to do so

As part of its safeguarding strategy for UASC, the DfE has commissioned the development of good practice resources on triple planning for social workers.⁴⁸ The No Recourse to Public Funds (NRPF) Network has been charged with producing a good practice model and materials on triple pathway planning for young people. This is due to be completed during 2019. NRPF notes that triple pathway planning is currently variable – becoming more common in some local authorities, but with some being unsure how to undertake it.

In Wales, a statutory Code of Practice,⁴⁹ and, in Northern Ireland, practice guidance⁵⁰ require pathway or ongoing planning to undertake a similar process, with corresponding wording to cover the three types of planning. The Welsh Code also states that, in the case of planning for return, relevant personal data may be shared with UKVI; and that the management of return arrangements will require a collaborative approach with UKVI in order to ensure they take place as sensitively and humanely as possible.⁵¹ The Northern Ireland guidance makes a similar reference to a cooperative working relationship with UKVI in the case of returns.⁵² Although children's social care services have similar duties in Scotland,⁵³ the detail set out in statutory regulations/guidance has not been updated in recent years so neglects to outline explicitly what is expected in terms of planning for unaccompanied asylum-seeking/migrant children, including for return. However, both Northern Ireland and Scotland recently introduced an additional safeguard through the establishment of a guardianship service for UASC up to the age of 18,⁵⁴ operated by Barnardo's in Northern Ireland and the Scottish Refugee Council and Aberlour in Scotland. In relation to returns, an earlier pilot phase of the Scottish guardianship service⁵⁵ agreed to work to a practice model whereby the child's guardian would not fully implement returns work until an initial decision had been made by the Home Office about the young person's asylum application. However, even in their early work with the unaccompanied child, the guardian would ensure that the issue of return was identified in discussions in order that

⁴⁷ DfE (2015) The Children Act 1989 guidance and regulations vol.3: planning transition to adulthood for care leavers, paras.6.20-6.27

⁴⁸ DfE and Home Office (2017) Safeguarding strategy: unaccompanied asylum seeking and refugee children.

⁴⁹ Welsh Government (2018) Social Services and Wellbeing Act (Wales) 2014. Part 6 Code of Practice (Looked After and Accommodated Children), para.511

⁵⁰ NI Health and Social Care Board (2019) Working arrangements for the welfare and safeguarding of unaccompanied and separated children and young people – guidance.

⁵¹ Op cit, para.517

⁵² Op cit, para.5.6

⁵³ s.25 Children (Scotland) Act 1995

⁵⁴ Through s.21 Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; and s.11 Human Trafficking and Exploitation (Scotland) Act 2015

⁵⁵ Crawley, H and Kohli, R (2013) She endures with me: an evaluation of the Scottish Guardianship Service pilot.



the young person understood this to be a potential outcome of the application for asylum.

5.4.4 Responsibility for care of unaccompanied children

Unaccompanied asylum seeking children are entitled to local authority support as a “looked after child” under four distinct children’s social care legal frameworks in England, Northern Ireland, Scotland and Wales. There is an obligation on local authorities to provide for UASC in the same way as for any other child in their care. However, the Home Office provides the funding for UASC, which does set them apart from other children in care, and local authorities complain about the shortfall in funding from the central government funding received for UASC. Currently, national daily rates for UASC under 16 years-old are £114, and £91 for 16 and 17 year-olds.⁵⁶

5.4.5 Guardians in Scotland and Northern Ireland, Advisors in England and Wales

“For children in Scotland having guardians makes a transformative difference. Many social workers are very stretched – they don’t have the time to give these children all the wrap-around service they need to access their rights and entitlements. The guardian is the go-between – the cog in the wheel that connects us all around the child. The guardian helps the child understand the difference between all the different adults they are surrounded by, and helps the child express their views.”

– JustRight Scotland – NGO providing legal assistance

The UK government takes the view that since its child protection legislation covers UASC, there is no need for a guardianship scheme in England and Wales. The Refugee Council is funded by the Home Office to run the Children’s Advice Project (formerly known as the “Children’s Panel”). They have a team of advisers (25) across the country to work with UASC, and every UASC in England and Wales is supposed to be referred to them. The Home Office does not have

⁵⁶ Home Office (August 2018) [Funding to local authorities financial year 2018/19. Unaccompanied asylum seeking children.](#)

accurate data on the overall percentage of UASC supported by the Refugee Council. However, the Independent Chief Inspector of Borders and Immigration reported in 2013 that in only 39% of cases sampled, and only at Croydon and Heathrow, were referrals made to this service.⁵⁷ The advisor's involvement with UASC might be limited to just a one-off phone call or finding them legal representation, or might be more involved. The Children's Advice Project had contact with about 2,000 UASC in 2018 (not all newly-arrived). If the government took the decision to change this system and to provide the necessary resourcing, the Children's Advice Project could be extended into a guardianship scheme.

Under modern slavery legislation,⁵⁸ England and Wales have Independent Child Trafficking Advocates, to provide specialist independent support for trafficked children. As noted above, Scotland and Northern Ireland have guardianship services for all UASC.

In Scotland and Northern Ireland guardians start their work with under-18 year old UASC and continue this support until needed, which usually continues for some years beyond 18. Guardians deal with children and young people going through three processes – age assessments, National Referral Mechanism processes for identifying and referring potential victims of modern slavery, and asylum decisions, and they also work on the issue of potential return. A 2017 ICIBI report said that: *'In Scotland, the Home Office and stakeholders considered that the Scottish Guardianship Service played a vital role in supporting the child throughout the asylum process, including when they received their asylum decision.'*⁵⁹

The Scottish Refugee Council told Unicef UK that they had found that many social workers neither knew nor understood what was happening with immigration/asylum decisions. Guardians will work with lawyers, challenge credibility issues with the young person, try to delay interviews if the young person is not prepared, act as an accompanying adult in interviews, work with the young person to explain negative decisions and rights of appeal, and raise the young person's voice on education, health etc to social workers. JustRight Scotland noted that at first there was some caution by social workers in Scotland about the role of guardians, but over the past nine years this has changed and many social workers see them as a specialist service they can go to for advice on asylum issues, statutory guidance, age assessment, and on all issues related to looking after UASC.

The Northern Ireland Independent Guardianship Service told Unicef UK that they had been running for one year and that they currently have five guardians, all with a professional social work background, with experience of asylum processes, and all Office of Immigration Commissioner (OISC)-trained to level 2 [i.e. intermediate level]. They are currently working with about 48 children/young people. As in Scotland, initially social services in Northern Ireland were quite sceptical about the Independent Guardianship Service. But they built relationships with them, and social workers now recognise their value, especially that of the guardians' knowledge of asylum processes and knowledge about trafficking, and their ability to identify good immigration lawyers. Also guardians obtain evidence from schools, doctors etc, to pass to the young person's lawyer.

⁵⁷ ICIBI (Oct 2013) *An Inspection into the Handling of Asylum Applications Made by Unaccompanied Children February – June 2013*

⁵⁸ [Section 48 Modern Slavery Act 2015](#)

⁵⁹ ICIBI, *An inspection of how the Home Office considers the 'best interests' of unaccompanied asylum seeking children August – December 2017*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695310/An_inspection_of_the_best_interests_of_unaccompanied_asylum_seeking_children_March_2018.pdf

In local authorities, specialist social work teams have been cut in order to reduce costs, and it is difficult for over-stretched social workers to dedicate sufficient attention to UASC's needs. UASC do not fit into the existing performance indicators of social work teams, for example, the placement of a child close to their family. Social work training does not cover some of the key immigration-related issues they need to assist UASC, such as the meaning of UASC leave, the impacts on a child of not being on the route to settlement, when they can apply for British citizenship, etc.

One of the main problems reported to Unicef UK for UASC in England and Wales was that children who have been granted UASC leave often do not receive the information that this is effectively a refusal of their application. Lawyers told Unicef UK that many young people come to see them after they turned 18 trying to renew UASC leave that has expired, after they received poor advice from social workers/foster carers and didn't appeal their asylum refusal at the time. This is despite the fact that legal aid is available for such appeals, and that it is often more difficult to appeal the refusals as an adult. Lawyers suggested that the Home Office should include a notice in the asylum refusal/UASC leave letter telling the social worker/child's foster carer that the child is advised to seek legal advice on it – to act as a trigger. They are currently given a right to appeal notice, but that is buried in the letter below the grant of UASC leave, and so often missed.

“The biggest problem we see for looked-after unaccompanied asylum seeking children here in London is that they get poor legal advice. Social workers and foster parents often look for the nearest, not the best, lawyer for the child. Social workers and foster carers blame each other for things, like not getting the child a school-place. If children in England had guardians it would help.”

– Shpresa – NGO working with unaccompanied asylum seeking young people

NGOs suggested to Unicef UK that resources and training for social workers and foster carers on basic immigration and asylum issues should be made available.

A 16 year old girl was discovered to be unaccompanied (without anyone acting with parental responsibility) in Northern Ireland following a domestic incident that was reported to social services. Social services took several days to contact the Independent Guardianship Service, and by the time of the referral the social worker had arranged for a flight for her to return on her own, as the child requested. The Independent Guardian was concerned about the girl as her case appeared to have some indicators that she may have been trafficked. She was nervous about taking the flight back to Romania. The guardian insisted that that the social worker should undertake checks, should ensure that someone travelled with the girl, and should make contact with social services in Romania. As a result of the guardian's intervention a joint social services visit took place at her home in Romania – with the British and Romanian social workers. Without the guardian's intervention there would have been no process to assess her safety. The social worker involved later acknowledged that what the Independent Guardian had insisted upon had in fact been in the child's best interests.

– Independent Guardianship Service, Northern Ireland

5.5 Family returns procedure – accompanied children

Returns are divided into voluntary returns (including assisted voluntary returns), enforced returns (including required and ensured returns), and deportation (used for Foreign National Offenders).

When a migrant receives a negative decision on an asylum or visa application, or is identified as being illegally present in the UK, the Home Office will send or deliver a letter informing them they have no right to remain in the UK. The letter will include information outlining the basis for the decision; a statement that the recipient has an obligation to leave the UK; when relevant, an explanation of the recipient's right to appeal the decision; conditions of continued residence including reporting conditions, the possible use of detention, and advice that removal will be enforced if they do not leave voluntarily; and contact details for the Home Office voluntary departures section.⁶⁰

Families enter the family returns process if:

- All in-country appeal rights have been exhausted and the family has no legal right to remain in the UK, AND
- Any outstanding documentation or other barriers can be resolved in parallel with the returns process, OR
- A family has indicated that they wish to leave the UK voluntarily (under the assisted voluntary return for families and children scheme; or without assistance).
- Cases can be put on hold if the family no longer meets the criteria, or if other barriers arise including additional legal challenges. The families of Foreign National Offenders (FNOs) can also be subject to deportation.⁶¹

The returns process takes place in three stages:⁶²

1. Assisted return

The Home Office invites the family to a Family Removals Conference (FRC) with a minimum of 7 days' notice, at which the Family Engagement Manager (FEM) discusses with the family steps they are making to depart the UK, and what departure options and support are available to them. It is up to parents to decide whether or not their children attend this conference. The Home Office also serves the family with a 'notification of intention' letter which informs them that, if they intend to apply for judicial review, they must do so within five days of receipt of the letter.

After the FRC, the family is required to attend a Family Departure Meeting after a minimum of seven days to discuss what they may have decided, and at which the FEM asks whether or not the family want to depart voluntarily. If so, the Home Office can provide support through an assisted voluntary return, or will check for evidence that the family have made their own return arrangements. The guidance recommends children are actively encouraged to attend this meeting.

If the family does not want to return voluntarily, they will be given 7 days' notice of removal directions, and are considered to be in the required returns stage.

⁶⁰ Evans, O and others (2015) Dissemination of information on voluntary return: how to reach irregular migrants not in contact with the authorities. European Migration Network

⁶¹ Home Office (Jan 2019) Criminal casework: deportation of family members of Foreign National Offenders.

⁶² Home Office (Jan 2019) Family returns process.

2. Required return

The family will be offered the opportunity to take 'self check-in removal directions' (SCI RDs) – meaning they can still be in charge of their own departure and avoid arrest. The SCI RDs will be served to all family members, copied to the legal representative and, if relevant, social services at least one week before the scheduled return. The Home Office can provide assistance to get to the port of departure.

3. Ensured return

If the SCI RD does not take place, family members will be subject to an ensured return. The FEM will choose from five options:

- Escorted check-in without further notice. This comprises escorted check-in to the transport being used within 10 calendar days without prior notice.
- Escorted check-in with full further notice, which refers to the requirement to give the family 72 hours' notice of the removal.
- Escorted check-in with limited notice, which sets the specified period within which departure will take place.
- Return through open accommodation, where families are moved away from their local community and placed in residential accommodation for up to 28 days. Full boarding is provided but there is no additional case support; or
- Return through pre-departure accommodation for families who have refused to comply with other return options and are placed in secure accommodation for up to 7 days prior to removal.

In 2014/15, the Independent Chief Inspector of Borders and Immigration (ICIBI) published an inspection of removals⁶³ which found that the Government's focus on increasing voluntary return was having a positive impact, although poor communication between different Home Office areas involved in the removals process was having an adverse impact on efficiency and effectiveness. In 2016, the Home Office integrated its voluntary return functions. ICIBI is due to update its inspection of returns in 2018/19.⁶⁴

5.5.1 Independent Family Returns Panel (IFRP)

The Independent Family Returns Panel was first introduced in 2011, and placed on a statutory footing in the Immigration Act 2014.⁶⁵ The Panel is multi-disciplinary, with a membership of medical, social work, policing, and other child safeguarding experts who provide independent case-by-case advice to the Home Office on how to best ensure it complies with the section 55 duty to safeguard children's welfare during a family's enforced return. The Panel therefore plays a vital role in holding the Home Office to account on its duties and responsibilities towards children and families. It is not a function of the Panel to endorse or reconsider removal decisions.

All plans **for ensured family returns** are referred to the Panel for advice. The Panel receives advance copies of the return plan to be considered during a telephone conference. The Home Office Family Engagement Manager (FEM) responsible for the return plan is expected to attend to present the proposal and answer any questions the Panel has. The officer in charge

⁶³ ICIBI (2015) *An inspection of removals, Oct 2014-March 2015.*, and *Home Office response to the report.*

⁶⁴ ICIBI (2016) *ICIBI inspection plan 2016/17-2018/19.*

⁶⁵ By inserting section 54A into the Borders, Citizenship and Immigration Act 2009

of the arrest visit also attends where possible. In a small number of cases, other professionals involved with the family will be invited to attend the conference. While there is a presumption that the Panel's advice will be accepted, overall responsibility for enforcing the family's return lies with the Home Office. If, in exceptional circumstances, the Panel's advice is not accepted, the case is referred to the Immigration Minister to decide.

Whilst the Panel does not question the immigration/asylum determination itself, it does check that the process of immigration/asylum appeals has been carried out appropriately, and if not they recommend that the Home Office should inform the family that they have the right to go to a lawyer. A Panel member told Unicef UK that the ensured returns process is quite robust in reflecting children's best interests. The Panel receives a Family Welfare Form completed by the FEM who obtains the children's school reports, any social workers' reports, etc. The Panel checks whether the return plans are informed by the children's welfare, and whether the children have been spoken to and informed. For example, the Panel will recommend that a family cannot be returned if there is a needs assessment of a child still underway, as they cannot ensure that the child's best interests are protected without all of the assessments.

A 2013 evaluation of the IFRP⁶⁶ found the new process improved levels of compliance, and had a positive impact on family welfare and safeguarding children, in particular by enabling children to carry on 'life as normal' to a greater extent than previously; and by demonstrating a higher level of reporting and referrals of social care, health and education issues. It also found that, although families felt better informed about what to expect, returns were taking longer and were more resource-intensive.

"The Panel's role is not to review immigration determinations. We do however question and scrutinise all areas related to the family case concerning the impact on the children and family. This may include Immigration, Health, Education and Children Social Care. For example, if a child is terrified of going back to a certain country in say a "Dublin returns" case, and there is an identified or potential issue, we will recommend a full assessment by the appropriate specialist children's service even if the "Dublin rules" permit a return to that country without any need for an assessment. We insist that welfare and safeguarding of a child or children overrides in such cases, where there are signs that there are concerns about a child. To date the Home Office has not rejected our advice in any case. So our impact is immense on individual family's cases including on how arrests are carried out to mitigate their negative impact on children, how returns are effected, and extending to the needs and any arrangements required for the family's reception in the destination country."

– Independent Family Returns Panel member

5.5.2 Detention-accompanied children

In the early 2000s the UK was holding large numbers of children in families in immigration detention. In 2010 the Conservative-Liberal Democrat Coalition government made a political commitment to end immigration detention of children. This has not been fully achieved, but

⁶⁶ Lane, M and others (2013) [Evaluation of the new Family Returns Process](#).

numbers of child detainees have reduced significantly from over 1,000 per year pre-2010 to 67 in 2017 and 63 in 2018 (see Annex 1, Table 7). Some age-disputed young people are held in detention and subsequently released when found to be children.

Prior to return, families undergoing enforced return may be held in Pre Departure Accommodation (PDA). However, the number of families held there remains low. The IFRP reports that a total of 20 families used PDA in 2015/16; 9 families in 2016/17; and 15 families in 2017/18.⁶⁷ The report by Her Majesty's Inspectorate of Prisons (HMIP) covers the 11-month period of June 2017 – April 2018 and refers to 19 families being held in the PDA during this time period.⁶⁸

Although official processes include the option to use open accommodation as an alternative to Pre Departure Accommodation for ensured returns, a 2013 evaluation of the family returns process found that it was very rarely used,⁶⁹ and those interviewed by Unicef UK were unable to point to any examples of it being used.

The PDA at Tinsley House Immigration Removal Centre (IRC) holds people being returned under the family returns process when other attempts to remove them have failed, usually for no more than three days, though they can be held for up to seven days. Tinsley House is operated by a private company, G4S, which must comply with PDA operating standards,⁷⁰ and is required to have a safeguarding children policy in place. The relevant Detention Services Order⁷¹ specifies that the key child safeguarding needs arising under these circumstances are:

- Effective protection from abuse and/or neglect;
- Monitoring and reducing any negative impact of their stay on parenting ability;
- Normalising children's stay as far as possible; and
- Clarifying and helping children prepare for onward arrangements

A 2018 inspection report⁷² is relatively positive, noting a suitable, clear safeguarding policy was in place; detainees had access to a duty solicitor and could contact other legal representatives; interaction between staff and detainees was good; detainees could access the outdoors, and contact their families/have visitors; health staff saw all detainees on arrival; and detainees had access to faith materials. The charity Hibiscus Initiatives provides detained families with a package of practical information to help them prepare for life in their destination country.

However, the HMIP report also queried why so many removals failed – only four of the 19 families detained in PDA during the inspection period were actually returned to their country of origin.

'The arrest, detention and attempted removal of families from the UK was harmful to children but was often ineffective. Children were woken early in the morning by arrest teams and escorted on long journeys before being detained in an unfamiliar environment with their

⁶⁷ Independent Family Returns Panel (2018) Independent Family Returns Panel report 2016-18.

⁶⁸ HMIP (2018) Report of an unannounced inspection of family detention, Tinsley House Immigration Removal Centre

⁶⁹ Lane, M and others (2013) Evaluation of the new Family Returns Process.

⁷⁰ Home Office (June 2017) Pre-departure accommodation operating standards.

⁷¹ Home Office (August 2018) Detention Services Order 19/2012: safeguarding children policy.

⁷² HMIP (2018) Report of an unannounced inspection of family detention, Tinsley House Immigration Removal Centre, para.S34

*parents who were often visibly distressed. Some children had witnessed their parents being restrained, but after this traumatic process, nearly 80% of families were simply released.*⁷³

HMIP's recommendation was that: *'The Home Office should analyse why so many removals fail, with a view to reducing the unnecessary and harmful detention of children and families.'*⁷⁴

An IFRP Panel member told Unicef UK that they consider the PDA to be about pre-departure support, rather than about detaining children for return, and that they consider it would be worse in some cases to take the family from home and keep them in a holding-room at an airport pending their flight. But they try to avoid use of the PDA where possible, to enable work with the families in the community.

The Independent Monitoring Board said of Tinsley House PDA: *'When we see them in the PDA, families are often relieved to be somewhere safe, comfortable and child-friendly. However, they share with us the trauma of arrest teams arriving in the early hours to collect them, their children's distress at being removed from familiar surroundings and their worry about what will happen next. We hear these feelings expressed on a regular basis and they formed the basis of the one formal complaint made to the IMB and the Home Office. We are concerned that no system currently exists to monitor regularly the arrest and transfer of families to the PDA.'*⁷⁵

An HMIP inspector told Unicef UK that in their view overall the UK government has done quite well at instituting a family-centred approach in the PDA, but that it is not clear what the purpose of the system is. If it is supposed to be for deterrent effect, there is no evidence that the existence of the PDA makes other families agree to leave, as it is unlikely that they know about it. It is a very expensive system and it involves major risks of creating problems for the affected families and children.

5.5.3 Returns counselling and preparation - Accompanied children

An IFRP Panel member told Unicef UK that they stress that they need to know what will happen on arrival in the country of return, to ensure that the family is not just abandoned and left sleeping on the streets for a few nights on arrival. The Home Office used to see their responsibility as ending at the point of return. The IFRP has insisted that Home Office planning has to extend for at least a short time post-return, e.g. making sure the family know where the children can be registered in schools, access to health-care information, linking them to a local NGO, providing some funding for initial assistance. In the family returns process, FEMs work with the family to prepare them for return. There is a Returning Home booklet (age-appropriate and appropriate for parents) which was drafted by staff of the Office of the Children's Champion. These are available to all FEMs and the IFRP expects parents to be provided with copies to assist them and their children.

In the Tinsley House PDA the charity, Hibiscus Initiatives, works with those families who are willing to work with them on returns planning. Hibiscus Initiatives told Unicef UK that the vast majority of detainees decide to talk to them about their return situation at some point in their stay. Hibiscus helps to provide country-specific information on issues such as health-care, ID

⁷³ Ibid, para.S34

⁷⁴ Ibid, recommendation 5.1

⁷⁵ Independent Monitoring Boards (May 2018) Annual Report of the Independent Monitoring Board at the Gatwick Pre-departure Accommodation for reporting Year 2017



cards, re-establishing family links, opening bank accounts, education, employment, vocational training, transport, initial shelter and initial support. They do bespoke assessments and try to link them up with relevant organisations in the return country. They do liaison internationally, facilitating phone calls with organisations in the country of return. They work with the family as a whole, not the children. The PDA's welfare team works with the children. Hibiscus Initiatives acknowledge that it is hard to do much in-depth preparation in 72 hours, at a time when the families are under great stress. Hibiscus has partnerships in many countries of return, and it seeks further contacts, to provide follow-up support for returned families.

On departure, Hibiscus gives families its contact details. A few families do make contact post-return, but most do not. No other UK agency does any follow-up after the returns.

5.5.4 Departure

Families subject to an enforced return are arrested and escorted to the airport and during the flight. Since May 2018, a private company, MITIE, has been commissioned to provide escort services for enforced returns. In different reports, both the IFRP and the OCC in the Home Office had asked whether its predecessor, Tascor, had provided escort staff with the appropriate training to work with and safeguard children. It is unclear whether this concern continues under the new contract.

In its early reports, the IFRP suggested that it may be inappropriate to remove families on Home Office charter flights since this could make children witness upsetting disturbances. In its 2016-18 report, the IFRP has reversed this, instead recommending: *'in exceptional circumstances with families who have been disruptive or who have threatened disruption, the Home Office should consider the use of charter flights to ensure the safe removal of the family.'*⁷⁶

⁷⁶ Op cit (2018), Recommendation 4

5.6 Bilateral and Multilateral Return Agreements

The UK is a signatory to a number of EU-wide agreements on the return of persons residing in the UK without authorisation – leading to a question about continuity of these arrangements post-Brexit. Guidance published by the Department for Exiting the European Union, states that ‘the UK will prioritise transitioning EU Readmission Agreements post EU exit in order to maintain, and where possible enhance, the UK’s capability to return individuals.’⁷⁷ The list of non-EU countries with agreements with the EU for the readmission of irregular migrants includes: Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, former Yugoslav Republic of Macedonia, Bosnia & Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey and Cape Verde.⁷⁸ In 2014, the UK had bilateral readmission agreements with Algeria, South Korea and Switzerland, and memoranda of understanding for the return of nationals found illegally in the UK with Afghanistan, Angola, Burundi, China, Democratic Republic of Congo, Guinea, Iraq, Kuwait, Malaysia, Nigeria, Rwanda, Sierra Leone, Somaliland, South Sudan and Vietnam.⁷⁹ Some of these agreements do include child focused content (eg. Afghanistan) but it is not included in all.

5.7 Designation of Countries of Return

Section 94 of the Nationality, Immigration and Asylum Act 2002 gives the Home Secretary the power to create an order to designate a country where ‘*there is in general in that State or part no serious risk of persecution of persons entitled to reside*’ there, and removal there ‘*will not in general contravene*’ the ECHR. In making the order, the Home Secretary must have regard to information from any appropriate source, including EU Member States and international organisations.

Orders are in force in relation to: Albania, Macedonia, Moldova, Bolivia, Brazil, Ecuador, South Africa, Ukraine, Kosovo, India, Mongolia, Bosnia-Herzegovina, Mauritius, Montenegro, Peru, South Korea and Serbia. Partial designations are also allowed, so Ghana, Nigeria, Gambia, Kenya, Liberia, Malawi, Mali and Sierra Leone are designated as without serious risk of persecution for men.⁸⁰

5.8 Information on Countries of Return

The Home Office publishes Country Policy and Information Notes (CPIN) to provide guidance to UKVI when it is making decisions in asylum and human rights applications [see Annex 2]. The only child-specific guidance note produced by the Home Office is for unaccompanied asylum-seeking children in Afghanistan, though arguably other CPIN – e.g., Iran: forced marriage; or Albania: blood feuds – are primarily about children, or include material applicable to the situation as it could affect children.

⁷⁷ Written Ministerial Statement (2019) <https://www.parliament.uk/documents/commons-committees/Exiting-the-European-Union/17-19/Correspondence/DExEU-sos-chair-intl-agreements-17-19.pdf>

⁷⁸ EU Migration and Home Affairs webpage (5 May 2019 update) https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en

⁷⁹ House of Commons Hansard (15 Oct 2014) Illegal immigrants. PQ 209994

⁸⁰ Information supplied by the Refugee Council to the Asylum Information Database

In this context, it is worth noting UNHCR guidelines which stipulate that, when analysing a well-founded fear of persecution, *'The principle of the best interests of the child requires that the harm be assessed from the child's perspective. This may include an analysis as to how the child's rights or interests are, or will be, affected by the harm. Ill-treatment which may not rise to the level of persecution in the case of an adult may do so in the case of a child.'*⁸¹ Home Office asylum guidance lists child-specific forms of persecution, including: forced/underage recruitment into military service; family or domestic violence; infanticide; forced/underage marriages; discrimination against street children; FGM; forced labour; child sexual exploitation; images of child abuse; trafficking; or children born outside of strict family planning laws and policies.⁸²

Lawyers who specialise in children's asylum/immigration cases sometimes commission their own country research reports (for example, from [Asylos](#)) to ensure a child-specific perspective is adequately evidenced in the application. They may also do their own specific research, e.g. phoning a number of pharmacists in the proposed return area concerning the supply and cost of certain drugs needed by the child, or phoning schools in the proposed return area to see if there is special educational needs provision. Some lawyers told Unicef UK that they use the UNICEF Child Notices for those countries for which they are available when representing children and families, and that they would be likely to use them if they were available for more countries of origin.

The Home Office Children's Asylum Policy Unit told Unicef UK that there is an appetite for some more child-specific information from caseworkers and the Home Office would not be averse to more child-specific CPINs, such as UNICEF Child Notices. The challenge of constrained resources, however, means that the Country Policy and Information Team has to make difficult choices about the focus of the information they supply. The Home Office would welcome the views of those working in the field on specific countries/issues that need child-specific CPINs.



⁸¹ UNHCR (2009) [UNHCR guidelines on international protection: child asylum claims under Articles 1\(A\)2 and 1\(F\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees](#), para.10

⁸² Home Office (Oct 2017) [Children's asylum claims](#).

5.9 Appeal mechanisms

The UK legal system relating to immigration and asylum is complex, with various different potential appeal mechanisms or legal procedures available at different stages in the process.

Applicants can appeal the initial asylum decision, but appeal statistics are not broken down by age. In 2015, 23.9% of initial decisions for children under 17 were granted refugee status, humanitarian protection, or private and family life leave. This proportion has risen in subsequent years, with percentages of 33.4% granted leave under those categories in 2016; 58.8% in 2017; and 61.5% in 2018 [see Annex 1, Table 1]. Data from the 2017 Home Office cohort analysis suggests that the final grant rate increases following appeal – by 20% in 2017 – although this data focuses on the main applicant and is not disaggregated by age.⁸³ If a child has been refused asylum or granted UASC leave, they can appeal; but as in the case example above, many children are not properly informed of their right to appeal. Before their UASC leave expires at age 17 ½, an application can be submitted to vary/renew the leave.

Lawyers informed Unicef UK that they find that it is almost always a good idea for the child asylum seeker to appeal the initial decision to refuse their claim. Duncan Lewis Solicitors noted that a child asylum seeker will often struggle with memory issues caused by trauma and common psychiatric conditions such as PTSD, and therefore having to recall the facts of why they left their country of origin is inevitably harder years after the event, and after they have been able to focus their minds on other things, such as schooling and integrating and getting used to a completely new environment.

“JM is a national of Afghanistan who arrived in the United Kingdom as a child of 14 years old. His asylum claim was refused by the Home Office as he was not found to be credible. The Home Office made no reference to its own policy about child asylum claimants as to what expectations should be made of his evidence. JM was not aware of his right of appeal and does not recall being advised of it. He was granted Discretionary Leave in accordance with the policy. When his leave was about to expire he attempted to get help from his social worker to make an application to renew his leave to remain, but they were not able to help him to make the application or to find a solicitor. He eventually found a solicitor when he was an adult; who put in a fresh claim that was subsequently refused. He was not given a right of appeal. He was later detained and attempts to make further representations were refused, as the Home Office relied upon its own credibility findings from when he was a child. His removal was stopped after a last-minute injunction. JM began to suffer from serious mental ill-health. He attempted suicide on a number of occasions in detention before his release. His judicial review decision is still pending.”

– Case from Duncan Lewis Solicitors

There may be other legal possibilities open to the young person, such as an application under Article 8 of the ECHR on the basis of family or private life, but this is unlikely to be within

⁸³ Home Office (2019) [Immigration statistics, year ending December 2018](#). Chart note for table as_06

the scope of legal aid. Depending on the length of their residence they might be able to seek registration as a British citizen. Foreign National Offenders, including those aged under 18, can appeal against a deportation order.

The Home Office has the power to 'certify' protection and human rights claims, under section 94 of the Nationality, Immigration and Asylum Act 2002. If the Home Office certify a claim because they categorise it as 'clearly unfounded', it restricts the right of appeal against refusal, so the appellant can only appeal from outside the UK. Lawyers have reported a recent spike (last quarter of 2018) in Albanian certified refusals of asylum claims, including for under-18-year-olds.

A judicial review of court decisions may also be possible. The last-minute 'appeals' that often delay or avert returns are usually judicial reviews/injunctions. These are sometimes made last-minute due to lack of legal aid earlier in the process.

5.10 Voluntary returns; Returnee support; Reintegration

The Home Office has a dedicated Voluntary Returns Service. Those opting for Assisted Voluntary Return (AVR) can receive assistance with the practicalities associated with returns, such as obtaining travel documents and other necessary documents, transport to airports, and contacts with relevant agencies in countries of return. The Home Office AVR Scheme has different levels of support depending on status and vulnerability. The financial assistance – up to £2000 and extra support – is available to under-18s who are travelling alone, or family groups travelling together which includes someone under 18.⁸⁴ In those countries where the UK has a service-provider contracted, e.g. Caritas, they will pass on the funds to the individual/family. In those countries where there is no service-provider it is uploaded onto a cash-card.

There is general agreement that the use of an AVR programme is preferable for both the State and the migrants because *'it is more dignified and more humane for the migrant, more cost-effective for the member states, more sustainable than forced return, and it does not require the same cooperation between states that forced return demands.'*⁸⁵

IOM ran the UK's assisted voluntary return and reintegration (AVRR) programme from 1999 to 2011, and continued to provide reintegration assistance to returnees to Afghanistan through to 2015. Since then, IOM has provided reintegration assistance for UK returnees in some select non-EU countries under the European Reintegration Network (ERIN), although their involvement in the programme ended in 2018. An NGO, Refugee Action, ran the AVRR scheme via their "Choices" programme from 2011 until the end of 2015, when the Home Office took it in-house. Refugee Action stated that many of the community groups, organisations and individuals using their service told them that they would find it difficult to trust or approach a programme run by the Home Office which, by definition, will not be available to listen to and provide advice to those who have not yet made up their minds to return.⁸⁶

The Home Office told Unicef UK that they have attempted to mitigate the concerns that individuals may have about approaching their in-house service, by developing a network of

⁸⁴ Home Office (2019) [Voluntary and assisted returns](#).

⁸⁵ Cherti, M (21 Feb 2017) [Is voluntary return the new way forward for managing irregular migration?](#) Compas blog

⁸⁶ Refugee Action (25 Nov 2015) [Goodbye to Choices, our assisted voluntary return service](#). Refugee Action blog

community engagement leads around the country who offer face-to-face meetings. They have also established an online application service, which they report is turning out to be well-used. A local NGO working with the Albanian community, Shpresa, told Unicef UK that they had noted that over the last two to three years the Home Office is trying hard to communicate with the Albanian community. Home Office officials offer free surgeries with Shpresa, present at Shpresa events, and organise focus groups.

Families who return voluntarily can opt to use a 'meet and greet' service on arrival in those countries where it is available, and these services are able to provide feedback to the Home Office including *'for example, confirmation that the family has a plan for where they are going and knowledge of how to get there, that the family has sufficient subsistence funds for this initial journey. This provides assurance that the family is not destitute, and has sufficient resilience in their new situation for the welfare and safeguarding needs of family members not to be at significant risk.'*⁸⁷ The IFRP recommended that this service be extended to families returned through the enforced route, and this is reported to now be available to them in those countries where this service is in place.

The Home Office stated that there have been a few voluntary returns of unaccompanied children, but these are very rare, and would require the consent of the child and their social worker. The Home Office reports that children are invited to attend the meetings related to returnee support. For families who are returned through the enforced route, some financial assistance may be made available for immediate needs, in consultation with the IFRP. For individuals who were previously asylum seekers, financial assistance of £1,500 is available on return. This may include former UASC. On the [gov.uk website](https://www.gov.uk), the Home Office offer of the £2000 AVR payment says it can be used *'to find somewhere to live, find a job or start a business in your home country.'* However, it does not get directly involved in providing on-the-ground support to help the reintegration of those returning to their country of origin.⁸⁸ Support around reintegration is, instead, provided in at least 22 countries via ERIN which works through local service providers to develop a reintegration plan with returnees, focusing on areas including accommodation, education, medical treatment and income generating activities. The UK government participates in occasional ad hoc monitoring visits organised by ERIN, to return countries. Research by NGOs into the delivery of reintegration services for Afghan child migrants found serious shortcomings in the reintegration process in Afghanistan (see box *Returns to Afghanistan*.)

The UK Department for International Development (DFID) has funded field research in Afghanistan, Ethiopia, Iraq, Senegal and Somalia under the Mediterranean Sustainable Reintegration (MEASURE) Project, managed by the Migrant Protection and Assistance Division at IOM Headquarters. The research has resulted in the development of 15 field-tested indicators and 30 measurement elements relating to the economic, social and psychosocial dimensions of reintegration, together with a scoring system for measuring reintegration outcomes that facilitates the measurement of returnees' progress towards sustainability. IOM is also looking at adapting these tools to the reintegration outcomes of migrants in vulnerable situations, including children.

These tools are currently being rolled-out in the framework of EU-IOM Actions in support of migrant protection and reintegration funded by the EU Trust Fund for Africa and the Development Cooperation Instrument. Similar support to help monitor post return outcomes of

⁸⁷ Op cit, 2018, para.7.3

⁸⁸ Cherti, as above

voluntary returnees from the UK would help in identifying lessons learnt and addressing gaps, and thereby strengthening future reintegration programming, based on evidence.

The Home Office, in consultation with DFID, is conducting research on returns and reintegration, drawing on sources including ERIN programmes in-country, as part of the development of a reintegration strategy. This will cover issues such as: options for reintegration services following the UK's departure from the European Union, the type of support packages offered and whether these are sufficient and suitably flexible to meet the needs of returnees, ensuring a consistency of approach to reintegration for different types of returns, eg. enforced, voluntary etc. The Home Office plan to begin implementing this before the end of 2019.

Returns to Afghanistan

In 2017, ECRE analysed reports of children and families, and other vulnerable groups being returned to Afghanistan from European countries. Despite the security situation worsening, they noted that: *'policy changes seem to be a reaction to the migration situation of Member States rather than to the objective security situation in Afghanistan.'*⁸⁹ They expressed concern that the shape of the migration debate across Europe was resulting in a simplistic focus on the number returned rather than reintegration, support and rebuilding in the destination country.

*'There are no common concepts, tools, structures or indicators to measure the success of return or how reintegration programmes support this process. Important indicators of successful (re)integration in Afghanistan must include whether returnees are safe, that they feel safe in their communities and outside the home, that they can return to a place where they have networks and assistance, that they are able to support themselves and their families, and feel able to stay in their country of origin when they want to do so.'*⁹⁰

In 2016 Refugee Support Network (RSN) reported that, since 2007, 2,018 care leavers had been removed from the UK to Afghanistan, yet no rigorous monitoring of their experiences or wellbeing after return had been carried out. RSN monitored 25 young people over a period of 18 months who were returned to Afghanistan after being asylum seekers and looked after in the UK care system. They found that their loss of social networks and a fear of stigma or discrimination had left most of them isolated and disconnected. Institutional support, particularly from IOM⁹¹, had been helpful to a minority of the young people, but the majority faced substantial barriers to accessing help and remained either without support or dependent on unsustainable and ad-hoc assistance from individuals in the UK. Twelve of the young people had firsthand experiences of security incidents since return. In three cases, young people were threatened or targeted as a result of issues connected to their original asylum claims, and seven were targeted simply because of their status as a returnee.⁹²

⁸⁹ European Council on Refugees and Exiles (ECRE) (2017) European migration policy and returns: case study on Afghanistan, p.2

⁹⁰ Ibid, p.3

⁹¹ IOM's role in providing reintegration support to voluntary returnees from the UK to Afghanistan ended in January 2016 when the Home Office took the voluntary return service 'in-house'

⁹² Gladwell, C and others (2016) After Return, Refugee Support Network

Amnesty International reports on criticism of the UK from the Afghan Minister for Refugees and Repatriation for returning young adults to Afghanistan after they had spent their childhood in the UK.⁹³ The same report comments on the absence of national legislation to govern the care of unaccompanied/separated children in Afghanistan, or of local or international NGOs that could provide them with support.

A Save the Children report on the return of child migrants to Afghanistan from EU countries found that: one in five returned alone; follow-up with their families in Afghanistan was almost non-existent; child-specific reintegration support was very limited/non-existent; many returned to regions where they had no family/community links; they felt unsafe after returning; many were unable to attend school; and the housing and economic situation to which they returned did not meet their basic needs.⁹⁴

5.11 Family unity: Family separation through detention, return or deportation

“The section 55 policies clearly place the burden of enquiry on the Home Office, but in BID’s experience they are rarely complied with. Time and again we see parents with caring responsibilities being detained, the Home Office having made no enquiries as to the children’s welfare.”

“It is difficult to imagine any other setting in which children in the UK could be left indefinitely without their primary carer, without proper enquiry as to the impact of that decision and/or the proportionality of it. Detailed processes are followed when children are taken into care because of parental abuse or neglect. And yet people with insecure immigration status who are caring and capable parents can be held in immigration without time limit. The decision to detain them is not made by a court but by an immigration officer.”

There appear to be no official statistics on the number of families separated through detention. Over July and August 2019, Bail for Immigration Detainees (BID) wrote 3 separate Freedom of Information (FOI) requests asking for information on the number of parents separated from their children through detention and deportation. In each response, the Home Office was unable to answer any of the questions in the FOI requests due to the fact that ‘*the information is not held in a reportable field on [their] case management system*’ and therefore they are ‘*unable to capture the information*’ without resorting to searching a high volume of individual records which would exceed the £600 cost limit. This lack of data prevents independent scrutiny of the Home Office’s compliance with its own statutory duty.

⁹³ Amnesty International (2017) *Forced back to danger: asylum seekers returned from Europe to Afghanistan*, p.39.

⁹⁴ Hagan, M and others (2018) *From Europe to Afghanistan: experiences of child returnees*, Save the Children



In 2013-14, BID carried out a monitoring exercise with families separated by immigration detention.⁹⁵ Eleven out of 47 parents, who between them had a total of 101 children (19 of whom were British-born), were removed or deported without their children. In 46 of those cases, the parents were detained for an average of 286 days before being returned. BID alleges that this practice still continues – they saw 170 children separated from their parents in 2017/18, and some children had been taken into care following the detention of a parent.⁹⁶

This is despite current Home Office policy.⁹⁷ It does allow for decisions to be made to separate families as a consequence of detention or removal. However, when immigration powers are used to detain or remove a family, the guidance quotes the underpinning principle within Article 8 ECHR that '*members of the family remain together wherever possible*'. Separation must be necessary and proportionate though, when separation involves a child, certain safeguards are written into government guidance, including criteria to refer ensured return cases to the IFRP, and cases involving permanent separation to the Office of the Children's Champion (OCC) which advises on the implications of that decision for the welfare of the children involved. The guidance also stipulates:

- The primary consideration, which must be fully documented, is the child's best interests.
- Nursing mothers must not be separated from the child they are nursing.
- A child must not be separated from both adults, or one in the case of a single-parent family, if the consequence will be the child will go into care.

⁹⁵ Ibid

⁹⁶ Bulman, M (4 July 2018) [Home Office separating scores of children from parents as part of immigration detention regime](#). Independent newspaper

⁹⁷ Home Office (Dec 2017) [Family separations](#).

All separations must be for as short a time as possible, and the family must be informed why the separation is necessary. Separations may be either:

- Permanent – where part of the family remains in the UK (regardless of immigration status) whilst the other part is returned to their country or territory of origin, or to a third country, and it is not considered to be in the family’s control to reunite themselves, nor does the Home Office have intentions of reuniting the family due to barriers preventing family life from continuing overseas; OR
- Temporary – where part of the family is separated from the family group, but the Home Office intends to reunite the family, or it is considered to be within the family’s control to be reunited. This family reunion can take place within the UK, the family’s country of origin, or a third country.

BID reports a concerning gap between policy and practice, with the onus ending up on parents to inform about their family life, rather than seeing the Home Office as having a duty of enquiry in order to protect children’s rights.

Issues often relate to a parent who has committed criminal offences, and is therefore classified as a Foreign National Offender. The UK Borders Act 2007 provides for the automatic deportation of any foreign national who is sentenced to a period of 12 months’ or more imprisonment. This affects many people who arrived in the UK as young children and may not have even been aware that they are not British. Lawyers proposed to Unicef UK that the UK government should repeal automatic deportation provisions for those with 12+ month sentences in the UK Border Act 2007, and that deportations should be decided on an individual basis by court orders and take into account the best interests of children. BID has conducted a recent analysis of 28 cases where they made an application to the Home Office for their client to be released on bail. In each of these applications they requested full disclosure of any correspondence with the OCC or with local authority children’s services, citing evidence of the Home Office’s failure to show that it had complied with its section 55 duty or its own policies by considering the best interests of the child in any decision to detain or maintain detention up to that point. None of the responses to these bail applications contained evidence that the OCC had been contacted, and in only one case was there evidence that a local authority been contacted.

HM Inspectorate of Prisons told Unicef UK that there should be more focus on the situation of adults in immigration detention who have children, looking at the impact of this on the children, and noted that there is a problem of lack of data on family separations through detention.

Beth’s grandfather, who was caring for her and her disabled brother Daniel during their mother’s detention, became seriously ill and was admitted to hospital three times. Beth had to stop attending school to care for her brother and grandfather and missed her GCSE exams. She also had to deal with proceedings which were started to evict the family due to rent arrears. Beth found it extremely difficult to look after her seven year old brother, who has very limited motor control and severe behavioural problems. During their mother, Christine’s, detention, he was made subject to a child protection plan, deemed to be at risk of emotional and physical harm and referred to Child and Adult Mental Health Services. A Children’s Services assessment found that: ‘Daniel has found it very difficult being separated from his mother, he is keen for her to return home and often states that she is “coming home today” when she is not and becomes upset when he realises this is

not the case. [A] concerned neighbour rang to report that Daniel was playing alone in the road at 8pm, he was seen to fall and lay in the road, which is a bus route... he walks into people's houses and has poor awareness of danger and his own safety.' Two months after his mother entered detention Children's Services received a report that Daniel had been hit by a car. Despite receiving reports about the welfare of these children, the Border Agency detained their mother for 160 days before she was released on bail by the Tribunal. She subsequently successfully appealed the Border Agency's decision to deport her.

Case study from BID (Bail for Immigration Detainees) – from their study *Fractured Childhoods: The Separation of Families by Immigration Detention*

Family separation through destitution arising from immigration status

Under section 17 of the Children Act 1989 local authorities have a duty to safeguard and promote the welfare of children within their area who are in need; and, so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.⁹⁸ The NGO Project 17 informed Unicef UK that in 2017 they worked with 207 new families. In nine of these cases, parents were threatened that their children would be taken away solely on the basis of destitution which arose from their immigration status. Project 17 is aware of cases where the children were present when these threats were made to the parents. In 2016, they dealt with a case where two young children were taken into police protection for 24 hours because the mother was homeless due to her immigration status and social services had refused to provide section 17 support. The Joint Council on the Welfare of Immigrants (JCWI) told Unicef UK that they have also seen parents who have been threatened with their child being taken into care because of lack of financial support due to their immigration status.⁹⁹ Such threats are contrary to government policy, and cause a lot of distress to families and children. JCWI have also seen mothers and children accommodated with the father made homeless, thus separating families.

5.12 Reducing risks for young people in the transition to adulthood

"If they are appeal-rights-exhausted and with no recourse to public funds, young people are at risk of exploitation and involvement in criminality."

– No Recourse to Public Funds Network

Research with migrant young people approaching adulthood indicates that some choose to 'go missing' in order to avoid being returned to their country of origin. Young people interviewed for the [ESRC Becoming Adult project](#) described '*purposefully disengaging from social care*', fully aware they risked being exploited but believing those risks outweighed by the risks associated with a

⁹⁸ Children Act 1989

⁹⁹ Lyons, K (13 June 2017) [Destitute immigrants in UK threatened with having children removed](#). Guardian newspaper

forced return.¹⁰⁰ ECPAT UK argues that the hostile environment package of measures¹⁰¹ designed to deter irregular migration can make trafficked children afraid of being arrested, detained or returned to their country of origin, thereby preventing them from seeking protection and support.¹⁰²

Since the numbers of enforced returns is relatively low, NGOs working with young people commented to Unicef UK that the reality is that the Home Office is not returning most appeal-rights-exhausted (ARE) young people, even when they turn 18. Therefore, once they turn 18 they face destitution and disappearance as the norm.

A literature review for the Independent Chief Inspector of Immigration and Borders concluded the following about the situation of young people who have become appeals-rights-exhausted: *'This status ushers in a new regime of having to report regularly at an immigration office. Failure to report will lead to being treated as an absconder. As people are regularly detained when they report to an immigration office, there is significant fear attached to reporting events with some reporting anxiety, sleeplessness and depression. For young people remaining in the care of their local authority, services may now be withdrawn or they may disengage with the service of their own volition in anticipation of being arrested at their accommodation. Few choose voluntary return and most embrace the risk of entering the world of illegal work and reliance on their network of friends and contacts for somewhere to stay.'*¹⁰³

The No Recourse to Public Funds Network reported that local authorities have duties to provide leaving-care support to young people, which ends at age 21. But they can withdraw this support earlier than 21 if the young person is appeal-rights-exhausted and if a human rights assessment has been carried out that shows there are no human rights-related reasons why they cannot return. Anecdotally they hear that when statutory support has been switched off, the young person may well disappear. The Joint Council for the Welfare of Immigrants stated that on turning 18, unaccompanied and separated children will often be homeless if they are appeal-rights-exhausted. They noted that most of the young people they come across in that situation have mental health needs.

"Young people know that 17.5 is pending and they fear being detained and returned at 18, so many prepare to go underground. They end up in the black market and organised crime. They become street-wise. They may use a different ID. There is no opportunity for them to not break the law. If they had the option of a pathway to status if they get a job or university place, this would improve everything."

– Shpresa, NGO working with unaccompanied young asylum seekers

¹⁰⁰ Sigona, N, Chase, E and Humphris, R (2017) Becoming adult: understanding causes and consequences of going missing.

¹⁰¹ This package of measures was introduced through the Immigration Act 2014 and Immigration Act 2016, and aims to put pressure on people who are unable to provide evidence of their right to be in the UK to leave the UK by removing their rights to specific services. This includes the right to rent, work, open a bank account, get a driving licence, attend university or receive free health care under the NHS. It also requires landlords, education institutions, banks and building societies, and health providers to check people's immigration status before providing a service and, in some cases, share that information with the Home Office.

¹⁰² Baker, C and Hunter, J (2018) Still in harm's way: an update report on trafficked and unaccompanied children going missing from care in the UK. ECPAT UK and Missing People

¹⁰³ Matthews, A (July 2017) Literature review on how the Home Office ensures it acts in the best interests of the child when conducting its immigration, asylum and nationality functions, specifically how it determines, reviews and secures the child's best interests: Prepared for the Independent Chief Inspector of Borders and Immigration, p.25

Some NGOs and local authority interviewees proposed that a plan should be drawn up for each unaccompanied young person facing return – to address all aspects of the young person’s needs, with independent scrutiny – similar to the work that the IFRP undertakes for families facing returns. If such a ‘panel’ were set up, it should consider the return plan – how the young person should be returned, transition, reception arrangements – and advise on it, with the presumption that the plan should be reconsidered if they do not approve it, and that they should oversee the process for young people who cannot be returned despite the Home Office’s intentions to return them.

5.13 Barriers to return

Around 50% of asylum applicants are granted refugee, humanitarian protection or discretionary leave at the initial or appeal stages. However, many of those whose applications are refused or withdrawn do not leave the UK.

The Refugee Council¹⁰⁴ and British Red Cross¹⁰⁵ have looked into the reasons why those with unresolved immigration status choose not to leave. They may fear:

- Ongoing violations of human rights and instability in their country of origin.
- That their lives will be at risk if they return to their country of origin, despite the Home Office believing their fears are unfounded.
- Potential unfairness of the asylum decision itself coupled with an inability to access good quality legal advice for their claim.
- Inaccuracies, inconsistencies and omissions in the Home Office decision-making process.

From the Government perspective, UKVI loses touch with refused asylum seekers once they have reached the end of the application process and are no longer receiving any support. This makes it difficult to locate them, and difficult to enforce removals. Also, the Government may be unable to return people due to their home countries refusing to receive returnees, or embassies failing to provide families with the travel documents they need.

In order to return an individual or family, the Home Office will usually have to approach the embassy in the country of origin and ask for an emergency travel document to enable the person(s) to travel. The Home Office publishes a list of travel documentation requirements in a regularly updated country returns guide.¹⁰⁶ Many countries will require documentary evidence of the person’s identity to establish that the returnee is one of their nationals. Many asylum seekers will have arrived in the UK with either no, or false, documentation. Others may not wish to provide the Home Office with documentation if it allows them to be returned. Some of the children involved in family returns may be British-born, so have no identity links to the country of destination.

In its 2016-18 report,¹⁰⁷ the IFRP lists additional barriers which prevent return, highlighting their concerns about families who abscond, and how this may affect their children’s welfare. However, at pre-arrest stage, the highest number of cancellations are due to new asylum claims

¹⁰⁴ McIntyre, P and Mogire, E (2012) Between a rock and a hard place: the dilemma facing refused asylum seekers. Refugee Council

¹⁰⁵ Blanchard, C and Joy, S (2017) Can’t stay, can’t go: refused asylum seekers who cannot be returned. British Red Cross

¹⁰⁶ Home Office (Dec 2018) Country returns guide.

¹⁰⁷ Op cit (2018)

being made, and at post-arrest stage, judicial reviews/injunctions. The IFRP appears to regard these legal challenges as deliberate obstruction – ‘*the use of last minute legal procedures to frustrate return.*’¹⁰⁸ Lawyers and NGOs interviewed by Unicef UK identified lack of legal aid for immigration cases earlier in the process as the main reason why last-minute legal applications are made. It can be easier to get Exceptional Case Funding for legal aid at the point of removal. Once in detention, the person gets access to lawyers, and may end up instructing new layers who review the case and may find applications or legal arguments that ought to have been made in the case. The person may have been unable to afford the fee for an earlier immigration application for themselves and their children as these fees can be very high.¹⁰⁹

With regards to enforced returns of young people (post-18) to Albania, the community organisation, Shpresa, told Unicef UK that they hear that the young people often move on to another country immediately after return. This is said to be due to them being in danger back in Albania, especially due to debts they owe for the original journey, and also the dangers they may have originally fled, such as blood feuds, domestic violence, threat of honour killings, or being LGBT.

¹⁰⁸ Independent Family Returns Panel (2014) Annual report 2012-14, para.1.10

¹⁰⁹ For example, an application to remain on the basis of the child’s residence of at least 7 years in the UK, (under 276ADE(1)(4)), the cost is £1,033 for each person including each child, plus £1,000 NHS surcharge for each person). There is a fee waiver process, but only if the person is destitute (using the same threshold for destitution as that used for accessing asylum support).

**PART III:
CONCLUSIONS
& RECOMMENDATIONS**



6 Conclusions

Implementation of the Best Interests of the Child Principle

There is no systematic application of the Best Interests of the Child principle in relation to immigration and asylum decisions that can result in a child being returned. The UK Government claims that the best interests of the child principle is enshrined in UK legislation and case law,¹¹⁰ and states that children's best interests considerations are taken into account in all asylum and immigration decisions. However, the UN Committee on the Rights of the Child does not agree with this assertion. It is of concern that there is no formal BID process. During immigration and asylum application processes, the lack of a formal BID process results in insufficient attention to best interests in decision-making, in a lack of adequate evidence about the child being put before Home Office decision-makers, and in lengthy, distressing and costly appeals. Children in families are often treated in practice as an 'add-on' to their parent(s)' asylum or immigration case, and frequently standard reasons are given for rejections (such as keeping the child with the family) which do not properly assess their best interests nor examine the particular circumstances of the child. There is a discrepancy between the case law and Home Office policy and practice.

The Office of the Children's Champion was set up as part of the government's child safeguarding duty, to provide internal advice or comment on the welfare aspects in individual cases which are referred to it and to provide internal advice on the child safeguarding elements of broader policy.

¹¹⁰ UK Government (March 2015) Fifth periodic report of States Parties due in 2014: United Kingdom, Committee on the Rights of the Child, para. 51

Delays in the system

Asylum and immigration processes are very lengthy, especially when appeals are necessary. Delays in the process could mean that children/young people for whom it may not have been in their best interests to remain in the UK at the time the case started end up with a right to remain by the end of the process simply due to passage of time and the roots they have established in the UK, as well as the greater difficulties they would therefore face on return. A child with at least 7 years residence in the UK will be granted leave to remain if it would be unreasonable to return him/her.¹¹¹

Current practice of not returning unaccompanied children

The UK does not currently undertake enforced returns of under-18-year-olds. If the UK established a proper BID process, it might be possible to identify children's best interests more effectively, which might result in some returns that do not happen under the current system. If an unaccompanied child is not granted refugee status, Humanitarian Protection or the right to remain under Article 8 ECHR,¹¹² they will be granted a form of limited leave if there are no adequate reception arrangements in the country to which they would be returned. UASC (Unaccompanied Asylum Seeking Child) leave is granted for a period of 30 months or until the child turns 17½ years old, whichever is shorter. Whilst this means that UASC are not returned, they are left in limbo at a time when they are trying to enter into adult life. They are removable the day after they turn 18, with no transition period.

Responsibility for care of unaccompanied children

There is an obligation on local authorities to provide for unaccompanied asylum seeking children (UASC) in the same way as for any other child in their care. However, the Home Office provides the funding for UASC, which does set them apart from other children in care.

Triple-planning for unaccompanied children

Since UASC are not currently subject to enforced returns in practice, for those granted only limited leave to remain or refused asylum, the focus is on planning for return once they reach adulthood. As part of its safeguarding strategy for UASC, the Department for Education (DfE) in England is developing good practice resources on triple planning for social workers – for the young person's life in the UK pending a decision, for remaining long-term in the UK if some status is granted, or for return. Triple pathway planning is not currently happening systematically. Once UASC turn 18 they face destitution and disappearance as the norm, more often than return.

Guardians in Scotland and Northern Ireland, Advisors in England and Wales

There is a Guardianship Scheme for all UASC in Scotland and Northern Ireland, which makes a positive difference to the support and care that children receive. In England and Wales, the Home Office funds the Refugee Council's Children's Advice Project, which provides some support for UASC in England and Wales, but does not reach all or provide as much support as guardianship would.

Access to legal aid

State-funded legal aid was removed from most immigration cases in 2013, despite the

¹¹¹ Under UK Immigration Rules Para. 276ADE(1)(4) for the child; under Appendix FM UK Immigration Rules for the parent of a qualifying child (a British child or a child qualifying under 276ADE(1)(4))

¹¹² European Convention on Human Rights, right to family and private life: https://www.echr.coe.int/Documents/Convention_ENG.pdf

complexity of UK immigration law. Some limited legal aid is available via the Exceptional Case Funding scheme, but has to be applied for and can itself be subject to refusal. Legal aid has remained available for asylum cases, and the government has announced that it will bring immigration matters for unaccompanied and separated children into scope of legal aid.¹¹³ There remain difficulties for children in families who are not able to access legal aid in immigration cases. This poses a major problem for children and results in less efficiency, and ultimately in greater costs to the system including last-minute challenges when returns were scheduled to take place.

Returns of European children – at potential risk of trafficking

There are reports of local authorities returning European children who may be victims of trafficking on occasions without notifying or involving the Home Office. The Child Trafficking Advice Centre is aware of incidents of European children who arrive in the UK alone or with unrelated adults being put straight back on planes without assessing their situation or investigating adults they are travelling with who may be a risk to them. Forthcoming statutory Guidance under the Modern Slavery Act 2015 envisages the establishment of a system of assessment by the Local Authority of whether return is in the best interests of the child in such cases, with input from the Independent Child Trafficking Advocate and with respect for safeguards.

UK family returns process

The UK's family returns process, which emphasises voluntary return, has led to significant improvements for children in families, with an increase in the relative numbers of voluntary returns. The Independent Family Returns Panel (IFRP) – which provides independent case-by-case advice to the Home Office on enforced family returns – plays an important role in promoting children's best interests in the ensured returns process and in holding the Home Office to account on their duties and responsibilities. The IFRP has improved levels of compliance, and had a positive impact on family welfare and safeguarding children, and mitigating the negative impacts of returns on children.

Immigration detention

The UK does not detain unaccompanied asylum seeking children (except in some age disputes). The family returns process has resulted in a dramatic reduction in the use of immigration detention of accompanied children. There is now relatively minimal use of immigration detention for children in families and in quite child-friendly surroundings, but it is still damaging for the few children who experience family arrest and detention, and no evidence that it impacts returns numbers.

There are concerns about family separation through parent(s) being detained, returned or deported. The UK policy on family separations is protective of children's rights, but there are reports of a concerning gap between policy and practice, with the onus ending up on parents to inform about their family life, rather than the Home Office fulfilling its duty of enquiry in order to protect children's rights. There have been cases of children taken into care following the detention of a parent, in breach of the policy.

¹¹³ House of Commons Hansard (12 July 2018) [Justice update. Written statement HCWS853](#)





7 Recommendations

On the basis of these findings, UNICEF UK proposes the following recommendations.

Best Interests

The UK government should:

- Develop a strengthened Best Interests Assessment and Determination process, undertaken systematically, objectively and in coordination with other government bodies responsible for child protection, that ensures that all of the necessary information about the child's best interests is available to the decision-maker, so that the child's best interests is a primary consideration for the asylum or immigration determination and can inform a durable solution for each child. **(Home Office)**
- Require Home Office caseworkers and decision-makers to provide fully reasoned section 55 decisions (in UASC and family cases) – setting out what they have done to fully consider information about the child's best interests, and including information about what would happen to the child on return. **(Home Office)**
- Extend in-depth training on best interests to all Home Office staff who make decisions about children's asylum and immigration cases – including for children in families, and including Immigration Directorate staff. **(Home Office)**

Support for unaccompanied asylum seeking children:

The UK Government should:

- Strengthen procedures to ensure that all relevant durable solutions are considered for unaccompanied and separated children – long-term settlement and integration in the UK (with the most appropriate form of leave considered on a case-by-case basis), relocation

to a third country (whether via family reunion or resettlement) or return to their country of origin. This should include supporting local authorities to plan with a child for the longer-term regardless of the outcome of the immigration decision in order to make sure the child's rights are protected. **(Home Office and Department for Education in England, and Governments of Scotland, Wales and Northern Ireland)**

- Introduce independent guardians for all UASC in England and Wales, recognising their importance to an effective Best Interests process and the vital support they provide to unaccompanied children facing the possibility of return. **(Home Office)**

Access to legal aid

The UK Government should:

- Make immigration cases that involve potential returns of all children, including children in families, eligible for legal aid. **(Ministry of Justice)**

Detention

The UK Government should:

- Review its use of the immigration detention of children based on civil society consultation and full consideration of alternatives. **(Home Office)**
- Ensure that Best Interests Assessments are carried out and referrals to the OCC are made in all cases that could result in children being separated from their parent(s) by immigration detention and/or returns/deportations. **(Home Office)**

Returns support and reintegration

The UK Government should:

- Ensure that the UK's approach to reintegration, based on research by Home Office and DfID, recognises the particular needs of children, and delivers reintegration and post returns monitoring in line with the Best Interests of the Child. **(Home Office)**

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ANNEX 1 – TABLES OF STATISTICS

Table 1, 2 & 3:
Discretionary Leave (DL), UASC Leave and Asylum refusal statistics 2015-2018¹¹⁴

Table 1

Unaccompanied asylum seeking children age 17 and under							
Date	Total number of initial decisions	DL – numbers	DL – percentage of total decisions	UASC leave – numbers	UASC leave – percentage of total decisions	Refusals – numbers	Refusals – percentage of total decisions
2015	1,568	38	2.4%	809	51.6%	346	22%
2016	1,656	14	0.8%	828	50%	260	15.7%
2017	1,454	2	0.1%	386	26.5%	211	14.5%
2018	1,327	2	0.1%	319	24.0%	190	14.3%
Unaccompanied asylum seeking children who have reached the age of 18							
Date	Total number of initial decisions	DL – numbers	DL – percentage of total decisions	UASC leave – numbers	UASC leave – percentage of total decisions	Refusals – numbers	Refusals – percentage of total decisions
2015	362	3	0.8%	0	---	295	81.4%
2016	295	1	0.3%	1	---	167	56.6%
2017	586	1	0.2%	0	---	265	45.2%
2018	824	2	0.2%	0	---	491	59.6%

Overall, the figures for Discretionary leave (Table 2) are much lower than UASC leave and refusals (Table 3). The figures have been separated out because UASC granted DL may, in ‘particularly compelling circumstances’, go on to be granted Indefinite Leave to Remain.

Table 2

Unaccompanied asylum seeking children age 17 and under – numbers of Discretionary leave statistics and as a percentage of all UASC initial decisions by country of nationality, 2015 – 2018				
Country of nationality	Discretionary leave			
	2015	2016	2017	2018
Afghanistan	11 (4.2%)	6 (1.4%)	2 (0.5%)	1 (0.3%)
Albania	8 (1.4%)	0	0	0
Egypt	1 (1.2%)	0	0	0
Eritrea	2 (0.5%)	0	0	0
Ethiopia	0	0	0	0
Iran	0	4 (1.7%)	0	0
Iraq	0	0	0	0
Sudan	0	0	0	1 (0.4%)
Syria	0	1 (1%)	0	0
Vietnam	0	0	0	0

¹¹⁴ Home Office (2019) Immigration statistics, year ending December 2018. Table as_09

Unaccompanied asylum seeking children who have reached the age of 18 – numbers of Discretionary leave statistics and as a percentage of all UASC initial decisions by country of nationality, 2015 – 2018				
Country of nationality	Discretionary leave			
	2015	2016	2017	2018
Afghanistan	0	0	0	2 (0.5%)
Albania	2 (0.3%)	0	0	0
Egypt	0	0	0	0
Eritrea	0	0	0	0
Ethiopia	0	0	0	0
Iran	0	0	0	0
Iraq	0	0	0	0
Sudan	0	0	0	0
Syria	0	0	0	0
Vietnam	0	1 (1.4%)	0	0

Table 3

Unaccompanied asylum seeking children age 17 and under – numbers of UASC leave and asylum refusal statistics and as a percentage of all UASC initial decisions by country of nationality, 2015 – 2018								
Country of nationality	UASC leave				Refusals			
	2015	2016	2017	2018	2015	2016	2017	2018
Afghanistan	147 (56.1%)	269 (66.3%)	140 (36.5%)	101 (27.8%)	42 (16%)	47 (11.1%)	45 (11.7%)	33 (9.1%)
Albania	288 (49.4%)	133 (48.9%)	25 (23.6%)	29 (16.8%)	143 (24.5%)	53 (19.5%)	22 (20.7%)	29 (16.8%)
Egypt	54 (64.3%)	12 (46.1%)	10 (27.8%)	4 (10.0%)	20 (23.8%)	7 (26.9%)	10 (27.8%)	10 (25.0%)
Eritrea	162 (40%)	120 (30.2%)	4 (0.8%)	5 (1.3%)	54 (13.3%)	34 (8.6%)	8 (1.6%)	4 (1.1%)
Ethiopia	9 (21.9%)	15 (31.3%)	9 (10.8%)	11 (12.5%)	6 (14.6%)	3 (6.3%)	7 (8.4%)	7 (7.9%)
Iran	21 (26.9%)	108 (45.2%)	52 (27.2%)	61 (25.4%)	12 (15.4%)	49 (20.5%)	37 (19.4%)	28 (11.7%)
Iraq	15 (33.3%)	76 (41.1%)	74 (36.3%)	46 (18.5%)	12 (26.7%)	33 (17.8%)	32 (15.7%)	34 (13.7%)
Sudan	1 (1.4%)	4 (6.9%)	7 (3.3%)	14 (5.4%)	0 (—)	2 (3.4%)	8 (3.8%)	6 (2.3%)
Syria	32 (32.3%)	7 (6.8%)	6 (8.7%)	1 (2.0%)	10 (10.1%)	5 (4.9%)	6 (8.7%)	2 (4.0%)
Vietnam	40 (53.3%)	22 (31.4%)	29 (22.1%)	20 (13.1%)	10 (13.3%)	3 (4.3%)	13 (9.9%)	12 (7.9%)

Unaccompanied asylum seeking children who have reached the age of 18 – numbers of UASC leave and asylum refusal statistics and as a percentage of all UASC initial decisions by country of nationality, 2015 – 2018

Country of nationality	UASC leave				Refusals			
	2015	2016	2017	2018	2015	2016	2017	2018
Afghanistan	0	0	0	0	19 (7.3%)	17 (4%)	42 (10.9%)	90 (24.8%)
Albania	0	0	0	0	141 (24.2%)	44 (16.2%)	47 (44.3%)	111 (64.2%)
Egypt	0	0	0	0	9 (10.7%)	7 (26.9%)	13 (36.1%)	26 (65.0%)
Eritrea	0	0	0	0	25 (6.2%)	18 (4.5%)	6 (1.2%)	1 (0.3%)
Ethiopia	0	0	0	0	4 (9.8%)	4 (8.3%)	9 (10.8%)	14 (15.9%)
Iran	0	0	0	0	18 (23.1%)	20 (8.4%)	33 (17.3%)	88 (36.7%)
Iraq	0	0	0	0	9 (20%)	22 (11.9%)	36 (17.6%)	58 (23.4%)
Sudan	0	0	0	0	3 (4.1%)	2 (3.4%)	16 (7.6%)	18 (7.0%)
Syria	0	0	0	0	17 (17.2%)	3 (2.9%)	11 (15.9%)	8 (16.0%)
Vietnam	0	0	0	0	12 (16%)	8 (11.4%)	27 (20.6%)	33 (21.7%)

Table 4 – Total returns by age, sex and country of nationality by type of return, 2015-2018¹¹⁵

Total returns by age, sex and country of nationality by type of return, 2015-2017 [annual figures only published]					
Date	Countries of nationality	Enforced returns ¹²¹			
		By age at departure from UK & sex (f/m)			
		Total	Under 14	14-15	16-17
2015	TOTAL (all ages & all countries) 13,690	Under 18s (all countries) 94	82 (34f; 48m)	6 (2f; 4m)	6 (2f; 4m)
	Top ten:				
	Nigeria	10	5f; 4m	0f; 1m	0f; 0m
	Albania	8	4f; 3m	0f; 0m	0f; 1m
	China	7	2f; 5m	0f; 0m	0f; 0m
	Pakistan	7	4f; 3m	0f; 0m	0f; 0m
	Eritrea	6	1f; 4m	0f; 1m	0f; 0m
	Afghanistan	5	0f; 2m	0f; 1m	1f; 1m
	Romania	5	2f; 3m	0f; 0m	0f; 0m
	Syria	5	1f; 4m	0f; 0m	0f; 0m
	Libya	4	1f; 3m	0f; 0m	0f; 0m
	Sri Lanka	4	3f; 1m	0f; 0m	0f; 0m

¹¹⁵ Home Office (2018) *Immigration statistics, year ending September 2018*. Returns table rt_03

¹¹⁶ Enforced returns covers enforced removals from detention, non-detained enforced removals and other returns from detention. The detained figures relate to those detained in immigration removal centres (IRCs), short term holding facilities (STHF) and pre departure accommodation (PDA).

Total returns by age, sex and country of nationality by type of return, 2015-2017
[annual figures only published]

Date	Countries of nationality	Enforced returns By age at departure from UK & sex (f/m)			
		Total	Under 14	14-15	16-17
2016	TOTAL (all ages & all countries) 12,469	Under 18s (all countries) 26	24 (8f; 16m)	1 (0f; 1m)	1 (0f; 1m)
	Top ten:				
	Albania	5	2f; 3m	0f; 0m	0f; 0m
	China	4	1f; 3m	0f; 0m	0f; 0m
	Nigeria	3	0f; 2m	0f; 1m	0f; 0m
	India	2	1f; 1m	0f; 0m	0f; 0m
	Namibia	2	0f; 2m	0f; 0m	0f; 0m
	Iran	1	0f; 1m	0f; 0m	0f; 0m
	Iraq	1	1f; 0m	0f; 0m	0f; 0m
	Romania	1	0f; 1m	0f; 0m	0f; 0m
	Sudan	1	0f; 0m	0f; 0m	0f; 1m
Vietnam	1	0f; 1m	0f; 0m	0f; 0m	
2017	TOTAL (all ages & all countries) 12,049	Under 18s (all countries) 40	32 (15f; 17m)	3 (2f; 1m)	5 (1f; 4m)
	Top ten:				
	Romania	6	1f; 2m	2f; 0m	1f; 0m
	Iraq	4	2f; 2m	0f; 0m	0f; 0m
	Albania	3	2f; 0m	0f; 0m	0f; 1m
	China	3	2f; 1m	0f; 0m	0f; 0m
	Bangladesh	2	1f; 1m	0f; 0m	0f; 0m
	Israel	2	1f; 0m	0f; 1m	0f; 0m
	Morocco	2	1f; 1m	0f; 0m	0f; 0m
	Bulgaria	1	0f; 1m	0f; 0m	0f; 0m
	Eritrea	1	1f; 0m	0f; 0m	0f; 0m
Nigeria	1	0f; 1m	0f; 0m	0f; 0m	
2018	TOTAL (all ages & all countries) 9,474	Under 18s (all countries) 28	26 (10f; 2m)	2 (2f; 0m)	0 (0f; 0m)
	Top ten:				
	Afghanistan	4	1f; 2m	1f; 0m	0f; 0m
	Albania	4	1f; 3m	0f; 0m	0f; 0m
	Brazil	2	1f; 1m	0f; 0m	0f; 0m
	China	4	1f; 3m	0f; 0m	0f; 0m
	India	3	2f; 1m	0f; 0m	0f; 0m
	Iraq	4	2f; 1m	1f; 1m	0f; 0m
	Georgia	1	0f; 1m	0f; 0m	0f; 0m
	Latvia	1	0f; 1m	0f; 0m	0f; 0m
	Nigeria	1	0f; 1m	0f; 0m	0f; 0m
Venezuela	1	0f; 1m	0f; 0m	0f; 0m	

Total returns by age, sex and country of nationality by type of return, 2015-2017
[annual figures only published]

Date	Countries of nationality	Voluntary returns (excluding from detention) ¹²² By age at departure from UK & sex (f/m)			
		Total	Under 14	14-15	16-17
2015	TOTAL (all ages & all countries) 28,189	Under 18s (all countries) 2,402	2,046 (981f; 1,065m)	173 (88f; 85m)	183 (91f; 92m)
	Top ten:				
	India	421	197f; 200m	9f; 6m	4f; 5m
	Nigeria	210	98f; 86m	8f; 8m	6f; 4m
	Pakistan	205	75f; 103m	4f; 7m	8f; 8m
	Saudi Arabia	129	53f; 55m	5f; 5m	4f; 7m
	Libya	121	53f; 53m	4f; 3m	4f; 4m
	Bangladesh	82	38f; 38m	3f; 1m	0f; 2m
	China	59	23f; 21m	4f; 3m	5f; 3m
	Sri Lanka	51	20f; 26m	0f; 1m	3f; 1m
	Brazil	48	23f; 16m	2f; 3m	2f; 2m
Egypt	29	11f; 12m	1f; 0m	2f; 3m	
2016	TOTAL (all ages & all countries) 27,157	Under 18s (all countries) 2,422	2,074 (974f; 1,100m)	154 (65f; 89m)	194 (91f; 103m)
	Top ten:				
	India	411	185f; 207m	5f; 5m	4f; 5m
	Pakistan	204	90f; 90m	5f; 6m	5f; 8m
	Nigeria	189	85f; 73m	12f; 6m	8f; 5m
	Bangladesh	70	25f; 36m	0f; 3m	4f; 2m
	Saudi Arabia	128	49f; 55m	4f; 6m	6f; 8m
	Libya	120	57f; 55m	1f; 3m	2f; 2m
	China	88	40f; 31m	3f; 6m	2f; 6m
	Brazil	87	27f; 43m	3f; 4m	6f; 4m
	Sri Lanka	44	17f; 24m	0f; 0m	0f; 3m
South Africa	39	17f; 16m	3f; 1m	1f; 1m	
2017	TOTAL (all ages & all countries) 20,502	Under 18s (all countries) 1,738	1,483 (716f; 767m)	103 (56f; 47m)	152 (62f; 90m)
	Top ten:				
	India	211	80f; 123m	1f; 3m	1f; 3m
	Nigeria	119	47f; 53m	6f; 2m	1f; 10m
	Pakistan	135	53f; 73m	1f; 2m	0f; 6m
	Brazil	98	41f; 40m	6f; 1m	7f; 3m
	Saudi Arabia	96	42f; 43m	2f; 2m	5f; 2m
	Iraq	80	36f; 34m	2f; 4m	3f; 1m
	China	65	1f; 31m	0f; 1m	6f; 6m
	Libya	55	27f; 24m	1f; 2m	0f; 1m
	Russia	39	16f; 15m	2f; 1m	2f; 3m
Egypt	34	11f; 17m	0f; 1m	2f; 3m	

¹¹⁷ Voluntary returns includes assisted returns, controlled returns where a notified person makes his/her own arrangements to leave the UK, and other verified returns including those who have left the UK without formally informing the immigration authorities.

Total returns by age, sex and country of nationality by type of return, 2015-2017 [annual figures only published]					
Date	Countries of nationality	Voluntary returns (excluding from detention) ¹²² By age at departure from UK & sex (f/m)			
		Total	Under 14	14-15	16-17
2018	TOTAL (all ages & all countries) 14,415	Under 18s (all countries) 1,267	1,063 (535m)	88 (49m)	106 (65m)
	Top ten:				
	India	160	84f; 69m	1f; 4m	0f; 2m
	Pakistan	120	50f; 56m	0f; 8m	1f; 5m
	China	94	39f; 38m	1f; 2m	4f; 10m
	Nigeria	94	39f; 35m	5f; 5m	6f; 4m
	Saudi Arabia	80	27f; 40m	4f; 5m	2f; 2m
	Brazil	69	22f; 33m	1f; 1m	5f; 7m
	Iraq	47	30f; 13m	2f; 1m	1f; 0m
	Libya	31	10f; 18m	2f; 0m	1f; 0m
	Bangladesh	26	11f; 13m	0f; 0m	1f; 1m
	Russia	25	10f; 6m	1f; 3m	2f; 3m

In addition to the quarterly immigration statistics, the Government publishes transparency data which record the number of all **family returns**, including those who left voluntarily with at least one child under 18. Figures do not specify the age, sex or number of individuals within each family, or the country of nationality/destination/third country to which they have been returned.

Table 5 – Immigration Enforcement data

Family returns	
Aug 2015 – July 2016 ¹²³	1,188
Aug 2016 – July 2017 ¹²⁴	1,011
Aug 2017 – July 2018 ¹²⁵	478

The Independent Family Returns Panel publishes a biannual report with different figures spanning different periods of time.

- Between April 2014 to end March 2016, 1,470 families returned through the process, with removal not pursued in 243 cases. 1,323 of the 1,470 families returned voluntarily, 89 families with assisted voluntary return for families and children (AVRFC) and 14 families at the required return stage¹²¹
- Between April 2016 to end March 2018, 1,933 entered the returns process, and 1,281 returned through the process: 1,161 voluntary returns; 88 assisted voluntary returns; 6 required returns; and 26 ensured returns¹²²

¹¹⁸ Home Office (2018) [Immigration Enforcement Data, February 2018](#). Table PDA_01

¹¹⁹ Home Office (2018) [Immigration Enforcement Data, May 2018](#). Table PDA_01

¹²⁰ Home Office (2018) [Immigration Enforcement Data, November 2018](#). Table PDA_01

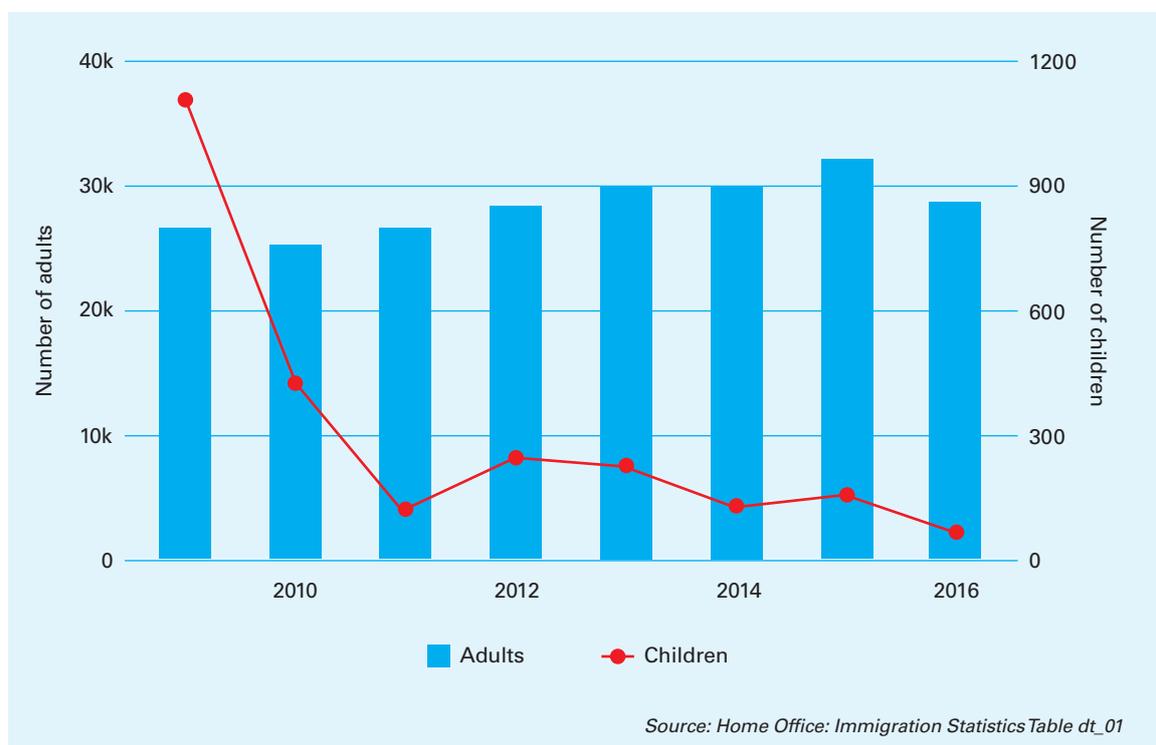
¹²¹ Independent Family Returns Panel (2017) [Independent Family Returns Panel report 2014-16](#).

¹²² Independent Family Returns Panel (2018) [Independent Family Returns Panel report 2016-18](#).

Table 6 – Children leaving detention, and number returned from the UK, 2015 – 2018¹²³

	2015	2016	2017	2018
Total number of children detained	166	104	67	63
Number returned from the UK	50	18	11	22

Table 7 – People entering detention by age 2009 - 2016



¹²³ Home Office (2018) Immigration statistics, year ending September 2018. Tables dt_05, and dt_05q

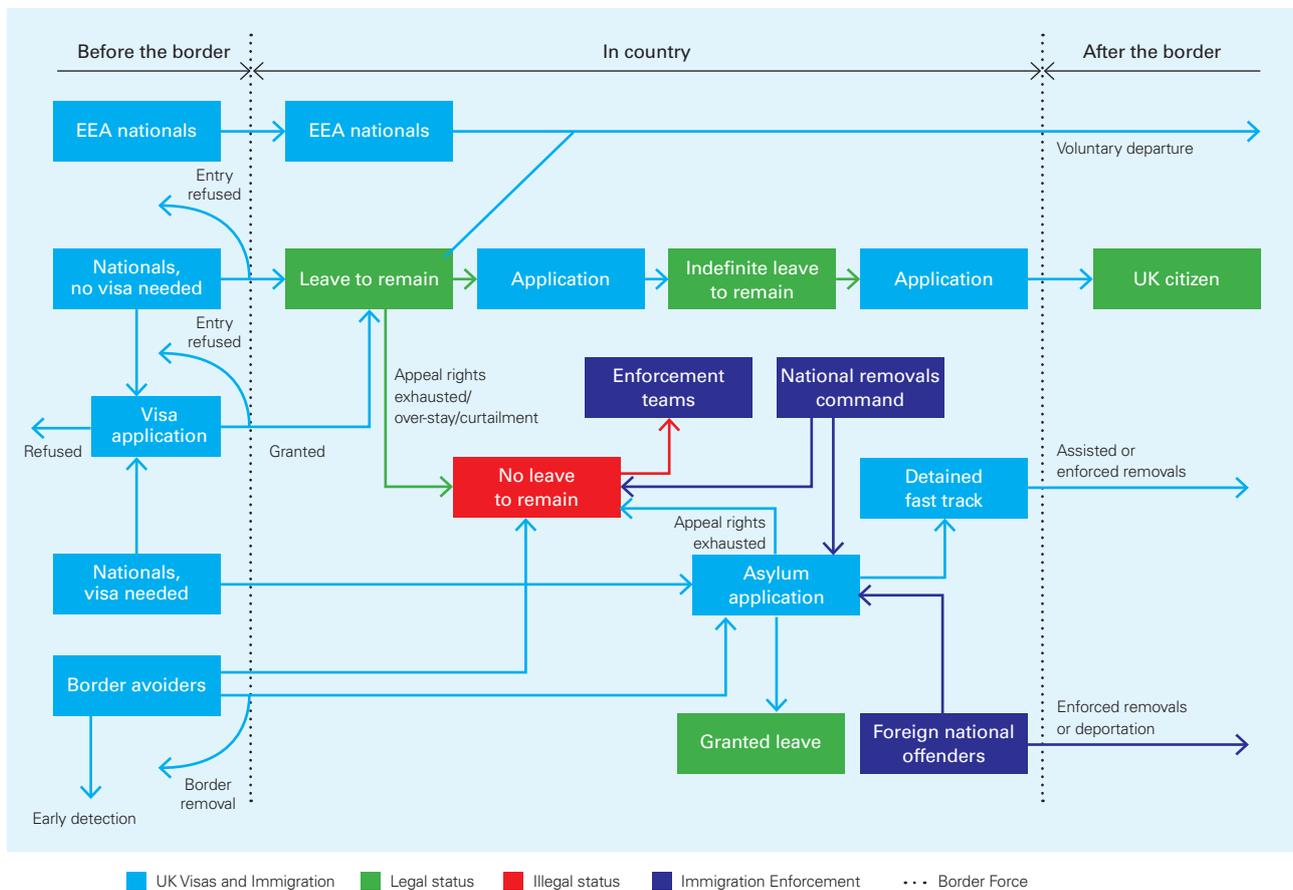
ANNEX 2 – LIST OF COUNTRY REPORTS FOR TOP TEN CHILD & FAMILY RETURN COUNTRIES

Country (amalgamated list of top ten child & family return countries, 2015-2018)	Home Office country policy & information notes (most recent at top)
<u>Afghanistan</u>	<ul style="list-style-type: none"> • Hazaras • Hindus & Sikhs • Security • Unaccompanied children • Afghans perceived as ‘westernised’ • Sexual orientation & gender identity • Fear of anti-government elements • Women fearing gender-based harm/violence • Prison conditions
<u>Albania</u>	<ul style="list-style-type: none"> • People trafficking • Domestic abuse & violence against women • Blood feuds • Report of a Home Office fact-finding mission • Background information including actors of protection and internal relocation • Sexual orientation & gender identity • Ethnic minority groups
<u>Bangladesh</u>	<ul style="list-style-type: none"> • Religious minorities & atheists • Background information including actors of protection and internal relocation • Women fearing gender-based violence • Opposition to the government • Sexual orientation & gender identity • Journalists, publishers & internet bloggers • Report of a Home Office fact-finding mission
Brazil	None available
Bulgaria	None available
<u>China</u>	<ul style="list-style-type: none"> • Opposition to the State • Contravention of national population & family planning laws • Fear of punishment on return to China for crimes committed in other countries (‘Double Jeopardy’) • Background information including actors of protection and internal relocation • Falun Gong • Non-Christian religious groups • Christians
<u>Egypt</u>	<ul style="list-style-type: none"> • Background information including actors of protection and internal relocation • Muslim Brotherhood • Christians • Military service • Women
<u>Eritrea</u>	<ul style="list-style-type: none"> • National Service & illegal exit • Religious groups • Report of a Home Office fact-finding mission: illegal exit and National Service

Country (amalgamated list of top ten child & family return countries, 2015-2018)	Home Office country policy & information notes (most recent at top)
<u>Ethiopia</u>	<ul style="list-style-type: none"> • Oromos, including the Oromo protests • Background information including actors of protection and internal relocation • Opposition to the government • People of mixed Eritrean/Ethiopian nationality
<u>India</u>	<ul style="list-style-type: none"> • India background note • Actors of protection • Internal relocation • Women fearing gender-based violence • Religious minorities • Sexual orientation and gender identity & expression • Prison conditions
<u>Iran</u>	<ul style="list-style-type: none"> • Illegal exit • Kurds & Kurdish political groups • Ahwazis & Ahwazi political groups • Women fearing domestic violence • Background information including actors of protection and internal relocation • Christians & Christian converts • Fear of punishment for crimes committed in other countries ('Double Jeopardy' or re-prosecution) • Honour crimes against women • Forced marriage • Zoroastrians • Baha'is • Adulterers • Military service • Journalists & internet based media • Sexual orientation & gender identity • Smugglers • Human rights defenders • Prison conditions
<u>Iraq</u>	<ul style="list-style-type: none"> • Internal relocation, civil documentation & returns • Perceived collaborators • Security & humanitarian situation • Sunni (Arab) Muslims • Ba'athists • Religious minorities • Female genital mutilation (FGM) • Blood feuds • Kurdish honour crimes • Political opinion in the Kurdistan region of Iraq • Sexual orientation and gender identity & expression
<u>Israel</u>	None available

Country (amalgamated list of top ten child & family return countries, 2015-2018)	Home Office country policy & information notes (most recent at top)
<u>Libya</u>	<ul style="list-style-type: none"> • Ethnic minority groups • Women • Security & humanitarian situation • Actual or perceived supporters of former President Gaddafi
<u>Morocco</u>	<ul style="list-style-type: none"> • Sexual orientation & gender identity
<u>Namibia</u>	<ul style="list-style-type: none"> • Sexual orientation and gender identity & expression
<u>Nigeria</u>	<ul style="list-style-type: none"> • Boko Haram • Medical & healthcare issues • Female genital mutilation (FGM) • Trafficking of women • Prison conditions • Women fearing gender-based harm or violence • Background information including actors of protection and internal relocation • Sexual orientation & gender identity
<u>Pakistan</u>	<ul style="list-style-type: none"> • Ahmadis • Security & humanitarian situation, including fear of militant groups • Christians & Christian converts • Medical & healthcare issues • Background information including actors of protection and internal relocation • Land disputes • Hazaras • Prison conditions • Sexual orientation & gender identity • Women fearing gender-based harm or violence • Interfaith marriage • Pakistan Shia Muslims
Romania	None available
Russia	None available
Saudi Arabia	None available
<u>South Africa</u>	<ul style="list-style-type: none"> • Background information including actors of protection and internal relocation • Sexual orientation & gender identity
<u>Sri Lanka</u>	<ul style="list-style-type: none"> • Sexual orientation & gender identity • Minority religious groups • Journalists, media professionals & human rights activists • Tamil separatism • Report of a fact-finding mission: treatment of Tamils & people who have a real or perceived association with the former Liberation Tigers of Tamil Eelam
<u>Sudan</u>	<ul style="list-style-type: none"> • Report of a fact-finding mission to Khartoum • Opposition to the government, including sur place activity • Return of unsuccessful asylum seekers • Non-Arab Darfuri • Report of a fact-finding mission: situation of persons from Darfur, southern Kordofan & Blue Nile in Khartoum
<u>Syria</u>	<ul style="list-style-type: none"> • The Syrian civil war
<u>Vietnam</u>	<ul style="list-style-type: none"> • Fear of illegal moneylenders • Trafficking • Opposition to the State • Ethnic & religious groups

ANNEX 3 – THE UK IMMIGRATION SYSTEM (FROM NATIONAL AUDIT OFFICE DIAGRAM)¹²⁴



ANNEX 4 – LEGAL ANALYSIS¹²⁵ OF THE LEGISLATION REGULATING THE RETURN OF CHILDREN MIGRANTS IN THEIR COUNTRY OF ORIGIN OR THIRD COUNTRY APPLICABLE IN THE UNITED KINGDOM, DLA-PIPER PRO BONO

<p>a) Is there any specific legislation or regulation applicable in the UK regarding the return of children migrants, children seeking asylum and children refugees to their country of origin or a third country?</p>	<p>No</p> <p>There is no specific domestic legislation passed for the purpose of returning children, however there is still a UK framework contained in various pieces of legislation that aims to protect child returnees.</p> <p>The UK is also signatory to a number of international and regional measures that legislate for the protection of child migrants, refugees and asylum seekers (“Child Returnees”). These include EU legislation: the <u>Dublin III Regulation</u> and the <u>Qualification Directive</u>, and UN conventions: the <u>United Nations Convention on the Right of the Child</u> and the <u>United Nations 1951 Refugee Convention</u>.</p>
<p>i. Does the national legislation provide for any form of protection (protection from removal from the territory; grant of legal status and associated rights) for children migrants, children seeking asylum and children refugees?</p>	<p>Yes</p> <p>Provisions aimed at protecting Child Returnees are contained within:</p> <ul style="list-style-type: none"> • <u>Nationality, Immigration and Asylum Act 2002</u> • <u>Asylum Seekers (Reception Conditions) Regulations 2005</u> • <u>Immigration and Asylum Act 1999</u> <p>The <u>Immigration Rules</u> provide for the protection of Child Returnees. Accompanied children are afforded certain protections, while unaccompanied children are afforded wider protection.</p>
<p>ii. Is the principle of non-refoulement incorporated into national laws? If yes, please specify the law and provision and provide the link to the law.</p>	<p>Yes</p> <p>The <u>Human Rights Act 1998</u> incorporates the European Convention on Human Rights into UK law. Article 3 of the Convention has been interpreted to mean signatories cannot return refugees to countries where they might be subjected to torture.</p> <p>The <u>Asylum and Immigration Appeals Act 1993</u> confirms the UK’s obligation not to remove or require a person to leave the UK in contravention of the UN 1951 Refugee Convention, Article 33 of which sets out the principle of non-refoulement.</p>

¹²⁵ Return here refers to repatriation, voluntary return, but also forced returns.

<p>iii. Does the national legislation provide protective measures for unaccompanied and separated children before, during and after return? If yes, please specify.</p>	<p>Yes</p> <p>The <u>Borders, Citizenship and Immigration Act 2009</u> obliges the Home Office to protect children’s welfare.</p> <p>Local authorities in the constituent countries of the UK are placed under obligations to protect children in need. Home Office guidance confirms that unaccompanied child asylum seekers will be considered as such. The following legislation sets out such duties:</p> <ul style="list-style-type: none"> • <u>Children Act 1989</u> (local authorities in England) • <u>Children (Scotland) Act 1995</u> (local authorities in Scotland) • <u>Social Services and Well-being (Wales) Act 2014</u> (local authorities in Wales) • <u>Children (Northern Ireland) Order 1995</u> (local authorities in Northern Ireland) <p>The <u>Immigration Rules</u> also outline a number of other ways that the state is obliged to protect unaccompanied children.</p> <p>The governments of Scotland and Northern Ireland fund services which directly support Child Returnees. These services are given a statutory basis in the <u>Human Trafficking and Exploitation (Scotland) Act 2015</u> and <u>Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015</u>.</p>
<p>b) National procedures on return decisions</p> <p>i. Which government authority is in charge of taking return decisions?</p>	<p>A division of the Home Office: <u>UK Visas and Immigration</u></p>
<p>ii. Which government authority is in charge of child protection before, during and after return?</p>	<p>The <u>Department of Education</u> and the <u>Home Office</u> working in collaboration with local authorities have authority over child protection before return. <u>UK Visas and Immigration</u> (formerly the UK Borders Agency) and <u>UK Immigration Enforcement</u> have authority over child protection during the return process.</p> <p>The Refugee Council Panel of Advisors and the Scottish and Northern Irish guardianship services also have a role in the protection of Child Returnees (and are referred to in government guidance or statute respectively) but are not government authorities in their own right.</p>
<p>iii. Does the legislation specify that the best interests of the child should be assessed and taken into consideration (e.g. right to be heard) during and after the return procedure?</p>	<p>Yes</p> <p>The <u>Borders, Citizenship and Immigration Act 2009</u> requires the Home Office to safeguard children in the UK, the application of this duty is set out in a number of Home Office guidance documents:</p> <ul style="list-style-type: none"> • <u>Change for Children</u> • <u>Family returns process</u> • <u>Detention Services Order 19/2012: Safeguarding Children Policy</u> <p>The <u>Children Act 1989</u> provides that where a court determines any question concerning the upbringing of a child, the child’s welfare shall be the court’s primary consideration.</p>

<p>iv. Can return decisions be appealed? If yes, to which judicial or administrative body and what is the interim protection given to children in the meantime?</p>	<p>Yes</p> <p>Return decisions can be appealed to the <u>First-tier Tribunal (Immigration and Asylum)</u>.</p> <p>The protection measures detailed at (a)iii above remain in place during the appeals process. No specific protection measures were identified that came into force in the event of an appeal. Bodies such as the Children’s Panel and the Scottish Guardianship Service retain their mandate during such process.</p>
<p>c) Has the UK concluded any bilateral or multilateral agreement with other countries to regulate the return of children migrants, children seeking asylum and children refugees to their country of origin or a third country?</p>	<p>Yes</p> <p>The UK has completed various agreements, on its own accord and by virtue of its membership of the EU, that regulate the return of refugees, asylum seekers and migrants generally but do not make specific provision for children.</p> <p>Specifically, the <u>Cotonou Agreement</u> and the <u>Joint Way Forward</u> (between the EU and Afghanistan) contain provisions broadly aimed at protecting children.</p>
<p>i. Are there protective measures stipulated in the bilateral or multilateral agreement for children being returned upon arrival in country of origin or third country?</p>	<p>See above</p>
<p>d) Is there any key jurisprudence in the UK concerning the return of children to their countries of origin or third countries?</p>	<p>Yes</p> <ol style="list-style-type: none"> 1. Wah (Yau Yak) v Home Office ([1982] Imm AR 16, CA.) 2. ZH (Tanzania) v Secretary of State for the Home Department ([2011] 2 W.L.R. 148) 3. HH (Appellant) v Deputy Prosecutor of the Italian Republic, Genoa (Respondent) ([2012] UKSC 25) 4. DW (Jamaica) v Secretary of State for the Home Department ([2018] EWCA Civ 797) 5. R. (on the application of MA (Pakistan)) v Upper Tribunal (Immigration and Asylum Chamber) ([2016] EWCA Civ 705) 6. Zoumbas v Secretary of State for the Home Department ([2013] 1 WLR 3690) 7. EV (Phillipines) v Secretary of State for the Home Department ([2014] EWCA Civ 874)

<p>e) Does the UK comply with its International and European Human Rights obligations when it comes to the return of children migrants, children seeking asylum and children refugees and guarantee their protection? What national legal provisions are in contradiction with international and European standards?</p>	<p>The UK's practice of detaining accompanied children in immigration detention centres runs contrary to the recommendations of the Refugee Council. There have been allegations of abuse and negligence against the private company contracted to run these centres. Prior to age determinations unaccompanied children may be detained.</p> <p>Age determinations resulting in asylum seekers being deemed adults results in their being denied education and local authority support. Age assessments are frequent in the UK despite the UN Committee on the Rights of the Child and statutory guidance stating that age should only be disputed in cases of serious doubt. In 2016 almost 1/3 of all child migrants were subject to age disputes. The result is numerous children not being afforded the protections they are entitled to.</p> <p>The UK's attempts to meet its obligation to reunite children with families in the UK, as enshrined in Article 10 of the Convention on the Rights of the Child, have been widely criticised. The process remains lengthy and poorly communicated to the children it aims to help, leading to many being forced to remain in informal refugee camps.</p> <p>The UK has been accused of breaching international law by deporting 2,018 young adults to Afghanistan between the years of 2007-2015, a time when violence was escalating in the country. A report by Amnesty International stated such returnees were at risk of persecution, torture and death.</p>
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The photos included in this report depicts situations involving refugee and migrant children across the world and not necessarily within the UK.

