



Navigating the System:

Advice provision for young refugees and migrants - Report Summary

Prompted by concerns raised through our advice and casework that many services for young refugees and migrants in England were inadequate, unavailable or facing an uncertain future, **Coram Children's Legal Centre undertook a review of the level and quality of advice and representation currently provided in England.**

As well as referring to evidence identified in a literature review, '*Navigating the System: Advice provision for young refugees and migrants*' draws on findings from a survey conducted with 41 NGOs, charities and law firms, together with interviews of 26 professionals working with this group across England. It was also informed by case studies from the work undertaken by the Migrant Children's Project over the past two years.

The report focuses on separated children and young people subject to immigration control, those who have been separated from their parents or primary caregiver. This includes those who have been trafficked; those who are seeking asylum; and those who have been separated from their family once in the UK and may be 'undocumented'. What unites this group is that, perhaps more than any other in the UK, **they have to contend with a number of complex legal and administrative processes in order to access the support and protection they need.** Discriminatory practice towards young migrant and refugees is still evident, and access to support and care is often determined by their immigration status. **Access to advice and/or legal representation will be essential young refugees and migrants are to realise their rights.**

To read the full report, go to: www.seekingsupport.co.uk/images/navigating_the_system_final.pdf

For more information on the Migrant Children's Project at Coram Children's Legal Centre, see www.childrenslegalcentre.com or contact mcp@essex.ac.uk

Problems and challenges

The report examines **the asylum process**, through which a child fleeing persecution and human rights abuses will apply to be recognised as a refugee. This can be a very confusing process, with complex administrative procedures and decisions made based on complicated legal and evidential considerations, often followed by appeals in the courts. The outcome of a child's asylum application is highly significant for their future well-being, and in some cases can literally be a matter of life or death. It is therefore extremely important that children are represented by quality legal representatives with the requisite skills and expertise, and also supported throughout the asylum process, which for many children can be extremely complex and confusing.

Other children and young people may not be asylum seekers, but may be what is termed '**undocumented migrants**', without a regular immigration status. They may be illegal entrants (those who have entered the UK unlawfully and never acquired any form of regular immigration status) and overstayers (those who have come to the UK as visitors, and remained in the country beyond the date at which their leave expired). Many undocumented children are brought into the UK by a parent or guardian, or through a private fostering arrangement, but then relations break down and they are left alone. Their lack of status is clearly identifiable obstacle to accessing basic social rights and entitlements but many children and young people face difficulties regularising their status and need legal advice and representation in order to do so.

All separated children in England should be accommodated by the local authority in which they are physically present, and provided with support appropriate to their needs, the same as any other child, including leaving care support when it is appropriate for them to leave care. However, evidence from practitioners found that there is still a lack of consistency in the response from local authorities to separated children and young people, and many do not receive adequate provision. Advocates and others may help young refugees and migrants pursue complaints, but in many cases, especially where there is a danger of a child being left homeless, the threat of legal action is required.

Age disputes can result in many children not receiving the local authority support they require and their asylum and immigration claims not being dealt with appropriately. A significant number of young asylum-seekers arrive in the UK claiming to be children but without documentation to prove their ages, or with false documentation. Many have their age questioned by either the UKBA or the local authority to which they have turned for support. The question of age is of great importance, not only because it goes to the heart of a young person's identity, but also because it affects how they are supported by children's services; their access to education; how their asylum or immigration application is processed; and whether they are dispersed (if provided with asylum support by the UKBA) and accommodated or detained with adults.

In the absence of statutory guidance, **there has been much confusion within the UK Border Agency and within local authorities as to what constitutes a lawful age assessment**, and many social workers are not sufficiently trained to undertake such specialist assessments. Variations in the experience, capacity and procedures followed by different local authorities result in significant differences in the quality and approach towards assessing age. In addition, the fact that once a child is identified as a child, the local authority will be required to take responsibility for them and for leaving care arrangements after they turns 18, can have an impact on a social worker's objectivity, especially in a climate of increasing budget constraints. Research with local authorities has found that age disputes were one of the main reasons why children did not receive the services they need. As the main remedy against an unlawful age assessment is judicial review, legal representation may be required to ensure that children are treated as children.

Case study

A left Afghanistan after being forcibly recruited to the Taliban. He had no documents and did not know his date of birth. He thinks he was 14 when he left Afghanistan. His journey was arranged by agents and he travelled in cars, lorries and on foot. He was apprehended by the police and was arrested and handcuffed. At his Screening Interview there were problems with the Home Office interpreter and A did not feel that what he said was being interpreted accurately.

In September 2009 A's application for asylum was refused by the UK Border Agency. He was granted neither refugee status nor humanitarian protection, but was given discretionary leave to remain. The age he claimed to be was disputed by the local authority, who said he was an adult, and the UK Border Agency accepted the local authority's assessment of A's age. A was moved and placed in a house with four men much older than him. He felt very isolated and spent a great deal of time on his own in his room. The local authority said they would get him an advocate but this never happened. They cited practical problems, saying that it was not possible to provide an advocate for "an adult", even though his age was in dispute.

With the assistance of a legal aid immigration solicitor, A appealed against the UK Border Agency's refusal to grant international protection. His asylum appeal was allowed in April 2010. A's age was a relevant factor in the determination of his asylum appeal and the judge considered A to be "under 17". The judge assessed the local authority age assessment as well as evidence submitted in support of A's case by his solicitor, including an independent paediatric assessment, and the appeal was allowed.

However, A has still not received his refugee status papers because the local authority still insisted that A was older than he said he was and the immigration judge found him to be. With the help of his solicitor he is continuing to challenge the assessment of his age. Until there is an outcome to this challenge he continues to live in limbo, and the legal complications have affected the support he has received.

There is often considerable confusion among young refugees and migrants as to what will happen when they reach the age of 18. Practitioners often express concerns regarding the vulnerability of young people in this age group, not just because of their transition from children's services, but also because many of them are waiting for the outcome of an asylum application or an application to extend their leave to remain. They face an uncertain future and are often extremely concerned about being removed from the UK.

Both statutory service providers and the separated young people themselves are often unclear as to what housing, subsistence and other support they are entitled to in the UK at this time, and many end up destitute because their support is withdrawn by the local authority upon their turning 18 once they had been refused asylum and become appeal rights exhausted, even though this may be unlawful. Again, advice on their entitlements is necessary, as may be legal action if support is about to be withdrawn.

Children and young people face considerable barriers to accessing education, including waiting time, confusion over their entitlements to financial assistance, difficulties in navigating the English education system, and discriminatory or inconsistent admissions policies. Inadequate or inaccurate information through social workers, peers, schools/colleges and even education institutions themselves, particularly with regards to student finance, can result in young people making ill informed educational choices. Many of the queries received by the Coram Children's Legal Centre involve clarifying eligibility for home fees and student support for young people wishing to go to university.

Children may be trafficked into the UK for various reasons, including sexual exploitation, forced labour, domestic servitude and criminal activities. However, **many children are not identified as potential victims of trafficking and are subsequently charged with drugs or immigration offences.** Often these children will first come to the attention of the police, or a Youth Offending Team. For trafficking victims, the primary response should be one of child protection and safeguarding to ensure that children have appropriate support to meet their welfare needs. Trafficked children are entitled to support under section 20 of the Children Act 1989 and should be provided with safe accommodation. If there is a risk that they will suffer significant harm if found by the trafficker, child protection

Case study

Y was born in Nigeria and trafficked into England around the age of five for domestic servitude. She still does not know who her birth family is and only knows her date of birth because she saw it written down in the house where she grew up in England. Denied education, not registered with a GP and given limited access to the outside world, she was treated as a servant and suffered systematic abuse which continued for years. When she finally escaped and presented to the London borough of Hillingdon, she was at first accepted as a child, placed in foster care and enrolled at a school.

After about eight months the local authority decided to dispute her age, stating she did not have documents to prove her date of birth and that a dental assessment concluded she was older than she had claimed. They concluded at an age assessment that she was three years older than her claimed age of 16 and was therefore an adult. Y was told her foster placement would be terminated and she would no longer be entitled to any support or accommodation from the local authority children's services department. The indicators of trafficking were not picked up by the local authority and no referral to the National Referral Mechanism was made.

Y was referred to Coram Children's Legal Centre which challenged the age assessment. The High-Court decided that Y had been a child of 16 at the time of the assessment. Now aged 18, Y is receiving support and hoping to study childcare at college. tions have affected the support he has received.

procedures under section 47 of the Children Act 1989 should be followed, and they should be taken into care under Section 31. A referral should also be made to the National Referral Mechanism.

Advice provision

Addressing many of the problems outlined above may ultimately rely on a child or young person securing good-quality, free legal advice and representation from solicitors and immigration advisors. However, this is not the only means by which a child or young person may come to understand their rights and entitlements. Indeed, it is rare for a child directly to contact a firm of solicitors without the assistance of a support worker, advocate, mentor or similar. They may turn to any professional or carer for assistance or guidance, and in turn professionals have a key role to play in ensuring the child or young person understands the legal process, their part in that process, and their rights and entitlements.

In the absence of a guardianship system, it is essential that those professionals have a sufficient level of knowledge and understanding to help the children and young people with whom they work to ensure their rights are upheld, and work together to achieve this. The report examines the roles of some (not all) of the key professionals that work with separated children and young people.

Legal representatives play an important role and children may well have more than one solicitor or legal representative acting for them at any one time. For example, a child could have a community care lawyer challenging an age assessment and the level of local authority support, an immigration lawyer working on their asylum or immigration case, a criminal lawyer if they face prosecution (for example for working in a cannabis farm), or a lawyer bringing a private law action for damages for a period of unlawful detention.

Children accommodated under section 20 of the Children Act 1989 may be placed with a **foster carer** and should have an allocated **social worker** and, if over 16, a personal adviser. Foster carers can play a key role in facilitating a separated child's access to key services such as education and healthcare and in supporting them as they go through the immigration process. The role of a social worker will not only include assessment and decisions regarding appropriate accommodation but will also include helping to arrange good quality legal representation and monitoring the progress of claims, supporting young people through the process, helping to facilitate

communication and advocating on their behalf. As most separated children are over the age of 14, and many are aged 16-17, a key task for social workers is also to prepare those young people for the transition to adulthood in the context of the uncertainty of their immigration status.

Advocates should provide one-to-one support and advice for children in care, empowering them to resolve any problems they may have with their care by giving information, advice

and support, and helping them to express their own views directly or by speaking on their behalf. However, there is still no absolute right to independent advocacy for children in care of the state, and the accessibility and quality of advocacy provision 'is still patchy'. Without access to an advocate who can speak on their behalf, young refugees and migrants have expressed concern that they would be unable to access basic services, let alone complain about the quality of those services.

In a local authority, a range of **advocacy, mentoring and befriending services** might often exist, which afford separated migrant children and young people with opportunities to socialise, learn new skills and find out about services, and obtain advice about their current legal and care situation. Separate to statutory services, **there exist a number of projects and initiatives run by NGOs and charities which play a critical role in the role in offering further support to this group**. These may seek to fill gaps and meet needs that they identify as not otherwise being addressed, through advice, advocacy and/or sign-posting.

Practitioners have found that where a child or young person has an advocate through an NGO or voluntary organisation which specialises in supporting separated children, 'there is a much better chance that local authority involvement will be effective and will help young people to get services they might not be getting otherwise'. Many charities that provide support will accompany the child to meetings with the Home Office and solicitors, as can their social worker. Other forms of assistance may include providing reference letters to solicitors, following up on immigration cases, dealing with problems with landlords, and offering advice on education and careers, in lieu of the Connexions services that have now closed in many authorities across England.

Barriers to accessing advice and representation

Identified barriers to young refugees and migrants accessing advice included a lack of expertise and knowledge among professionals, lack of capacity amongst legal aid immigration providers, the legal aid funding regime and funding cuts in the public and voluntary sector.

The **quality of legal representation** received by separated children and young people is extremely varied, and there **is an insufficient number of representatives with adequate knowledge of relevant law and policy, and skills in working with children**. Young people cannot always recognise poor practice, due to the complexity of the legal system and limitations with language, among other reasons. The same can apply to social workers, who may struggle to recognise poor practice because they have never received training on what legal representation should look like. Common problems include legal advisers' lack of experience in interviewing and communicating with children and interpreters and understanding forms of child persecution. Very few legal representatives have expertise in immigration, child/family law, and community care law.

Many children are not advised of their right to appeal, or are wrongly refused legal aid representation at this stage. As a result, they have to go to the tribunal and face a judge and Home Office presenting officer without representation, which can be very distressing.

Referring children and young people to good firms with capacity to take on cases is a significant problem. 59% of practitioners surveyed for this study reported problems in referring children to legal representatives.

Practitioners found that, while it was relatively straightforward making referrals to welfare solicitors for issues such as age assessments, or challenging children's services about the level of support a young person was receiving, especially in London, making referrals to immigration solicitors was becoming increasingly difficult. This was especially the case in certain parts of the country where there are 'advice deserts', such as the South West. 70% highlighted that children were forced to travel long distances to access legal representatives and 71% said that capacity to take on new clients was an issue.

In recent years many firms have stopped or reduced publicly funded work because of **restrictions in legal aid funding** and the difficulties in remaining financially viable in this funding regime. The legal aid regime does not incentivise quality and can impede representatives taking the necessary time to prepare young people's applications properly, take instructions sensitively, and conduct basic client care. Concerns were raised that firms were taking on caseworkers to represent children who were insufficiently trained and experienced, to save on costs.

Current challenges, already considerable, look set to be dramatically compounded by the Legal Aid, Sentencing and Punishment of Offenders Act, which received royal assent on 1 May 2012. Asylum cases are to remain in scope, but most immigration cases will be taken out of scope from April 2013, including children's immigration cases. The government made a concession in relation to trafficking cases, but other than this children and young people with immigration claims will be not eligible for legal aid at any stage of the decision-making or appeals process. This creates the prospect of children having to represent themselves in legal proceedings on extremely complex points of law against a publicly funded legal team for the Home Office.

The government has suggested that there are alternative sources of advice for those losing legal aid funding, including from the not-for-profit legal advice sector. However, this sector is facing huge shortfalls in funding that threaten the viability of many organisations. Nor can other voluntary sector organisations fill the gap as they cannot provide legal immigration advice under the regulatory framework governing this jurisdiction.

The government has further suggested that assistance with immigration applications could come from social workers, and has expressed its intention to look into social workers becoming exempted by the Office of the Immigration Services Commissioner so that they can provide 'low-level advice' and assistance with 'form filling'. **Social workers are not trained, supported or supervised to provide immigration advice or services.** Moreover, non-professional advice is likely to be inadequate in terms of meeting children and young people's needs. Changes to legal aid may thus result in a local authority's obligations to children in their care expanding to include securing and financing legal advice and representation. Such costs would be at private rates and would be likely, therefore,

to be significantly more expensive than legal aid rates. Local authorities have specifically raised these concerns in relation to unaccompanied children and care leavers making applications for further leave on Article 8 grounds, who will be excluded from assistance under legal aid, and what amounts to ‘cost-shifting’ from the Ministry of Justice to local authorities.

Both the public and voluntary sectors face considerable pressures and insecurity about the future in the face of extensive spending cuts, and many organisations and agencies have either closed, reduced dramatically or are still awaiting funding decisions that will affect service provision and staffing. Problems recognised by charities working with refugee and migrant children included a reduction in children’s services expertise, especially in areas where the local authority does not have (or has closed) a specialist team, or in areas with fewer migrants.

Of the charities and NGOs surveyed for this report, over 50% did not have future funding secured, and were unsure as to whether they would be able to secure it.

90% were reliant on government funding, and those organisations with no engagement in public sector contracts were least financially affected by public sector cuts, and therefore more confident in the face of current challenges. One conclusion that can be drawn is that the charity sector may be more dependent on charitable trusts and foundations and individual giving, rather than

viewing public service contracts as offering a reliable or sustainable future for their work. However, with 55% of survey respondents already funded in part by charitable trusts and foundations, a clear concern was that cuts would result in increased competition for this type of funding, with increased vulnerability as a result.

The picture formed in the report is one where specialist provision for refugee and migrant children becomes all but nonexistent in the future. Specialist programmes or teams result in greater expertise, and an ability to react more quickly and appropriately to problems – a level of service that arguably cannot be replicated by those working more generally with children and young people. While voluntary organisations and volunteers play an important role in delivering services, they cannot be viewed as a means of filling in gaps caused by public sector funding cuts, and it is not likely that they will be able to in light of the increased competition for funding, coupled with reprioritisation within mainstream organisations. Fewer larger charities are carrying out dedicated work with refugee and migrant children and there is a danger that, if charities and NGOs do not continue this work, vulnerable groups will be marginalised yet further. While many organisations expressed their determination to maintain service capacity despite significant funding and staffing reductions, they acknowledged that cuts would have an impact on the quality of service provided.

Improving advice provision

One of the measures proposed to address the best interests of migrant children, not least problems of inadequate support and advice provision is **a system of guardianship**. Many NGOs have long campaigned for separated children to be assigned a guardian. While social services have a statutory duty under the Children Act 1989 to accommodate and support separated children, there is nevertheless no-one with parental responsibility for the child under current provisions. A guardianship system would provide children with an independent professional from the point of arrival to the UK, protecting the rights and interests of the child and advocating and co-ordinating for them holistically in relation to all services and agencies. The expert reporting function of a children’s

guardian (also referred to as a ‘guardian ad litem’), is also an essential element of a guardianship scheme, to ensure that decision-makers and judiciary are provided with a formal authoritative report on the best interests and welfare needs of the child. An “ad litem” role for separated children could make dramatic improvements to the present inconsistent quality of information about children’s welfare and development provided to the UKBA and to the courts.

The greater the **knowledge and awareness among all professionals working with this group** – including social workers, key workers, support workers, advocates and other voluntary sector staff and volunteers – the better able they will be to assist them. It is important that practitioners understand the general processes around children’s

asylum and immigration claims and the framework of rights and entitlements to education, social services support, housing, and health care. Up to date information and training in this area will help tackle misconceptions and mistakes that leave children and young people unsupported. To achieve this, specialist agencies are required to provide second tier support and it is important to mainstream training into social work programmes and into other professional training programmes.

Delivering an effective continuum of care and protection for migrant children and young people 'requires **close co-operation of a variety of government bodies, specialised agencies and professionals**' and for professionals to work together to best support them. This will involve professionals sharing expertise, being aware of which organisations provide which services and building on existing contacts and relationships, and developing collaborative working.

To respond to the increasing advice needs of their clients, it may be possible for organisations to **adapt and expand services**. In particular, some have considered whether staff from voluntary sector organisations could become accredited (at least to the most basic level) and regulated by the Office of the Immigration Services Commissioner, so that they can provide some immigration advice. Organisations can help facilitate, coordinate and oversee, but this should be part of a structure whereby appropriate referrals are still made.

One way that advice provision to migrant children and young people can be improved is by ensuring that they are able to access good legal representation by lawyers with appropriate expertise. This may involve, for example, providing better guidance and training to professionals working with children in how to locate good legal representatives, how to recognise poor quality provision, and what to do when a child or young person is unhappy with the representation they have received. For those children and young people who under current proposals are set to lose out on legal aid, it will be of great importance that where local authorities are required to pay private fees for them, the local authority seeks out high quality providers and not those charging the lowest rates. Another area that requires attention is supporting those who have been wrongly denied public funding to pursue their cases.

Another possible way to think about improving advice provision to young migrants – including those who may not otherwise access advice – is to look to increasing provision through **advice surgeries and outreach work**. Providing advice in this way has a number of advantages, including reaching hard-to-reach groups. Advice surgeries and outreach work cannot, however, provide a substitute for full representation.

A further option for legal advice provision is to move away from legal aid funding. **Incorporating pro bono work** from private law firms could provide one possibility. Some organisations may **seek funding to do immigration and asylum casework** without relying on the Legal Services Commission or private fees, or may top up their publicly funded work with other sources of funding.

An important direction for **future research** would be an assessment of how migrant children and young people feel about the advice they need, the advice they receive and where they receive it from, and any areas where they feel they are not getting adequate advice and support. Understanding children and young people's perceptions of their advice needs should drive improvements in advice provision.

In writing this report, it was evident that there are a number of dedicated professionals working with separated children and young people who are keen to provide the best service they can. But they are working in a challenging climate, and while together we can explore options to 'fill the gaps' in provision, there is a limit to what can be done to address the full impact of funding cuts, and discriminatory policy and practice, without further changes at a national level. **Ultimately, it is the responsibility of the government to ensure that young refugee and migrants are supported and protected, and budgetary constraints cannot be used as a means of shirking this responsibility.** The introduction of a guardianship system is one way in which the government could ensure that it is upholding these legal standards, as would be further measures to ensure that all children and young people are able to access free quality legal advice and representation, and thus ensure their access to protection and justice. **What is needed from central and local government alike is an open commitment to affording young refugees and migrants equal rights and treatment under UK and international law.**