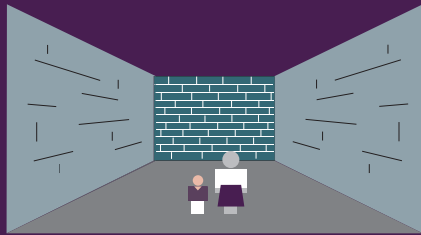


# Growing Up In A Hostile Environment:

## The rights of undocumented migrant children in the UK



### EXECUTIVE SUMMARY

November 2013

*“Undocumented children are triply vulnerable, as migrants, as persons in an irregular situation and as children. The laws applicable tend to tackle their situation from a migration and status standpoint, and not from a child viewpoint.”<sup>1</sup>*

Public concern about immigration is currently at the highest level seen for a number of years, with the widely held belief that there are too many migrants in the UK and that legal restrictions on immigration should be tighter.<sup>2</sup> A number of concerns stem from the perception that migrants claim benefits or use public services without having contributed in return, and are adding to pressure on schools and hospitals.<sup>3</sup>

In response, current policy is focussed on ‘illegal immigration’, where individuals enter or are living in the UK unlawfully (this group are referred to in this report as ‘undocumented migrants’)<sup>4</sup> and has continued the approach taken by previous governments of introducing increasingly restrictive measures for those already in the UK, with a commitment to making ‘the housing system, the welfare system, the legal aid system... the health system – fit in with our immigration policy.’<sup>5</sup> This approach appears to be based on the belief that creating a ‘hostile environment’ for migrants in the UK is an effective means of encouraging them to leave<sup>6</sup> and that it is Britain’s ‘generosity’ to migrants that attracts them to the UK.<sup>7</sup> Despite the lack of empirical evidence demonstrating that access to services plays a determinant role in attracting migrants to the UK,<sup>8</sup> or that ‘we can encourage people to leave by being nasty’,<sup>9</sup> much policy is predicated on the belief that migrants’ access to public services must be restricted to reduce so-called ‘pull’ factors. As a result, the past year has already seen the refusal to increase asylum support levels in line with inflation,<sup>10</sup> the removal of legal aid for almost all immigration cases and the tightening of the Immigration Rules on long residence,<sup>11</sup> as well as proposals to severely restrict access to healthcare and private housing for certain groups of migrants.

Coram Children’s Legal Centre’s research and experience show that this tougher stance is having a significant and damaging impact on children in the UK. Undocumented migrant children, who live

in the UK without regular immigration status, are often unable to access appropriate education, healthcare and support as a result of their immigration status, leaving them cut off from society and in many cases facing extreme poverty. At the same time, they are often unable to either return to their (or their parent/s’) country of origin, or to take the necessary steps to regularise their status, even when they have strong claims for remaining in the UK. The former may be due to ongoing fear and protection needs; the latter due to lack of awareness of their legal options, inadequate or unavailable legal advice, and prohibitive Home Office application fees. This circular problem, wherein immigration status leaves ‘unreturnable’ children and young people in ‘precarious situations with no access to basic social rights’<sup>12</sup> but the current asylum and immigration system does not sufficiently allow for individuals to resolve their immigration issues, is one that must be addressed with great urgency if the UK is to fulfil its legal obligations towards children.

The Home Office has long been criticised for its inadequacies and inability to provide a robust and effective immigration system,<sup>13</sup> yet rather than accept some of the historical failings of the system of managing immigration, those who have been here for years as a result of that system are among those being significantly disadvantaged and the options available to them for regularising their status have been narrowed. This includes children who have grown up in the UK, gone to school in the UK, and consider themselves to be British.

Drawing on the work of Coram Children’s Legal Centre (CCLC) through its Migrant Children’s Project advice line, outreach services and legal casework, this report examines the ways in which lack of immigration status is an obstacle to children and young people accessing their basic rights and entitlements and the difficulties this group face in regularising their status and obtaining essential legal advice. Undocumented migrant children are amongst the most vulnerable in the UK and the most at risk of exceptional poverty and destitution. While the importance of developing a more effective immigration system cannot be denied, such a system must go hand in hand with the UK’s human rights obligations to children.

### Undocumented migrant children and young people in the UK

Children, young people and families who do not have a regular immigration status may be referred to as ‘undocumented’, ‘irregular’ or ‘illegal’ migrants.<sup>14</sup> This report uses the term ‘undocumented’, and broadly defines an individual who is undocumented as someone without permission (leave) to enter or remain in the UK. This includes those who may have been in the UK lawfully but did not apply to extend their leave to remain (or had their application refused), those whose asylum claims have been refused and those who were born in the UK but to parents who are not ‘settled’ in the UK. A May 2012 University of Oxford report put the number of undocumented migrant children in the UK at 120,000, with over half born in the UK.<sup>15</sup>

Many undocumented children are brought into the UK by a parent or guardian, or through a private fostering arrangement. Some come lawfully when they are very young with a parent or other relative and grow up here, unwittingly staying beyond the period when their visas or leave were valid. In some cases, family relationships may break down, leaving children abandoned and left to be taken into the care system. Other children are born in the UK to parents with irregular status, while others claim asylum or are victims of trafficking but do not receive the protection they need.

These children and young people may be in the UK for many years without realising that immigration is even an issue. In the intervening period, they will usually have become fully integrated into society, built up support networks, settled in the education system, know no other life and speak no other language. It is unlikely to have been their choice to come to the UK and yet they are often expected by the Home Office to leave their entire lives behind and return to a country ‘of origin’ of which they may have little or no memory. For most of those born in the UK, their parent/s’ ‘home’ will be a country to which they have never even been.

Often undocumented migrants will have had previous asylum or immigration applications decided by the Home Office or the Tribunal/courts but these applications may not have been soundly and justly determined due to poor quality legal representation, poor quality Home Office decision-making, a lack of adherence to guidance by Home Office decision-makers,<sup>16</sup> and a ‘culture of disbelief’<sup>17</sup> within the Home Office. Bureaucratic inefficiencies and backlogs have also exacerbated the number of migrants living in the UK for long periods without final decisions on their immigration or asylum claims.

Many undocumented migrants who do not have valid leave nevertheless cannot leave the UK. There are situations in which voluntary return is not an option and situations in which someone cannot be forcibly removed from the UK by the government. This may be because they have an outstanding application or representations with the Home Office that have not been considered. There can be very long delays of months and even years before an applicant receives a Home Office decision.

Alternatively, there are barriers to their return to their country of origin, such as problems with documentation, their non-acceptance by the relevant national authorities, no feasible route of return, or a medical condition that means they are unable to travel. The courts have ruled that people cannot be returned to certain countries for certain periods of time.

In CCLC’s experience, many undocumented migrants currently living in the UK have very strong legal claims to remain, but face obstacles to regularising their status. These obstacles include:

- Lack of awareness of their legal rights
- Inability to understand the extremely complex Immigration Rules
- Misinformation about legal rights and routes to regularisation
- Lack of access to legal advice and representation, including the absence of legal aid for non-protection immigration cases
- Reluctance on the part of solicitors and legal representatives to take on certain cases
- Unaffordable application fees for Home Office applications
- Lack of co-operation by partners, including in situations of abuse and domestic violence
- Fear.

This leaves a population of children in limbo without a regular immigration status or access to services, but unable to leave the UK.

### Children’s rights standards

Migrant children should be viewed as children first and foremost, and must be afforded the same rights and protection as any other children in the UK. The UN Convention on the Rights of the Child (UNCRC), which the Supreme Court has held imposes binding international legal obligations on the UK,<sup>18</sup> clearly states that the rights within the Convention should be respected for all children within the state party’s jurisdiction, ‘without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status’.<sup>19</sup> The UNCRC also states that the best interests of the child must be a primary consideration (Article 3), including in the government’s exercise of its immigration control functions, in decision-making processes and that state parties must afford children the right to express their views in all matters affecting them – including in judicial and administrative proceedings (Article 12).

There has been progress in the protection of migrant children’s rights in the shape of the UK lifting its reservation to the UN Convention on the Rights of the Child in 2008 and in the passing of section 55 of the Borders, Citizenship and Immigration Act 2009, which places a statutory duty on the Home Office to

safeguard and promote the welfare of children in the exercise of its functions. The courts in the UK have also made positive findings on issues relating to children's best interests in immigration cases, setting procedural standards and providing guidance in their jurisprudence.

However, there remains an ongoing tension between children's rights and the prioritisation of immigration control. This is evident in law and policy determined by central government, in the media's portrayal of the 'problem' of immigration,<sup>20</sup> and in the practice of some front-line service providers working with this group. Home Office decision-making still fails adequately to consider the best interests of children and the case law on section 55 demonstrates clearly that the emphasis on effective immigration control continues to dominate thinking in the Home Office.<sup>21</sup> The government's revisions to the Immigration Rules in 2012 attempted to impose on decision-makers and the courts a narrow construction when interpreting human rights, especially Article 8 of the European Convention on Human Rights (ECHR) and the best interests of the child,<sup>22</sup> and the new Immigration Bill attempts to cement this in statute.

## Access to support, accommodation and essential services

International law makes clear that access to adequate support and services is integral to a child's development and well-being, recognising a child's right to the 'highest attainable standard of health',<sup>23</sup> the right to education<sup>24</sup> and 'the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development'.<sup>25</sup> However, international standards are not fully reflected in UK domestic legislation.

UK law expressly excludes undocumented migrants from social housing and access to welfare benefits, with those who are destitute only able to avail themselves of support either from the Home Office if they have claimed asylum, or in certain situations from local authorities under the Children Act 1989. The increasing exclusion of asylum-seeking and other migrant families from mainstream welfare provision and paid employment since the Immigration and Asylum Act 1999 has 'led to the re-emergence of levels of child poverty that had previously been eradicated'.<sup>26</sup>

For undocumented migrant children, access to healthcare is limited, under current legislation, to primary healthcare and emergency care. GPs can, at their discretion, register any individual as a patient on a temporary or permanent basis, irrespective of their immigration status. Prior to 2004, anyone who had lived in the UK for more than a year qualified for free secondary healthcare, but now migrants must prove that this period of residence was lawful. Access to free education is permitted by law for those in compulsory education, but for those wishing to study after the age of 16, immigration status will often be a barrier to their doing so.

Even when engaging with education, healthcare and other statutory or voluntary services is permitted by law, practice can often prove very different. The issue of trust is central to the ways in which undocumented migrants develop and establish networks,<sup>27</sup> and a fear of authorities can have a significant impact on access. There is an increasing trend for central government to outsource the task of migration management to local government<sup>28</sup>, with social workers, school teachers and healthcare professionals facing the challenge of balancing their statutory duties to children with increasing pressure from the Home Office to perform tasks of immigration control. Increased controls on access to public services, rather than acting as an incentive for irregular migrants to leave the UK, are more likely 'to cause irregular migrants to reduce their contact with mainstream structures and systems', and in turn increase 'the vulnerability of irregular migrants to exploitation, forced labour or criminal activity'.<sup>29</sup>

Another key issue is the understanding of rights and entitlements on the part of professionals and individuals themselves, which is crucial if the rights of young migrants are to be realised. Misunderstanding and misinterpretation of the law can result in children being denied access to essential services.

## Asylum support

It is estimated that there are 10,000 children living on asylum support, including almost 800 children on section 4 support, with families who are unable to return to their countries of origin staying on this support for many years.<sup>30</sup> The difficulties faced by families in accessing asylum support and the inadequacies of the support itself are well documented and leave many living in poverty and vulnerable to exploitation. Common reasons for destitution of families include having asylum support refused or cut off, abusive relationships and subsequent family breakdown, and bureaucratic delays and confusion.

Asylum support levels differ significantly from mainstream benefit levels and 'the current levels of support provided to families are too low to meet children's essential living needs', let alone their wider needs to learn, grow and develop.<sup>31</sup> Many families relying on asylum support are provided with unsafe, dirty and overcrowded accommodation. Without sufficient support but denied the right to work, many are left vulnerable to exploitation in order to survive. Young people and families may be forced into street homelessness and will rely on friends and charities, facing a day to day struggle to secure food and shelter. There is a growing body of evidence that destitution does not lead to undocumented migrants returning to their country of origin and the premise that making things difficult for families will somehow lead more people to leave the UK, has been described as 'dangerously flawed', with serious repercussions for children's well-being and safety.'<sup>32</sup>

### Local authority support

Duties are owed to children 'in need' under section 17 of the Children Act 1989, which includes all children, irrespective of immigration status, and is an important safeguard for children in undocumented families who have no recourse to public funds.

In 2011, the No Recourse to Public Funds Network reported a 'dramatic increase' in the numbers of supported children and family cases, with the vast majority of these cases involving those who had entered the UK on visas and overstayed, were waiting for a decision on human rights applications from the Home Office and would be destitute without local authority support. Local authorities do not receive any funds from central government for providing support but this provision can last for several years because of delays in decision-making on immigration claims to the Home Office.<sup>33</sup> For a significant proportion of NRPF cases there will be a barrier to removal, such as pending immigration applications and waiting for decisions on immigration applications costs local authorities an estimated £46.5million per year.<sup>34</sup>

The provision of this support is far from automatic or straightforward. Negative experiences highlighted by CCLC's casework include being refused any assistance in securing support, having support withdrawn unexpectedly, and parents being threatened with the taking of their child into care. Responses to CCLC Freedom of Information Act Requests revealed great variation in local authority practice, with many children and families being turned away when requesting support. Some local authorities supported as few as 36% of families who presented to them; others supported all of the families who turned to them for support.<sup>35</sup>

Over half of the local authorities who had policies or pre-defined support rates are providing support under section 17 to destitute families at the equivalent level to the section 95/section 4 support provided by the Home Office, or even less, despite evidence demonstrating that Home Office support is not sufficient to meet children's needs. Rates of financial support given by one local authority were as low as £30 per week for an adult and £10 for a child, significantly lower than Home Office support. Another provided £44.24 to an adult and £15.21 for a child below 11, but expected families to cover the costs of utilities including gas and water from that amount. Only two local authorities based their support on mainstream benefit rates. One CCLC client received only £35 a week to support her and her young son – an amount that was increased to £102 a week after a legal challenge.

While local authorities have the power to accommodate a child in need and the child's family, they are not under a duty to accommodate the child and their family together. CCLC's casework has highlighted the problem of local authorities arguing that they can fulfil the duty to the child by providing accommodation for the child only, threatening to take children into care rather than support the family unit as a whole. In the vast majority of NRPF cases, there are no parenting concerns and social services intervention only takes place because of the existence of destitute children.<sup>36</sup>

Separated children who arrive in the UK alone and claim asylum are supported by the local authority as looked after children. After the age of 18, however, if they have no regular immigration status this can affect their entitlement to leaving care support. Although most should continue to receive support until issued with removal directions, so as to prevent a breach of their human rights,<sup>37</sup> practice among local authorities still varies widely,<sup>38</sup> and many find themselves in limbo – unable to leave the UK but left with no support or accommodation. Recent research has shown 'a sharp rise in the number of young people who are experiencing destitution and homelessness'<sup>39</sup> and Coram Children's Legal Centre has dealt with a number of cases where young people have been told their leaving care support will be withdrawn based on their immigration status.

### Private rented housing

Undocumented families have no recourse to public funds, which includes housing under Part 6 and Part 7 of the Housing Act 1996, as well as housing benefit and council tax benefit. They are also ineligible for social housing. The lack of access to benefits and social housing for undocumented families means that many undocumented families rely on the private housing market, mostly in the private rented sector as home ownership is out of reach, with migrants disproportionately represented at the poorer end of this market, including in houses in multiple occupation (HMOs).<sup>40</sup>

Undocumented migrants may face racism, exploitation and discrimination by private landlords. Unregulated landlords are able to provide poor-quality housing at extortionate rates, safe in the knowledge that undocumented migrants are unlikely to report abuse by landlords for fear of detection, losing their home or losing their children to social services. As a result, many are forced to live in sub-standard, overcrowded and unsanitary accommodation, based on informal arrangements and agreements that offer no security or stability.<sup>41</sup>

In summer 2013, government proposals were introduced that will potentially have dramatic consequences for undocumented migrants throughout the private rented sector, which involve requiring landlords to conduct immigration status checks on potential tenants, with penalties for those who let to undocumented migrants. CCLC and others have argued that the proposals will force a deeper underground culture of sub-standard accommodation and further increase overcrowding and housing instability, while giving landlords greater control over the lives of vulnerable migrant families and single young people.<sup>42</sup>

## Education

As well as providing necessary educational opportunities, schools play an important role in offering a sense of belonging and stability in undocumented children's lives, and are vital for a child's development.<sup>43</sup> Yet many migrant children still find it difficult to access, and remain in, appropriate school education. There may be practical reasons for this, such as language and communication problems or difficulties in affording travel, lunch or school uniforms. Less direct issues, including housing uncertainty and precarious living conditions, can also affect both a child's attendance and performance at school.<sup>44</sup>

Undocumented children are not entitled to free school meals, financial support for uniforms or transport to and from school,<sup>45</sup> which can have serious ramifications with regard to their academic performance and integration. Some local authorities have already addressed the problem by providing all primary school pupils in their area with free school meals and the announcement that all pupils at infant schools in England will get free school lunches from September 2015 was widely welcomed.<sup>46</sup>

Parents may be concerned about being detected and keep their children away from school as a result. There are often misplaced concerns in schools about a child's immigration status, or that of their parents', and how this affects their entitlement to education. It is vital, if all children in the UK are to receive the support they need, that teachers and schools do not fall prey to the common misconception that immigration control somehow trumps children's welfare and a child's right to education.

Yet frontline professionals, including teachers, are increasingly being asked to check the legal status of children in their care and act as 'de facto immigration control officers'.<sup>47</sup> The proposal considered by ministers, revealed by the press in 2013, to make schools check the immigration status of pupils<sup>48</sup> raises serious concerns. This came a year after the University of Oxford report 'No Way Out, No Way In' highlighted that increased demands on public authorities by the Home Office – such as asking social services to report suspected irregular migrants – were pushing families and children away from essential services, including schooling.

Further education, post-16, also provides an important opportunity to learn and enhance skills which can improve the opportunities for young people and play an important role with regards to their integration within society. Continuing in further education is not just of benefit to the individual but can bring significant social and economic benefit to the country.<sup>49</sup> However, young undocumented migrants face a number of institutional and practical barriers to accessing further education which can place a significant constraint on their lives and developmental aspirations.<sup>50</sup> While all young people are entitled to apply to study at a sixth form college or a further education college, local authorities are not obliged to provide school places for 16-18 year olds and current regulations make clear that a learner must be lawfully resident in the UK in order to secure a free place in further education. The one exemption to this is those in receipt of section 4 support.<sup>51</sup>

## Healthcare

While children in care are granted equal access as nationals, undocumented children, young people and families are only eligible for 'essential' healthcare, despite the fact that they may be equally at risk, and suffer from their own specific set of vulnerabilities that arise from being undocumented. It has been shown that 'the combination of precarious immigration status, restricted rights of access to healthcare and financial hardship can have negative effects on migrant's physical and mental health' and financial and immigration insecurities may cause stress, exhaustion and anxiety.<sup>52</sup>

At the time of writing, primary health care,<sup>53</sup> including registration with a GP, was available to all. However, although a GP cannot legally refuse to register a patient on grounds of their immigration status, there is increasing confusion around GPs responsibilities to treat migrants who do not have leave to remain in the UK, and that the decision to register someone is at the discretion of a GP results in varied experiences of accessing healthcare for undocumented migrants. Those with leave to remain are entitled to free secondary health care, but most undocumented migrants are not eligible because they are not considered to be either 'lawfully resident' or 'ordinarily resident'.<sup>54</sup>

Current government proposals suggest limiting access to healthcare for migrants further, by establishing that all migrants, except those with 'permanent residence' must pay for primary healthcare. This is despite the Department of Health having identified that some undocumented migrants 'are likely to be vulnerable, living in conditions typically associated with greater individual health needs. They may also be destitute with no means to pay... [and] have no alternative to the NHS to meet their immediate health needs.'<sup>55</sup> The government's proposed definition of 'permanent residence' as only those with indefinite leave to remain ignores all those who have been living in the UK for many years, who are committed to living in the UK and may be on a route to settlement.<sup>56</sup>

Given the significant evidence showing the barriers migrants face in accessing GP services, despite their current entitlement, these proposals are likely only to worsen the situation for children, young people and families, and result in fewer engaging with the health system at all.<sup>57</sup> Where an individual is unable to access primary healthcare because of charging, there is a high probability that they will eventually present in A&E as an emergency when they are seriously ill and in need of (often expensive) treatment, a problem already identified by the Department of Health in 2012.<sup>58</sup> Charging for primary care will create a further barrier to promoting the health and well-being of children and undermine the government's own commitment to an effective childhood immunisation programme with an aim to reduce the incidence of childhood infections.



### Legal advice and representation

Publicly funded legal advice and representation for children, young people and families is vital to ensuring the voice of the child is heard in all administrative and legal proceedings, to enabling fair and equal treatment before the law, and to upholding children's best interests. Expert advocacy and legal representation are of critical importance for children where government agencies are making decisions about their future and where effective redress is required in the event of a government agency acting unlawfully.<sup>59</sup> Article 12 of the UNCRC provides that children should have 'the opportunity to be heard in any judicial and administrative proceedings affecting [them], either directly or through a representative' and the UN Committee on the Rights of the Child has emphasised that 'it is urgent to fully implement [migrant children's] rights to express their views on all aspects of the immigration and asylum proceedings.'<sup>60</sup>

For many years, there have been difficulties in accessing good-quality, experienced legal representatives in the area of immigration, asylum and nationality law. The situation has been dramatically worsened by cuts in 2013 to legal aid. Despite the complexity of immigration law and the significant impact that the outcome of immigration cases can have on an individual's life, under the Legal Aid, Sentencing and Punishment of Offenders act 2012 (LASPO) legal aid is now no longer available for immigration cases, from 1 April 2013 (it is still available for asylum cases). This means that no public funding is now available for legal representation in immigration claims such as those based on rights to respect for family and private life under Article 8 of the European Convention on Human Rights and children's best interests. Consequently, many undocumented children, young people and families are not entitled to free advice or representation to regularise their status or extend their leave to remain. The disappearance of legal aid in immigration cases is even more problematic for undocumented migrant children, families and single young people because it has coincided with a time when making immigration claims have become significantly more difficult and complex, due to changes to the Immigration Rules.

Where a local authority supports a child or young person, it has been argued that local authorities' obligations will extend to considering their needs to have their immigration status issues resolved and needs for legal services.<sup>61</sup> As a result, their duties to meet children's needs could include procuring private legal services for a child, care leaver or family. Such costs would be at private rates and likely to be significantly more expensive than legal aid rates, resulting in a substantial transfer of cost from the Ministry of Justice to local authorities. It was estimated that the lack of legal aid for non-asylum cases for unaccompanied children could cost local authorities £10 million annually, for example.<sup>62</sup> It is expected that the coming months and years are likely to see developments in this area, as local government struggles to ward off further financial burdens resulting from cuts made by other government departments, including the Ministry of Justice.

Following the cuts to legal aid, thousands of people are simply left without any option but to try somehow to find the money to pay

privately, sometimes putting themselves at risk of exploitation. Where there is no way to pay, undocumented migrants may struggle to navigate the incredibly complex administrative and legal system alone. The changes are seeing a rise in self-represented applicants and litigants, struggling to make applications on their own and represent themselves in court proceedings without legal representation. Alternatively, they are simply unable to make the applications they would need to make in order to regularise their and their children's immigration status. This may force some people, including appeal rights exhausted single young adults who were previously in the care system, underground.

In April 2013, the government suggested more cuts to legal aid in its 'Transforming Legal Aid' consultation which will further endanger access to justice to migrant children, young people and their families. In particular, the proposed introduction of a 'residence test' will prevent all undocumented migrant children and families accessing legal aid in those areas of law where civil legal aid still exists, such as public law, community care and special educational needs. The residence test will mean that where unlawful decisions are made there will be undocumented children who have meritorious claims and who have a right in law to challenge the decision but who will effectively be without any remedy because they will be unable to access legal advice or representation. For example, if a local authority acts unlawfully and does not comply with its duties to the children under section 17 of the Children Act 1989, the family will not be able to access legal aid for a community care solicitor. Judicial review proceedings in these cases are a key safeguard in ensuring a local authority does not act in breach of the law by unlawfully refusing support and forcing a family into destitution, but they will have no access to legal aid to bring proceedings and are, in CCLC's experience, completely unable to bring such proceedings unaided.

### Routes to regularisation

There are a number of reasons why many undocumented children, young people and families simply cannot, or should not, leave or be removed from the UK. These include human rights constraints and the often very strong legal human rights claims people have to stay in the UK, the cost to the government of removing and deporting people, geopolitical considerations, and the unwillingness of some countries of origin to accept returnees. This situation leaves hundreds of thousands of people in limbo – unable to leave or be removed from the UK but unable to engage fully with, and contribute to, everyday life in the UK, and with limited opportunities – especially following legal aid cuts and a tightening of the long residence rules – to regularise their status.

Children are a particular group in this regard, especially as many children are born into irregularity. Families with children are not a priority group for removals,<sup>63</sup> which means that they often spend long periods of their childhood, adolescence and adulthood in the UK, feeling completely rooted yet having no regular legal immigration status.

The undocumented status of these children and the legal limbo they grow up in clashes markedly with the developing norms and practices around children's rights and children's development, including an emphasis on stability and permanence. Both international and domestic law place great importance on planning for children's futures and ensuring they are able to develop to their maximum potential.<sup>64</sup> There is a clear need for routes to regularisation and secure immigration status to be put in place for undocumented children in the UK in order to promote their well-being.

In the UK, means of regularisation exist through a number of different routes, including under nationality legislation, immigration and asylum legislation, human rights law, and the Immigration Rules (these are outlined in Annex I to the report). However, the options available have been significantly narrowed in recent years. Changes to the Immigration Rules have made it harder and more onerous for undocumented migrant children and families to regularise their status on the basis of long residence and their right to private and family life under Article 8 of the European Convention on Human Rights. Even where there is a right in law on the basis of which to make an application to regularise, few undocumented migrants are able to regularise their status easily, if at all, due to a number of significant obstacles including:

- Lack of awareness on the part of children, young people and families and the professionals working with them (including social workers). Where a child or young person is in local authority care, too often the local authority is unaware of, or simply does not address, the resolution of immigration issues within the care planning process.
- Lack of quality free legal representation.
- Application fees for Home Office applications. The application fees for limited or indefinite leave to remain range from around £500 to £1,000 per application.<sup>65</sup> The Secretary of State has the discretion to waive a fee<sup>66</sup> but this is limited to certain circumstances.<sup>67</sup>
- Poor-quality decision-making by the Home Office. Decisions on long residence and Article 8 applications (private and family life) are being made on an overly restrictive set of criteria contained in the Immigration Rules that do not reflect the law on Article 8. Even on the basis of those requirements, applications that appear to meet the criteria are refused, with poor quality refusal letters that do not engage with the evidence provided or the legal arguments presented, and which too frequently fail to consider children's best interests.
- Restrictions for some people on appeal rights and problems accessing representation and paying appeal or legal fees. Many migrants and their families get caught in a situation where they apply to the Home Office for permission to stay, are rejected but then are unable to appeal the decision to the Tribunal, so are stuck in limbo. There is a policy on the circumstances where a removal decision can be requested and will be granted to give a right of appeal, which includes consideration of children,<sup>68</sup> but the Home Office rarely issues removal decisions on its own initiative and it takes the initiation of litigation.
- Grants of short periods of leave and very long routes to settlement. Even where leave is granted, either under the rules or at appeal, the leave granted is now for very short periods of time, often with no recourse to public funds, with very long routes to settlement – for example, a young person who has lived at least half their life in the UK will only be granted an initial period of leave for 30 months and will not be entitled to indefinite leave to remain until they have accumulated ten years of such leave, requiring a further three applications to be made. This creates an extremely long route to settlement and allows for individuals who cannot afford to make repeated claims, or do not fully understand the legal system, to find themselves 'falling out' of regularity.

The obstacles faced by those seeking to regularise their immigration status in the UK and resist unlawful removal from the UK will be dramatically worsened by the Immigration Bill that at the time of writing had just been tabled if it becomes law. The government has already attempted to codify its own very narrow approach to Article 8 in recent changes to the Immigration Rules. It now intends to give that approach statutory force, putting forward in the Bill an overly narrow set of criteria for the determination of Article 8 cases and severely constricting the space for the assessment of children's best interests. The criteria do not reflect established jurisprudence or the UK's obligations, including under the European Convention on Human Rights, the EU Charter and the UN Convention on the Rights of the Child. The Bill includes provision for 'little weight' to be attached to private life established while someone is unlawfully in the UK or in the UK with 'precarious' immigration status.<sup>69</sup> The government is attempting to restrict appeal rights, lessening the opportunities for effective redress for those about whom wrong decisions are made by the Home Office.

## Conclusion

Many of the cases seen at Coram Children's Legal Centre are a stark illustration of the extent to which current policy and legislation affecting migrant children is using 'child poverty as a tool of immigration control'.<sup>70</sup> In 2012, the Education Select Committee asserted that 'it would be outrageous if destitution were to be used as a weapon against children because of their immigration status' and called on the Government 'to review the impact of immigration policy upon child protection and children's rights to ensure that this is not the case'.<sup>71</sup> There has been little sign of this recommendation being taken forward: rather, further measures have been introduced that clearly demonstrate the negative impact of immigration policy on children's rights.

Furthermore, many of the changes implemented as part of a programme of developing a hostile environment for migrants have resulted in a shifting of responsibility and cost onto local authorities, who for many migrants are the last resort when destitute and desperate. This is placing increasing pressure on local government resources at a time when many are already struggling to maintain adequate provision for the most vulnerable in their area.

## GROWING UP IN A HOSTILE ENVIRONMENT

Not only is the government's approach to claims to regularise on the basis of long residence not in accordance with the UK's legal obligations to children under the UN Convention on the Rights of the Child but, in practical terms, it also fails to address the issue of those migrants in the UK who either cannot, or should not be made to, leave the UK. These 'unreturnable' individuals include those who have been born in this country or who have spent the majority of their lives here. The 'home' to which the Home Office is urging people to return<sup>71</sup> is for many children and young people a country they neither know, nor have been to.<sup>72</sup> For others who have claimed asylum, 'home' is a country to which they are too scared to return for fear of persecution or reprisal, or because war and conflict is ongoing.

The UK government has a sovereign right to manage immigration and to determine who may or may not be permitted to enter and remain, subject to various international, regional and domestic legal obligations. Such a system must be able to deal effectively with those individuals whose leave runs out or who do not qualify, for whatever reason, to enter or remain in the UK. But the development of a more effective immigration system must include empowering those who have a legal right to remain in the UK with the means to take steps to regularise their status and have their claims fairly heard, rather than simply focussing on harsher measures to make their existence impossible. The latter will serve only to cut off undocumented migrant from public services and drive them underground, damaging children's welfare while not addressing the problem, and leaving long-term residents of our communities in an unending limbo.

## Recommendations

### General

- The government must always undertake a thorough child rights impact assessment of any proposed primary or secondary legislation.
- The Department for Education (rather than the Home Office) should be the government department with the lead responsibility for all separated migrant children as with all other looked after children and care leavers.
- All statutory safeguarding and child protection procedures and guidance should include specific reference to undocumented migrant children requiring particular care, not just to asylum-seeking children or victims of trafficking.
- The delivery of essential services, including education, healthcare and local authority support, must be kept separate and independent from immigration enforcement functions.
- All information-sharing arrangements between agencies should be in accordance with clear written agreements, not through informal practices. The sharing of such information should only be used to promote the individual child's best

interests and should conform to all data protection and other legal duties and guidance.

- Training should be provided to all frontline professionals, including police, social workers, healthcare professionals and teachers, on the rights, entitlements and protection needs of migrant children and young people to build capacity to provide effective support and to counter misconceptions.

### Healthcare

- All children should have access to free healthcare based on need, not status, for as long as they are present in the UK.
- Maternity services, including ante and post natal services should be available free irrespective of status in order to protect and promote the well-being of the mother and the child.

### Education

- Access to compulsory education should be available free of charge to all children and schools should in no circumstances be required to check the immigration status of children as part of their admissions process.
- Free school meals should be provided to all children in compulsory education, starting with all children in primary education. At a minimum, in the short-term the government should ensure that the new entitlement criteria being developed by the Department for Education and Department for Work and Pensions include groups of children who are among the poorest in the UK, namely those in receipt of section 4 support from the Home Office under the Immigration and Asylum Act 1999 and children in families receiving section 17 support from a local authority under the Children Act 1989.
- Further and higher education should be accessible to all and funding and support made available on the same basis as for settled children and young people for so long as the child or young person is present in the UK.

### Support

- Child poverty statistics should capture the numbers of all asylum-seeking and migrant children living in poverty, including those who experience destitution.
- Asylum support rates should be in line with mainstream benefit rates, and at least 70% of Income Support. Support rates for all families with children should be increased back up to 70% of Income Support as a matter of priority.
- Section 4 support is unacceptable and inadequate, including for families. There should be only one asylum support stream – section 95 – and this should be adequate to meet children and families' needs.



- All local authorities should have written policies on the provision of support for NRPF families and the level of support provided should be firmly based on children's needs, and in line with mainstream benefits.
- Children should not be separated from their families by children's services solely on the basis of destitution.
- Schedule 3 of the Nationality, Immigration and Asylum Act 2002 should be amended or its interpretation clarified so that all young people who have been in the care of children's services, including as children accommodated under section 20 of the Children Act 1989, should be supported under the statutory leaving care provisions until they leave the country or reach the maximum permitted age under the leaving care provisions.

### Private rented housing

- When local authorities engage in operations designed to target inadequate or illegal housing in their area, they must comply with their legal duties to identify children who are potentially 'in need' and where needed provide necessary support in line with their duties under section 17 of the Children Act 1989. The best interests of children must guide the solution found for such families and they should be assisted to continue to live in the locality where this is in the best interests of the children.
- No landlord should be required to undertake an immigration status check on potential or existing tenants.
- Families in precarious accommodation should be assisted to access quality immigration legal advice where this is the underlying cause of their housing problems.

### Legal advice and representation

- The Government should conduct an immediate assessment of the availability and quality of legal representation for migrant children in England and Wales across relevant areas of law, including an assessment of the effects of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- All immigration cases involving children should be brought back into the scope of legal aid using the power contained in section 9(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- Local authorities must develop policies and guidance for their staff outlining how they will assist children, young people and families whom they are supporting to resolve their immigration status.
- The Government should abandon the proposed residence test for civil legal aid which, even with the listed exemptions, is unlawful and discriminatory. At a minimum, it should exempt from the residence test all cases relating to duties to children in need under section 17 of the Children Act 1989.

- Judicial review must be protected as a critical safeguard to protect the rights of vulnerable undocumented migrants.

### Immigration decision making

- The best interests of children must be at the forefront of all Home Office decision-making, including decisions by both Immigration and Visas and Enforcement staff at the Home Office. Training must be provided on the legal framework and the assessment of best interests and the Office of the Children's Champion must play a proactive role in mainstreaming best interests considerations throughout the Home Office in policy development and operational decision-making.
- When making any decision which affects a child, including the removal of a parent, the Home Office must first take steps to obtain all relevant information about the best interests of the child, and then consider the impact of any potential decision on the welfare of the child. It should in its decision set out how it has taken the best interests of the child into account.
- Children's long-term legal status and stability should be resolved as soon as possible, and every immigration case should include a case-specific consideration of the welfare of the child concerned when making the decision on whether to grant limited or indefinite leave to remain, not a prescriptive reliance on a ten-year (or other fixed term) route to settlement.
- A fee waiver for all immigration and nationality applications should be applied in any case where the criteria outlined in the Home Office guidance are met, rather than only in relation to specific types of application. Where the criteria are not met, discretion should always be exercised to waive the fees to ensure that no child's rights are adversely affected by being unable to make a claim to realise their rights in law. In particular, children who have an entitlement in law to register as British citizens who cannot afford to pay the application fee, should be subject to a fee waiver.
- Where a refusal decision is made on an individual's immigration claim, there should be a right of appeal to the Tribunal in all cases. The government should rethink its proposal to severely restrict appeal rights.
- The Immigration Rules and statute must reflect the UK's legal obligations under the European Convention on Human Rights, the EU Charter, the UN Convention on the Rights of the Child, and other domestic, regional and international instruments. Children and young people's Article 8 rights and best interests must be respected in line with established domestic and regional jurisprudence. Narrowing the approach to be taken to private and family life claims, and the best interests of children, must be avoided.

## GROWING UP IN A HOSTILE ENVIRONMENT: ENDNOTES

- 1 Council of Europe, *Undocumented migrant children in an irregular situation: A real cause for concern*, 2011, p 5, quoted in S. Lengar and M. LeVoy, *Children First and Foremost: A guide to realising the rights of children and families in an irregular migration situation*, Platform for International Cooperation on Undocumented Migrants (PICUM), 2013 at <http://picum.org/picum.org/uploads/publication/Children%20First%20and%20Foremost.pdf>
- 2 The Migration Observatory, *UK public opinion towards immigration: overall attitudes and level of concern*, 23<sup>rd</sup> February 2012, at <http://www.migrationobservatory.ox.ac.uk/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-concern>.
- 3 Lord Ashcroft, *Small island: Public opinion and the politics of immigration*, 2013, at <http://lordashcrofthpolls.com/wp-content/uploads/2013/08/LORD-ASHCROFT-Public-opinion-and-the-politics-of-immigration2.pdf>
- 4 The Migration Observatory, *Thinking Behind the Numbers: Understanding Public Opinion on Immigration in Britain*, 2011 <http://migrationobservatory.ox.ac.uk/sites/files/migobs/Report%2-%20Public%20Opinion.pdf>
- 5 David Cameron's immigration speech, 25<sup>th</sup> March 2013 at <https://www.gov.uk/government/speeches/david-camerons-immigration-speech>
- 6 The inter-ministerial group on migration set up in 2013 was, according to one ex-minister, initially called the 'hostile environment working group' – D. Aitkenhead, 'Sarah Teather: 'I'm angry there are no alternative voices on immigration'' *The Guardian*, 12 July 2013, at <http://www.guardian.co.uk/theguardian/2013/jul/12/sarah-teather-angry-voices-immigration>
- 7 The government has vowed to 'make sure that ours is the toughest country instead of the softest' – see David Cameron's immigration speech, 25<sup>th</sup> March 2013 at <https://www.gov.uk/government/speeches/david-camerons-immigration-speech1>
- 8 The Migration Observatory, *Determinants of migration to the UK*, 2011, at <http://migrationobservatory.ox.ac.uk/briefings/determinants-migration-uk>
- 9 In 2008, Ian Duncan Smith MP stated that "it appears that a British government is using forced destitution as a means of encouraging people to leave voluntarily. It is a failed policy... UK policy is still driven by the thesis, clearly falsified, that we can encourage people to leave by being nasty". Centre of Social Justice, 'Scrap policy that drives asylum seekers underground and into prostitution, says new report', 15 December 2008, <http://www.centreforsocialjustice.org.uk/media-centre/press-releases-2012-13/press-release-85>
- 10 The Children's Society, 'Freezing asylum support will hurt vulnerable children – Sarah Teather MP and The Children's Society', 6 June 2013 at <http://www.childrenssociety.org.uk/news-views/press-release/freezing-asylum-support-will-hurt-vulnerable-children-%E2%80%93-sarah-teather-mp-an>
- 11 Immigration Rules are detailed statements of policy with which the Secretary of State for the Home Department must comply. They do not have the force of an Act of Parliament or Statutory Instrument.
- 12 Platform for International Cooperation on Undocumented Migrants (PICUM), *Country brief: United Kingdom*, at [http://picum.org/picum.org/uploads/publication/UK%20Workshop%20Brief\\_updated.pdf](http://picum.org/picum.org/uploads/publication/UK%20Workshop%20Brief_updated.pdf)
- 13 See, for example, the numerous and wide-ranging reports from the Independent Chief Inspector of Borders and Immigration at <http://icinspector.independent.gov.uk/>, as well as inquiry reports from the Home Affairs Select Committee at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/>
- 14 The term 'illegal' is highly problematic due to its connotations with criminality and its failure to take into account the 'varying degrees of compliance which may apply to the situation of any one migrant'. The UN, Council of Europe, European Parliament and European Commission all advocate that use of this term be avoided – see PICUM, *UK Country Briefing*, p 3. The Associated Press recently decided to ban the use of this term in its stylebook on the basis that the term 'illegal' should not be used to describe a person only an action, such as living in or immigrating to a country illegally. See <http://blog.ap.org/2013/04/02/illegal-immigrant-no-more/>
- 15 N. Sigona and V. Hughes, *No Way Out, No Way In: Irregular migrant children and families in the UK*, University of Oxford, 2012
- 16 Research has consistently highlighted problems with the quality of decision-making by the Home Office in asylum claims generally, as well as in family and children's cases specifically. See Amnesty International, *A Question of Credibility: Why so many initial asylum decisions are overturned on appeal in the UK*, April 2013, available at: [http://www.amnesty.org.uk/uploads/documents/doc\\_23149.pdf](http://www.amnesty.org.uk/uploads/documents/doc_23149.pdf); UNHCR, *Untold Stories: Families in the asylum process*, 2013, at [http://www.unhcr.org/fileadmin/user\\_upload/pdf/aUNHCR\\_Report\\_Untold\\_Stories.pdf](http://www.unhcr.org/fileadmin/user_upload/pdf/aUNHCR_Report_Untold_Stories.pdf); and UNHCR, *Sixth Report of the Quality Initiative Project*, 2009, at [http://www.unhcr.org/fileadmin/user\\_upload/pdf/6\\_QI\\_Key\\_Observations\\_Recommendations6.pdf](http://www.unhcr.org/fileadmin/user_upload/pdf/6_QI_Key_Observations_Recommendations6.pdf)
- 17 The Children's Society, *Into the Unknown: Children's journeys through the asylum process*, 2012 at <http://www.childrenssociety.org.uk/news-views/press-release/children-seeking-safety-uk-face-damaging-culture-doubt>
- 18 *ZH (Tanzania) v SSHD* [2011] UKSC 04, para 23
- 19 Article 2 of the UN Convention on the Rights of the Child 1989
- 20 A recent report by the Migration Observatory examined broadsheet and tabloid coverage of immigration over the past three years and found the most common word used to describe immigrants was 'illegal'. See Migration Observatory, *Migration in the News: Portrayals of Immigrants, Migrants, Asylum Seekers and Refugees in National British Newspapers, 2010-2012*, 2013, at <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Report%20-%20migration%20in%20the%20news.pdf>
- 21 See for example *R (on the application of TS) v SSHD* [2010] EWHC 2614 (Admin) especially Winn J at paragraph 59
- 22 See Statement of Changes to Immigration Rules HC 194 dated 13 June 2012
- 23 Article 24 of the UN Convention on the Right of the Child 1989
- 24 Under Article 28 and 29 of the UN Convention on the Rights of the Child 1989
- 25 Article 27 of the UN Convention on the Rights of the Child 1989
- 26 The Children's Society, *Written evidence to Birmingham City Council Enquiry: Children and Families with No Recourse to Public Funds*, 2013 at [http://www.childrenssociety.org.uk/sites/default/files/tcs/bcc\\_migrant\\_families\\_enquiry\\_final.pdf](http://www.childrenssociety.org.uk/sites/default/files/tcs/bcc_migrant_families_enquiry_final.pdf)
- 27 N. Sigona, A. Bloch and R. Zetter, *No right to dream: The social and economic lives of young undocumented migrants in Britain*, Paul Hamlyn Foundation, 2010, p 77 at <http://www.staff.city.ac.uk/yum/documents/Young%20Undocumented%20Migrants%20report.pdf>
- 28 S. Lengar and M. LeVoy, *Children First and Foremost: A guide to realising the rights of children and families in an irregular migration situation*, Platform for International Cooperation on Undocumented Migrants (PICUM), 2013, p 67 at <http://picum.org/picum.org/uploads/publication/Children%20First%20and%20Foremost.pdf>
- 29 S. Lukes, R. Stanton, M.A. Mackintosh, B. Vollmer, R. Grove- White, D. Flynn, *Irregular Migrants: the urgent need for a new approach*, Migrants' Rights Network, 2009, at <http://www.migrantsrights.org.uk/publications/policy-report/irregular-migration-urgent-need-new-approach>
- 30 *Report of the Parliamentary Inquiry into Asylum Support for Children and Young People*, January 2013, p 8. The report highlighted the case of one individual who had lived on asylum support for seven years
- 31 *ibid*, p 2
- 32 *ibid*, p 4
- 33 Around 60% of cases involving children and families who were supported by local authorities were resolved within two years, but a significant proportion of families remain supported for several years beyond this. NRPf Network, *Social services support to people with no recourse to public funds: A national picture*, 2011, at [http://www.nrpfnetwork.org.uk/policy/Documents/NRPF\\_national\\_picture\\_final.pdf](http://www.nrpfnetwork.org.uk/policy/Documents/NRPF_national_picture_final.pdf)
- 34 *ibid*, p 5
- 35 In the NRPf report, figures also varied greatly between local authorities, with some taking on as many as 90% of referrals and others taking on 0%. NRPf Network, *Social services support to people with no recourse to public funds: A national picture*, 2011, p 11
- 36 *Report of the Parliamentary Inquiry into Asylum Support for Children and Young People*, January 2013, p 16
- 37 The law on the withdrawal or withholding of local authority support to young people is included in Schedule 3 of the Nationality, Immigration and Asylum Act 2002, which prevents certain categories of migrants from accessing 'leaving care' and other types of support. Paragraph 6 of Schedule 3 states that young people who are considered to be 'failed asylum-seekers' are entitled to continue to receive leaving care support from a local authority up to the point where they 'fail to comply with the removal directions' set by the UK Border Agency (a removal direction details the time and place of removal from the UK). In other words, being a failed asylum seeker is not sufficient cause on its own to withdraw or withhold social services support - they must, in addition, have failed to comply with removal directions issued in respect of them. However, many 'end of line' young people, rather than being defined as 'failed asylum seekers', will fit into another category detailed in Schedule 3: 'persons unlawfully in the UK'.<sup>9</sup> If a young person is found to be a person 'unlawfully in the UK', then they can have their leaving care support withdrawn, providing that to do so would not breach their rights under the European Convention on Human Rights (ECHR) or under the European Community Treaties.

- 38 K. Dorling and A. Hurrell, *Navigating the System: Advice Provision for Young Refugees and Migrants*, Coram Children's Legal Centre, 2012, at [http://www.seekingsupport.co.uk/images/navigating\\_the\\_system\\_final.pdf](http://www.seekingsupport.co.uk/images/navigating_the_system_final.pdf)
- 39 I. Pinter, *I don't feel human: Experiences of destitution among young refugees and migrants*, The Children Society 2012, at [http://www.childrensociety.org.uk/sites/default/files/tcs/research\\_docs/thechildrensociety\\_idontfeelhuman\\_final.pdf](http://www.childrensociety.org.uk/sites/default/files/tcs/research_docs/thechildrensociety_idontfeelhuman_final.pdf)
- 40 John Perry, 'UK migrants and the private rented sector: A policy and practice report from the Housing and Migration Network', February 2012, available at <http://www.jrf.org.uk/publications/uk-migrants-private-rented-sector>
- 41 Similar housing concerns are also experienced by undocumented migrants across Europe, as highlighted in a PICUM report – see R. Van Parys and N. Verbruggen, *Report on the Housing Situation of undocumented migrants in six European countries*, PICUM, 2004, at <http://picum.org/picum.org/uploads/publication/Report%20on%20Housing%20and%20Undocumented%20Migrants%20March%202004.pdf>.
- 42 See CCLC's response to the government consultation at [http://www.childrenslegalcentre.com/index.php?page=migrant\\_children\\_consultation\\_responses](http://www.childrenslegalcentre.com/index.php?page=migrant_children_consultation_responses)
- 43 *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, PICUM, 2008, at [http://picum.org/picum.org/uploads/file\\_/PICUM%20Undocumented%20Children%20in%20Europe%20-%20%20EN.pdf](http://picum.org/picum.org/uploads/file_/PICUM%20Undocumented%20Children%20in%20Europe%20-%20%20EN.pdf)
- 44 N. Sigona and V. Hughes, *No Way Out, No Way In: Irregular migrant children and families in the UK*, University of Oxford, 2012, p 30
- 45 Under section 509 of the Education Act 1996, at <http://www.legislation.gov.uk/ukpga/1996/56/section/509>. See K. Dorling, *Seeking Support: a guide to the rights and entitlements of separated children*, Coram Children's Legal Centre, 2012, at [www.seekingsupport.co.uk](http://www.seekingsupport.co.uk)
- 46 'All infants in England to get free school lunches', *BBC News*, 17 September 2013, at <http://www.bbc.co.uk/news/uk-politics-24132416>
- 47 'No Way Out, No Way In: Migrant children fall through the net' at <http://www.rsc.ox.ac.uk/news/no-way-out>
- 48 Department for Business, Innovation and Skills, *BIS Research Paper Number 104: The Impact of Further Education Learning*, 2013, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69179/bis-13-597-impact-of-further-education-learning.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69179/bis-13-597-impact-of-further-education-learning.pdf)
- 49 N. Haywood et al, *Engaging all young people in meaningful learning after 16: a review*, Equality and Human Rights Commission, 2009, at [http://www.equalityhumanrights.com/uploaded\\_files/engaging\\_all\\_young\\_people\\_in\\_meaningful\\_learning\\_after\\_16\\_a\\_review.pdf](http://www.equalityhumanrights.com/uploaded_files/engaging_all_young_people_in_meaningful_learning_after_16_a_review.pdf); N. Sigona, A. Bloch and R. Zetter, *No right to dream: The social and economic lives of young undocumented migrants in Britain*, Paul Hamlyn Foundation, 2010, p 42 at <http://www.staff.city.ac.uk/yum/documents/Young%20Undocumented%20Migrants%20Report.pdf>
- 50 K. Dorling, *Seeking support: A guide to the Rights and entitlements of separated children*, Coram Children's Legal Centre, 2012
- 51 See the Migrant Children's Project factsheets on access to further education at [http://www.childrenslegalcentre.com/index.php?page=faqs\\_access\\_to\\_further\\_and\\_higher\\_education](http://www.childrenslegalcentre.com/index.php?page=faqs_access_to_further_and_higher_education)
- 52 N. Sigona and V. Hughes, *No Way Out, No Way In: Irregular migrant children and families in the UK*, University of Oxford, 2012, p 34
- 53 Primary health care includes access to a GP, dental treatment, eyesight tests, family planning services, prescriptions and mental health services
- 54 *National Health Service (Charges to overseas visitors) Regulations SI 2011/1556*. Section 175, National Health Service Act 2006 provides that those who are not 'ordinarily resident' in the UK could be charged for treatment
- 55 Department of Health, *Sustaining services, ensuring fairness: A consultation on migrant access and their financial contribution to NHS provision in England*, 2013, paras 3.60-3.61
- 56 Article 34 of the Immigration Bill 2013 defines anyone who does not have leave to remain or who has 'leave to enter or remain in the United Kingdom for a limited period' as not being 'ordinarily resident' for the purposes of free healthcare eligibility.
- 57 See Coram Children's Legal Centre, *Sustaining services, ensuring fairness: A consultation on migrant access and their financial contribution to NHS provision in England*, September 2013 at [http://www.childrenslegalcentre.com/userfiles/file/DoH\\_health\\_consultation\\_CCLC\\_Final.pdf](http://www.childrenslegalcentre.com/userfiles/file/DoH_health_consultation_CCLC_Final.pdf)
- 58 Department of Health, *2012 Review of overseas visitors charging policy, Summary report*, April 2012, para.28. GP consultations cost on average £20, compared to £110 for average A&E attendance – T, Yates; J. Crane; M. Rushby, Charging Vulnerable migrants for healthcare. *Student British Medical Journal* 15, 2007, pp 427-470
- 59 K. Dorling and A. Hurrell, *Navigating the System: Advice Provision for Young Refugees and Migrants*, Coram Children's Legal Centre, 2012, at [http://www.seekingsupport.co.uk/images/navigating\\_the\\_system\\_final.pdf](http://www.seekingsupport.co.uk/images/navigating_the_system_final.pdf)
- 60 <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.doc>, para 123 As the Committee's own analysis of the wording of Article 12 UNCRC makes clear, "‘Shall assure’ is a legal term of special strength, which leaves no leeway for State parties’ discretion. Accordingly, States parties are under strict obligation to undertake appropriate measures to fully implement this right for all children. This obligation contains two elements in order to ensure that mechanisms are in place to solicit the views of the child in all matters affecting her or him and to give due weight to those views.'
- 61 During the passage of the Act, the issue of legal advice for children was raised repeatedly, with concerns raised regarding the estimated 2,500 cases involving children under 18 relating to immigration matters which would not be covered and the government pressed to retain legal aid for children. However, the government argued that unaccompanied children with non-asylum cases could be provided with assistance in applying for further leave to remain by their social worker – see Letter from Damian Green, Minister for Immigration, to Sophie Barrett Brown, Immigration Law Practitioners Association, October 2011 <http://www.ilpa.org.uk/data/resources/13825/11.10.20-Damian-Green-MP-to-ILPA-re-legal-aid.pdf>. This suggestion illustrates the lack of appreciation of the importance of good quality legal advice. Social workers are not trained lawyers, and any social worker purporting to give legal advice and assistance would potentially be committing a criminal offence under section 91 of the *Immigration and Asylum Act 1999* if doing so without the necessary exemption or registration, at the right level. Furthermore, non-asylum immigration applications made by children are not simply a matter of 'form filling'. The proposal was subsequently abandoned.
- 62 Local Government Association, Legal Aid, Sentencing and Punishment of Offenders Bill - 23 April 2012 at [http://www.local.gov.uk/c/document\\_library/get\\_file?uuid=539ceff8-a19a-4e15-8ff6-17d7935b97ae&groupid=10180](http://www.local.gov.uk/c/document_library/get_file?uuid=539ceff8-a19a-4e15-8ff6-17d7935b97ae&groupid=10180)
- 63 N. Sigona and V. Hughes, *No Way Out, No Way In: Irregular migrant children and families in the UK*, University of Oxford, 2012
- 64 Article 6 of the UNCRC places an obligation on states to 'ensure to the maximum extent possible the survival and development of the child'.
- 65 FLR (O) form, Home Office, April 2013, at [http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/flr/flro\\_formnew0420091.pdf](http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/flr/flro_formnew0420091.pdf), [accessed: 15/07/2013]
- 66 Sub-section 51(3)(c) of the Immigration, Asylum and Nationality Act 2006
- 67 Under the Nationality (Fees) Regulations 2010 SI 2007 No. 807. it may not be appropriate to demand a fee be paid if to do so would be incompatible with a person's rights under the European Convention on Human Rights and the person was destitute. See *Omar v Secretary of State for the Home Department*, [2012] EWHC 3448 (admin)
- 68 The circumstances are where a removal decision will be granted are those cases where one of the following applies:
- the refused application for leave to remain included a dependant child under 18 who has been resident in the UK for three years or more
  - the applicant has a dependant child under the age of 18 who is a British citizen
  - the applicant is being supported by the UK Border Agency or has provided evidence of being supported by a local authority (under section 21 of the National Assistance Act 1948 or section 17 of the Children Act 1989), or
  - there are other exceptional and compelling reasons to make a removal decision at this time.
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- 70 Platform for International Cooperation on Undocumented Migrants (PICUM), *Country brief: United Kingdom*, at [http://picum.org/picum.org/uploads/publication/UK%20Workshop%20Brief\\_updated.pdf](http://picum.org/picum.org/uploads/publication/UK%20Workshop%20Brief_updated.pdf)
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Coram Children's Legal Centre, part of the Coram group of charities, is a national charity committed to promoting children's rights in the UK and worldwide.

The Migrant Children's Project at Coram Children's Legal Centre provides information and guidance to practitioners on the rights and entitlements of refugee and migrant children and young people, as well as providing advice and representation directly to children, young people, their families and carers.

For more information on the work of the Centre, visit [www.childrenslegalcentre.com](http://www.childrenslegalcentre.com).

Design and typesetting, Stephen Jones, [www.makeitlooknice.co.uk](http://www.makeitlooknice.co.uk)

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