

SYSTEMIC DELAYS IN THE PROCESSING OF THE CLAIMS FOR ASYLUM MADE IN THE UK BY UNACCOMPANIED ASYLUM SEEKING CHILDREN (UASC):

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Delay :-

“I cannot understand it. Everyone except me seems to have their decision. I need to know. I don’t care what the decision is, I just need to know it. I am going insane. It is driving me crazy. I think and worry about it every day. I am here claiming asylum, I need to know what is my future. It is not a life being here not knowing what your status is for such a long time”

(K – arrived in the UK age 13. Finally received a grant of Humanitarian Protection in an initial decision taken almost two years after the claim for asylum was lodged and only following the threat of judicial review proceedings being issued against the Home Office).

“...children should have their applications dealt with in a timely way that minimizes the uncertainty that they may experience”

(Para 2.7 Every Child Matters; Change for Children – statutory guidance to the interpretation of s55 Borders, Citizenship and Immigration Act (BICA) 2009)

Introduction and Background to Research

In 2015, 3,253 unaccompanied asylum seeking children (UASC) claimed asylum in the UK.¹ This was in the context of a refugee movement to Europe described by the United Nations as an unprecedented displacement of people caused by war and persecution.² Yet the actual numbers of those arriving in the UK was not unprecedented and certainly a small percentage of the 90,000 unaccompanied minors that arrived in Europe during that period.³ Whilst the number of young asylum seekers arriving in 2015 was higher than in recent years, it did not reach the level that arrived annually in the years 2006-2008.⁴

In November 2016 the Kent Law Clinic held a conference in partnership with MiCLU⁵ entitled “Child Refugees Welcome?” which invited participants from a variety of regional and national NGOs, legal representatives, educational providers and local authorities to discuss the legal complexities and challenges of working with young asylum seekers, particularly in light of the Immigration Act 2016 which when fully implemented will have a significant impact on those who are unable to secure refugee status. A major concern raised amongst those working with young asylum seekers was the delay in the asylum process, the impact this was having on young people’s well-being, and how this might also impact on the overall prospects of a ‘durable solution’. UK law states that given their potential vulnerability, particular priority and care should be given to handling the asylum claims of unaccompanied minors.⁶ The Home Office has a general published asylum processing target to make an initial decision within 6 months of an application.⁷ This processing target does not distinguish between the claims of adults and those made by minors. Yet participants reported delays at all stage of the process; delays in referring new arrivals for legal advice leading to young people being unable to submit their statement of evidence form; Home Office delays in arranging screening and substantive interviews; delays following the substantive interview prior to any decision; significant delays prior to any appeal hearing and finally delays in implementing decisions and providing young people with their Biometric Residence Permits. As a result many young people were waiting well over a year, sometimes two years and becoming adults before they were called for their asylum interview. This leads to a number of disadvantages since there are specific legal protections accorded to those under 18, and those under 17.5 who are refused asylum are often granted UASC leave to remain.⁸ Concerns exist that the likelihood of being granted asylum (if necessary following an appeal) is greater for those under 18, due to the fact that decision makers must consider questions of child specific persecution and take into account their best interests when considering

¹ Home Office statistics, Data Tables 2016. Accessed 08/01/18 at

<https://www.gov.uk/government/collections/immigration-statistics-quarterly-release>

² “‘Unprecedented’ 65 million people displaced by war and persecution in 2015”, United Nations, 20/06/16

<http://refugeesmigrants.un.org/‘unprecedented’-65-million-people-displaced-war-and-persecution-2015---un>

³ Eurostat Press Release, 02/05/16. Available at

<http://ec.europa.eu/eurostat/documents/2995521/7244677/3-02052016-AP-EN.pdf/19cfd8d1-330b-4080-8ff3-72ac7b7b67f6>. Notably 35,300 unaccompanied minors, or 40% claimed asylum in 2015 in Sweden. More than half of all the unaccompanied minors were Afghans.

⁴ According to Home Office statistics the number of unaccompanied minors arriving in the UK was 3,333 (2006), 3,489 (2007), and 3,976 (2008). Home Office statistics, Data Tables 2016. Accessed 08/01/18 at <https://www.gov.uk/government/collections/immigration-statistics-quarterly-release>

⁵ Migrant and Refugee Children’s Legal Unit

⁶ Immigration Rule 350. The law is set out in full in Annex 1 to this report

⁷ See <https://www.gov.uk/claim-asylum/decision>. The Home Office performance measure is that 98% of straightforward claims will be decided within 6 months.

⁸ UASC leave to remain is granted under immigration rule 352ZC where the Home Office is not satisfied that there would be adequate reception conditions were they to be returned to their country of origin.

the viability of any proposed internal relocation alternative. Delay may therefore prejudice the eventual outcome of the asylum claim.

In addition, those working with young asylum seekers have reported significant concerns about the mental health of those subject to lengthy delays in the asylum process, which has a subsequent impact on their ability to cope with an asylum interview or provide evidence in court. They also reported that with an uncertain legal status some young people were finding it difficult to access services that they should be entitled to. This can have a lasting impact on their ability to integrate into the UK even if they are eventually granted refugee status.

In July 2016, recognising that some local authorities such as Kent were responsible for supporting a disproportionate number of young asylum seekers, the government introduced the National Transfer Scheme⁹ which was designed to ensure a more equal distribution of responsibility for the support of asylum seeking children. This permits UASC to be transferred from local authorities where the proportion of UASC to child population exceeds 0.07% (this figure is to be revised on a yearly basis).¹⁰ Whilst this may in time reduce delays in areas such as Kent, concerns have been raised about the ability of local authorities with very little experience of young asylum seekers to provide appropriate support, including access to specialist legal advice.¹¹

In January 2017 Elder Rahimi Solicitors received Strategic Legal Funding to investigate the incidence of delay and its impact on young asylum seekers with a view to potential litigation to compel the Home Office to treat these claims as a higher priority. This report sets out the findings of that research and our recommendations.

Aims of Research

The purpose of this research was to investigate the incidence and impact of delay in the asylum system on unaccompanied asylum seeking children, providing evidence that despite the theoretical legal protections designed to ensure that claims are handled with due diligence, in practice these are not routinely applied. Our aims were:

- To establish and document the prevalence of delay affecting young asylum seekers.
- To establish and document the impact of delay on young people, both in terms of their personal experiences of delay and in terms of the potential impact on their asylum claims.

This report is divided into two main parts.

Part 1 considers the incidence of delay based on data obtained from the Home Office and on qualitative information obtained from organisations working with large numbers of unaccompanied minors. Part 2 considers the impact of delay on the wellbeing of young asylum seekers based on a series of semi-structured interviews with young people who have been subject to significant delay in the asylum process. It also draws on published literature to consider the impact of delay on a young person's mental health and the overall impact this may have on the outcome of their asylum claim. The report concludes with a series of recommendations. Annex 1 sets out the relevant law and policy which should be applied concerning the priority handling of asylum claims by unaccompanied minors.

⁹ See sections 69-73 Immigration Act 2016

¹⁰ Home Office, DfE, DCLG, Interim National Transfer Protocol for Unaccompanied Asylum Seeking Children 2016-17, Version 0.8, July 2016

¹¹ See Refugee Children's Consortium, Briefing on the National Transfer Scheme, August 2017

Part 1: The Incidence of Delay

Methodology

It was decided to focus on the delay between asylum claim and substantive interview and between the interview and a decision, although concerns have also been raised about lengthy delays prior to first-tier tribunal appeal hearings¹², delays in the implementation of decisions and delays in referrals for legal advice at the outset of the process.

There is no readily available published source of statistics concerning the length of time it takes to process the asylum claims of children. Therefore a number of freedom of information requests were made to the Home Office requesting statistics.

In addition, contact was made with a number of NGOs across the country, who shared their experiences of delay and their responses have informed this report. Some of those have produced written submissions and statements to assist with judicial reviews. Whilst this was not intended to be a comprehensive survey, it provides some qualitative information about the incidence of delay. It supports the conclusion that incidents of significant and detrimental delay, whilst perhaps more common in the South East are not confined to this region.

Findings

A freedom of information request¹³ produced the following information:

Table 1

	Q1 2015	Q2 2015	Q3 2015	Q4 2015	Q1 2016	Q2 2016	Q3 2016	Q4 2016	Q1 2017	Q2 2017
<i>The number of asylum claims made by unaccompanied asylum seeking children</i>	525	575	1,023	1,130	693	699	722	1,176	499	547
<i>The average length of time (in days) between asylum claim and screening interview</i>	12	18	31	48	15	11	6	6	4	1
<i>The average length of time (in days) between asylum claim and the substantive asylum interview.</i>	151	160	198	220	173	165	163	153	130	62

¹² By September 2017 the average number of weeks taken to process an asylum appeal in the first tier tribunal was calculated as 28 weeks, a decrease from 40 weeks during the same period in September 2016. The average number of weeks for all appeal types (e.g. including other human rights appeals) had increased to 52 weeks. (Ministry of Justice, Tribunals and Gender Recognition Statistics Quarterly, July to September 2017, 14/12/17)

¹³ FOI Request to Home Office 45535, 25/09/17. N.B: We were not able to obtain information about the delay between submission of SEF and substantive asylum interview.

<i>The average length of time (in days) between substantive interview and decision service</i>	95	78	76	53	49	35	27	19	17	1
<i>The average length of time (in days) between asylum claim and decision service</i>	233	222	261	258	201	193	181	163	130	65

At first these statistics appear to suggest that following the introduction of the national transfer scheme the incidence of average time taken to process a claim is declining. However, the averages in this data are based on cases that began during each quarter, regardless of when the interview/decision was taken. This means that the averages will change as the remaining interviews and decision events are completed, and so we would expect the averages to increase, particularly for more recent quarters which are likely to have outstanding interviews and decisions. It is evident that for most of this period the average length of time it takes to process a young person's claim from arrival to decision service is greater than the 6 month (180 days) target for straightforward cases. For comparison, the Independent Inspector of Borders and Immigration described an average time of 141 days as unreasonable in his 2013 report into the handling of asylum claims by unaccompanied minors¹⁴ (see below for further discussion). Even if the situation is now improving this does not undermine the argument that without changes to policy guidance, a further cohort of young asylum seekers may be exposed to similar problems.

A further request for information on the percentage of claims by unaccompanied asylum seekers not decided by 6, 12, 18 and 24 months after the registration of the claim was made in October 2017 but has still not been responded to.¹⁵

It is evident, from the literature review carried out that delay in the processing of children's cases is not merely a recent development caused by the increase in numbers in the Summer of 2015. The UNHCR in an audit of the handling of the claims of young asylum seekers in 2009 noted that in the significant majority of the children's claims assessed the Home Office did not meet its then target of 35-37 days for a first decision, though they noted that sometimes there was a sound reason for not adhering to the requisite time-scale.¹⁶ A report by Kent Law Clinic¹⁷ in 2013 which analysed the case files of a number of refused Afghan child asylum seekers arriving between 2006 and 2012 documented significant delay in a number of cases which potentially had adverse impact on the final outcome of the case. A report by the Law Centres Network¹⁸ which considered the experience of the asylum process for 60 young people who arrived in the year ending 2014 highlighted a number of incidents of significant delay with one young person waiting over 3 years for a substantive

¹⁴ Vine, J, Independent Chief Inspector of Borders and Immigration, An Inspection into the Handling of Asylum Applications Made by Unaccompanied Children, Feb-June 2013, p41. The current Chief Inspector has recently undertaken a further inspection into the circumstances of unaccompanied children. See <https://www.gov.uk/government/news/the-home-offices-consideration-of-childrens-best-interests-call-for-evidence>

¹⁵ FOI request No 45730 made on 08/10/17

¹⁶ *Quality Initiative Project Sixth Report to the Minister* UNHCR Representation to the United Kingdom in London April 2009

¹⁷ Kent Law Clinic (2013) "How Children Become Failed Asylum Seekers".

¹⁸ Law Centres Network (2015) Put Yourself in Our Shoes

interview.¹⁹ This report found that whilst in general there was timely asylum processing and decision-making, nevertheless, 9 cases (15%) faced delays of more than 12 months and concluded that a number of them suffered real detriment where they had turned 17.5 by the date of decision and thus were not granted any form of leave to remain. A report by The Association of Directors of Children's Services (ADCS) which surveyed local authorities in July 2016 throughout England noted that responding local authorities felt that asylum decisions were taking too long and coming sometimes two to three years after initial screening interviews, creating deep anxieties for the young people concerned.²⁰

For a 2013 report, the Chief Inspector of Borders and Immigration obtained statistics on the average length of time between an asylum claim being lodged and decision service for 115 files relating to unaccompanied children who applied for asylum between 1 April 2011 and 31 March 2012 taken from two Home Office departments: London and the East Midlands.²¹ At that time he found that the average time frame from application to decision was 64 days in London with 87% receiving a decision within 6 months, and 141 days in the East Midlands with 78% of cases being decided within 6 months. He described the Midlands average as unreasonable and noted that there were some very long delays in both offices, highlighting one case that took 424 days which was clearly unacceptable. He was concerned about the disparity between the two offices and considered that the average of 141 days was contrary to the requirement of the Immigration Rules that particular priority be given to children's cases. He further noted confusion over the benchmark targets that the offices were working to, with London aiming to make a decision in 60 days, and the East Midlands aiming for a target of 90 days (which was not being met). He documented conflicting information about whether these were formal or informal targets and recommended that the Home Office needed to be clear about what if any target it was working towards for completion of children's asylum claims, since children should not be left to wait for lengthy periods of time.

In their response to the report the Home Office accepted the recommendation to ensure that children's asylum claims are decided in a timely manner regardless of where they are considered and stated that it was *"reviewing exactly what that timescale should be as part of work to develop and implement a new balanced scorecard of performance measures for the asylum casework directorate. This will help to ensure that as the Chief Inspector rightly asserts children's claims should be decided within consistent timescales across the country"*.²²

A further Freedom of Information request was made for more detailed information broken down according to different asylum processing regions but this was refused on the grounds that to supply such information would exceed the applicable costs limit.²³ It has therefore not been possible to identify whether all regions are particularly affected by disproportionate delay, though interviews with those working with young asylum seekers in a variety of regions suggest that there are some areas where delay has been more of a concern than in others. A number of organisations in the

¹⁹ Ibid, p77

²⁰ ADCS, Safeguarding Pressures Phase 5: Special Thematic Report on Unaccompanied Asylum Seeking and Refugee Children, November 2016
http://adcs.org.uk/assets/documentation/ADCS_UASC_Report_Final_FOR_PUBLICATION.pdf

²¹ Vine, J, Independent Chief Inspector of Borders and Immigration, An Inspection into the Handling of Asylum Applications Made by Unaccompanied Children, Feb-June 2013

²² The Home Office response to the Independent Chief Inspector's report 'An inspection into the handling of asylum applications made by unaccompanied children', October 2013
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254526/Response_to_ICI_UASC_Report.pdf

²³ FOI Request 43953, 16/05/17

South East were clear that delays in processing young person's asylum claims were commonplace and leading to significant damage to the mental health of the young people they worked with. In contrast, a respondent in the North West of England stated that in their experience, whilst delays in the Home Office sometimes occurred, in general minor's claims were being dealt with promptly.

Reasons for the Delays

Respondents raised a number of reasons why they believed delays were occurring. In some regions a lack of legal aid capacity on the part of solicitors' firms and other organisations financed to offer representation was cited as leading to a delay in the initial referral to solicitors therefore delaying the submission of the Statement of Evidence Form (SEF). Other causes include delay in the completion of age assessments, difficulties in arranging suitable interpreters for interviews or logistical problems in arranging for the young person to attend the interview. However, in many cases the reasons for the delay were simply unclear and appeared to rest solely with the Home Office failing to arrange the asylum interview or to produce a decision.

One organisation in the South West working with about 30 recently arrived UASC stated:

For newly arrived children there is considerable wait for a SEF to be issued after they have claimed asylum and been Screened. This may be 6 months or more. However a few children are processed very quickly indeed, in a matter of months completing Screening, SEF and SEF Interview and receiving decision. Others are processed through interviews and SEF within perhaps 6 months but then wait another 6 months or more for a decision. There does not seem to be any logical reason for the differences and none is given by the Home Office. For example one client received a substantive interview date but could not attend as his solicitor was not available. This was informed to the Home Office and a further date requested but it took a year for another interview date to be provided, during which time he became 18.

Another respondent working in the West Midlands stated:

There appears to be no logic behind whose case is dealt with and what the cause of the delays are. Young people take their delays personally and believe there is a problem with their case. This can cause significant distress.

A number of those spoken to during the course of this research mentioned that they had heard in the course of their casework that the Home Office had a policy of "Barriering" some young people's asylum claims. They were concerned that some cases which have already been delayed by more than 6 months are being placed into a separate queue, or left indefinitely so that other more recent arrivals can be processed first within a 6 month service standard.²⁴ This would certainly fit with the experience of a number of young people interviewed where there are no obvious reasons for the delay in the resolution of their case, who have reported their experience of witnessing newly arrived young asylum seekers receiving swift interviews, whilst their cases remained on hold (see Part 2). If this were the case it would be a worrying development, reminiscent of what happened in the early 2000s, where a Public Service Agreement (PSA) target requiring that 60% of new asylum applications

²⁴ Since April 2014 the Home Office has worked to a customer service standard of providing an initial decision on asylum claims within 6 months of registration (The 'Day 182' target), though non-straightforward claims are excluded, but have an internal performance aim of a decision within 12 months and must be regularly reviewed. (para 3.9 Bolt, D (2017) Independent Chief Inspector, An inspection of asylum intake and casework, November 2017)

were decided within 61 days of the application being made, led to older cases being “shelved” and subjected to considerable delays.²⁵

A further Freedom of Information request was made requesting details of any training materials that are given to Home Office caseowners working with unaccompanied minors that include information on the timescales of such claims. This was refused on the grounds that to release such information would be prejudicial to the operation of immigration controls.

A request was made for any regional protocols, policies, process maps or information on internal targets concerning the length of time it takes to process a child’s claim and whether such claims are prioritised, including information on whether there was any policy of “barriering” or delaying cases that were not decided within a particular period of time. The Home Office stated that:

*Asylum casework currently aim to resolve straightforward cases within 6 months. If this is not possible for reasons that a particular barrier exists then the case is flagged as Non Straight Forward. For these cases we aim to make a decision with (sic) 12 months but actively manage these cases to ensure prompt removal of any barriers. Cases are not classed as Non Straight Forward simply because a decision hasn’t been made within 6 months.*²⁶

No further information or documentation was provided, or any explanation of what factors might specifically lead to a child’s case being classed as non-Straight Forward. The current published version of the Home Office Guidance *Processing Children’s Asylum Claims*²⁷ contains no details of when a child’s claim may be classed as non-straight forward, only noting that decisions on UASC leave may be delayed where it is likely that adequate reception arrangements are present in the country of return and a decision on the adequacy of the reception arrangements can be made within 6 weeks.²⁸

The most recent inspection report into general asylum casework by the Chief Inspector²⁹ considered the current processing times of asylum claims, though did not focus specifically on the processing of claims from minors. The Inspector raised concerns that since October 2015 the number and percentage of claims being classed as non-straight-forward has increased.³⁰ Once classified as such, the case no longer counts towards the 6 month target and so there is a temptation to give it less priority. He reveals that internal Home Office guidance considers there to be 7 broad case types that may be classed as non-straightforward.³¹ These are:

- *the claimant claims to be a victim of torture and is awaiting a medico-legal report from one of the two Home Office recognised providers*
- *the claimant is pregnant, or has a verified medical condition which hinders progression of the case*
- *the claimant has a particular vulnerability, such as a mental health condition, which requires careful handling*

²⁵ See the case of *S, R (on the application of) v Secretary of State for the Home Department [2007] EWCA Civ 546* where it was held that this amounted to “conspicuous unfairness”.

²⁶ Freedom of Information Request, 43951, 16/05/17

²⁷ *Processing Children’s Asylum Claims* (Version 2.0), 9 October 2017

²⁸ *Processing Children’s Asylum Claims* (Version 2.0), 9 October 2017 p69

²⁹ Bolt, D (2017) Independent Chief Inspector, An inspection of asylum intake and casework, November 2017

³⁰ Ibid para 3.11. In October 2015 67.16% of cases (2,812 in total) registered that month were classed as straightforward. By September 2016 only 58.77% (1,481) cases were classed as straightforward (Figure 1, para 6.2)

³¹ Ibid para 5.23

- *the Home Office is awaiting information from another Home Office unit or other government department or agency in order that all the evidence relating to the claimant is available, for example where the claimant is a potential victim of modern slavery*
- *the claim is identified as one that may fall to be considered by another EU member state under the provisions of the Dublin Regulation*
- *it would not be appropriate to make a decision on the claim, or cohort of claims, until legal or policy considerations have been resolved*
- *the claimant has caused delay to the case, for example in not providing supporting documentation or failing to attend their substantive interview*

The Inspector records an admission that the Home Office had been overusing the classification through a “generous” interpretation of when a case is non-straight forward.³² The 6-month target incentivises the categorisation of cases as non-straight forward and decision makers have admitted to giving less attention to monitoring and reviewing these cases.³³ He found limited evidence that these cases were being reviewed unless there was external pressure such as the threat of legal action or an enquiry from an MP.³⁴ He recommended that the Home Office should review the way in which such claims are categorised. Whilst this report did not specifically address the claims of unaccompanied minors, it highlights a potential explanation for the delay that young people have been experiencing.

A further Freedom of Information request³⁵ was made for details of the percentage of young person’s asylum claims that are classified as straightforward or non-straightforward. This produced the following information:

Quarter	Total Number of Applications	Classed as Straightforward	As a % of the Total	Classed as Non-Straightforward	As a % of the Total
Q1 2015	525	275	52%	250	48%
Q2 2015	575	317	55%	258	45%
Q3 2015	1,023	462	45%	561	55%
Q4 2015	1,130	491	43%	639	57%
Q1 2016	693	306	44%	387	56%
Q2 2016	699	315	45%	384	55%
Q3 2016	722	276	38%	446	62%
Q4 2016	1,176	337	29%	837	71%
Q1 2017	499	231	46%	268	54%
Q2 2017	547	Data not available ³⁶	Data not available	Data not available	Data not available
Q3 2017	543	Data not available	Data not available	Data not available	Data not available
Total	8,132	4,057	50%	4,075	50%

³² Ibid para 3.21

³³ Ibid paras 8.23-8.26

³⁴ Ibid para 8.29

³⁵ Freedom of Information Request, 46780, 08/01/18

³⁶ No data is reported against periods where some or all of the cases within the cohort were still within service standard timescales. For example, applications made within Q2 and Q3 2017 would still be within a 6 month service standard by the end of Q3 2017 (the latest published period), so it is not possible to report the number identified as non straightforward.

This suggests that children's claims are more likely to be classified as non-straightforward than adult claims and as such are more likely to be excluded from the 6 month service standard. The Chief Inspector had found that in April 2016 just 39% of 'Work in Progress' asylum claims were classed as non-straight forward. By March 2017 this figure had risen to 48%.³⁷ It is particularly concerning that as the number of new claims increased in late 2016, the percentage being classed as non-straight forward also increased, suggesting that as with adult cases, workload pressures may be leading to more decisions to classify cases as non-straightforward.

In response to a request for the criteria by which a children's claim is classified, the Home Office confirmed that internal policy guidance uses the same 7 broad category classifications that apply to adult's cases to make a decision whether a child's claim is non-straightforward. It is the case that many young people could be classified as particularly vulnerable and have cases which require careful handling (criteria 3). It would be of concern though if this criteria was being used to remove cases from the 6 month service standard, leading to lengthy further delays, without considering the best interests of the young person involved.

The Impact of the National Transfer Scheme

The National Transfer Scheme was introduced in July 2016 in an attempt to address the uneven distribution of young asylum seekers throughout the UK, which had resulted in a lack of social services capacity, educational placements and legal aid capacity. In December 2017 it was announced that the scheme which initially applied to England would be extended throughout the UK.³⁸ It operates on the basis that "where an unaccompanied child first presents in a local authority which is over the ceiling of 0.07%UASC to child population, the local authority is expected to arrange for the transfer of the child through the national transfer scheme, unless there are clear reasons why it would not be appropriate to transfer the child".³⁹

The Home Office Interim Transfer Protocol states that the local authorities are expected to make a transfer decision within 48 hours (two working days) of the child's arrival in to the care of the entry local authority⁴⁰ but lacks detail on the timescale within which transfers should be carried out.

In August 2017, the Refugee Children's Consortium reported a number of problems with its implementation based on the concerns of their members and discussion with staff in the transfer areas.⁴¹ A key concern is the delay in transfer of young people from the local authority of arrival. They note that RCC members are seeing many cases where children are not being transferred for weeks and even months, including in cases where young people had already become settled in foster placements and were then extremely resistant to being moved.

They consider that in a significant number of cases, transfer is not taking place within a child's best interest's timeframe with delays resulting in disruption of education, legal advice and support that was being provided. They note further delays upon arrival in young people obtaining legal advice,

³⁷ Bolt, D (2017) Independent Chief Inspector, An inspection of asylum intake and casework, November 2017, Figure 4, para 6.19, p19

³⁸ The Transfer of Responsibility for Relevant Children (Extension to Wales, Scotland and Northern Ireland) Regulations 2017

³⁹ Home Office, DfE, DCLG, Interim National Transfer Protocol for Unaccompanied Asylum Seeking Children 2016-17, Version 0.8, July 2016

⁴⁰ Ibid p9

⁴¹ Refugee Children's Consortium, Briefing on the National Transfer Scheme, August 2017

particularly in areas that already lack good quality legal advisers qualified to work with minors. These delays are likely to have a knock on effect in terms of processing the asylum claim, since delays in obtaining new legal representation may delay the submission of the Statement of Evidence Form (SEF) or prevent the Home Office from arranging an interview for those under 18. The RCC report young people having to wait up to 4 months for an appointment with a solicitor and note with concern a considerable number of transfers of young people to local authorities in Devon, where the only qualified legal advice is based in Plymouth.

In our further discussions with those working with young people in the transfer regions, a repeated concern raised was the difficulty young people faced in accessing good quality legal services. Another concern was cases of young people absconding from their transfer region in order to return to their area of arrival where they had already made friends. It was felt that this was more likely to happen in cases where transfer occurred after a lengthy delay during which the young person had already begun to settle in the area of arrival.

Examples were also given where despite young people being transferred, their asylum case had not been and was still being processed in another region meaning that they, their solicitor and care worker had to take a day to travel to London and back for interview. This was both costly and inconvenient. In one case study provided, the young person had simply not been able to attend their substantive interview in London for logistical reasons, and the Home Office had refused or failed to transfer the case to Cardiff until recently, following many attempts, including by the local MP, to request this of the Home Office.

Therefore, whilst the national transfer has the potential to allow the Home Office to improve the processing of the asylum claims of young people by taking the pressure of new applications away from overstretched regions such as the South East, it is far from clear that this will not be offset by the other causes of delay identified above; in particular initial delays in transfer and subsequent delays in accessing legal advice.

Given that the majority of young asylum seekers are 16-17 the potential disruption posed by an inefficient transfer system is a very serious issue, and makes it even more imperative that the Home Office commit to a clear framework for processing claims.

Part 2: The Impact of Delay on Young People

Methodology

A series of interviews were carried out with young people who had experienced lengthy delays in their asylum claims. Prospective participants were identified by support workers from NGOs who explained the broad aims of the research to the young person and asked if they would like to take part. The only criteria was that they had arrived as a child and had experienced a delay of more than a year – either prior to their main interview or in waiting for a decision. In the vast majority of cases referred, the delays experienced by the young people were in fact more than 18 months and in some cases were over 2 years.

Appointments were made to meet the young people at the premises of the NGO's. At the beginning of the interview the purpose of the research was explained in more detail. It was made clear that participation was voluntary and would have no impact on the asylum process, either way. Participants appeared keen to have the opportunity to be listened to and to give their opinion on their experience of the asylum process. All participants signed a consent form agreeing to be interviewed. It was explained that they were free to decline to answer any questions, and that they could change their mind or withdraw consent at any time. It was explained that, whilst their comments may be used in a final report, they would not be identified and all cases would be anonymised.

It was recognised that the subject matter of the interview could be distressing for some young people to talk about. In many cases the young person had their support worker with them during the interview. Participants were given a gift voucher, to thank them for their time and contribution. This was to be given to all who attended an interview appointment, even if they declined to participate.

Interviews were semi-structured around a number of primary questions, though the interviews developed as conversations with the young people about their experiences. They were carried out with an interpreter in the young person's preferred language.

In total 14 young people were interviewed from a variety of nationalities which reflect the client groups who attend the NGOs which co-operated with the research. Whilst this can not be considered a representative sample, it aims to provide an overview of the problems that young people experience as a result of delay. A number of common themes emerged in the accounts of many of the young people interviewed and it is therefore anticipated that these same issues would be present in a larger study. Several support workers were also interviewed at the NGOs about their experiences of working with young people whose claims were being delayed. In addition, a number of support organisations working with young people throughout England provided information about their experience of delay in the asylum process and in some cases provided their own case studies. Their comments are also included in what follows.

Profile of the Sample

Of the 14 young people who were interviewed, 9 were male and 5 female. 5 were from Eritrea, 4 from Afghanistan, 3 from Sudan, 1 from Iraq and 1 from Syria. Their ages ranged from 16-19. The young people were represented by a variety of different legal aid solicitors. 5 had been granted refugee status and 1 Humanitarian Protection. 3 were refused and were currently in the appeal process. 5 were yet to receive a first decision at the time of the interview.

Length of Delay

- **Total Delay from Arrival**

All but one of the cases had experienced a total delay of over 18 months. 6 cases had experienced a total delay of more than 2 years from arrival.

- **Delay prior to obtaining a Solicitor**

7 cases were referred to a solicitor within a month of arriving. The other 7 experienced lengthy delays prior to receiving any legal advice, ranging from 2 months to a year delay. As a result a number of the young people interviewed found themselves attending their screening interview without a solicitor or independent interpreter present or without having received any legal advice about what it meant to claim asylum.

- **Delay prior to Substantive Interview**

The most significant delay occurred prior to the substantive interview. 8 of the young people had waited for over a year from arrival for their interview, with several of these approaching a 2 year delay. 3 were still waiting for their substantive interviews at the date of interview after delays of approximately 2 years.

- **Delay following the Substantive Interview**

6 of those interviewed received a decision within a month of completing their substantive interview. However, 3 of those interviewed experienced further delays of 7 months, 11 months and 1 year and 1 month after the substantive interview. The remaining 5 were still awaiting a decision at the date of the interview.

Experience of Delay

Participants were asked about what effect the delay had or was having on their lives. The vast majority mentioned that it had caused them significant stress and anxiety. Many mentioned they were having difficulty sleeping and that this had had a knock on effect on their daily activities.

*The delay affected my whole life. In education, and in my daily life. Whenever I thought about my situation and the fact that I didn't know what was going to happen I was never comfortable and always worried. The worst part was when I came through the countries I went through, so many bad things happened and I was terrified all the time about whether I would be made to go back to that. It was haunting me. I was not sleeping properly, always worried. When I discussed my situation with others I was always anxious. **(Case A granted Refugee Status after 1 year and 9 months)***

*For a year and a half I did not know what would happen to me. I was always scared and thinking I could be asked to leave at any time. **(Case B refused asylum after a year and 8 months)***

*It was too much for me - the long wait. I didn't know what to do. Whenever I tried to find out they were just saying just wait and the waiting was so long. The worst part is the stress. I was always wondering where I would end up. I could not function properly I could not follow my education. I felt like I was in limbo waiting for this. **(Case C granted Refugee Status after 1 year and 10 months)***

It is very depressing – just thinking about it is so depressing. Whenever I see my solicitor it keeps taking me back to all the problems I have had. When I see my solicitor to talk about it, I cannot sleep properly afterwards. It is very bad. (Case E still waiting for an interview after 1 year and 11 months)

It is not easy – always so depressing. It does not make you a full person. You think a lot about it and what will happen. I can not concentrate on my education because of that. When you think about it - Why have some people got a decision and they are living easily. Why me – what mistakes have I made? You cannot relax and have your life at ease. (Case G still waiting 2 years for an interview)

It was making my feelings horrible. It made me crazy. I couldn't sleep as I was worried about my case and scared they might reject me. When I woke up I was feeling so tired. I was always thinking about my future and it went on 2 months, 3 months, you know... (Case K granted refugee status after 1 year and 7 months)

I was scared and sometimes I could not sleep. Other people used to tell me that you might get sent back to your country. Lots of things happen to you, things you can't say.... It is something that you are always thinking about. (Case N granted Refugee Status after 2 years and 1 month)

Only one young person interviewed said that they were not affected by the delay and this was because he had no confidence in the likely outcome in his case.

(The delay) wasn't affecting me really to be honest. I knew that when I got an interview I would be refused. So I was thinking if they don't send me an interview – no news is good news.

Why was it not a problem? *Well, I can see that all Afghan boys get refused. I know the Home Office don't believe any Afghan boys whatever they say. So I didn't really mind. I was just waiting for my interview and knew if I got it I will get refused. I am expecting to be refused. I don't think even on appeal I will succeed as most are being refused by the judge. My friend was just refused by the judge. This is what happens. (Case J still waiting for a decision after 2 years)*

There were a variety of sources of anxiety that were mentioned. Firstly not having even an indication of when an asylum interview might be set meant that there was no end in sight. The uncertainty about their immigration status and whether they would be asked to leave the UK meant that they were unable to start focusing on their future. A number mentioned feeling trapped, or unable to look forwards. This had a significant impact on their motivation and ability to study, and even those who eventually obtained refugee status felt they had lost valuable time.

I was attending an ESOL class regularly, then I went to college but I was not excelling as required as my mind was pre-occupied with the whole situation. (Case A granted Refugee Status after 1 year and 9 months)

Not knowing what would happen, discourages you from living your life fully. What is the point of education if I did not get my papers? I was not thinking properly. Most of the people my age who came with me were getting their papers. But I don't know what had happened with my case. Even though my foster carers were pushing me to get an education, and got me a tutor, my mind was not there as I just did not know what would happen with my situation. I know myself very well and I did not excel the way it is supposed to be. Even

though I lived 2 years in the country I have not achieved what I should have. (Case C granted Refugee Status after 1 year and 10 months)

*I didn't study and I told them I won't study until I get my decision. I was studying English language in Dover and when my English improved my name came on for a course in Canterbury but I refused to go. I said I would not do it without getting my status first. **Why?** I didn't know what my future would be and what would happen to me and I wasn't feeling safe. I was worried that I might be sent back to another country. And I didn't think it was worth starting this course if I was going to be sent back. I knew that without papers you can't do anything in this country. (Case L granted refugee status after 1 year and 8 months)*

A number of participants were anxious about the thought that they would have to talk about their reasons for leaving and their journey again and that they would be expected to accurately recall dates and details of events that occurred many months ago. This also meant they were unable to start forgetting the bad memories and experiences they had been through and move on from their past.

My history in my country was not a problem, but to remember my journey and the dates was very hard 2 years after it happened. After that trip I did not want to go back to thinking about it. Every time you talk about it, it takes you back. Even though I know I am safe in the UK going back over it is not helpful. (Case C granted Refugee Status after 1 year and 10 months)

I cannot forget the worst parts of my experience, but there are a lot of things that will not be easy to remember to tell exactly. Dates and things will be difficult. I wish it had been a long time ago – I would have been able to forget the bad things. But I keep having to remember it because you know the interview is coming. It stops your life as well. (Case G is still waiting for an interview after 2 years)

The support workers and other professionals interviewed described the deterioration in the young people's mental health which they have observed over the past years and the challenges this presents for them in their roles.

We see a lot of deterioration in their mental health. Generally they get to a stage where they are all frustrated and hopeless and actually quite depressed. A few of them it affected particularly badly....Generally it is really challenging for us in our roles we were having to placate people and try and reassure them that this is just part of the process and happens to everyone and not just them...

Some have said to me they couldn't concentrate (on their education). A good example is a Syrian from Aleppo who refused to go to school until he got an answer from the Home Office as a protest. He didn't realise that the teachers and social services had no impact on the Home Office. But he kept saying he could not concentrate and what was the point of him going to school if he did not know his status. (Support worker, Canterbury)

I think the stress has a major impact. They say directly to me they struggle concentrating in class – that they have trouble sleeping at night and are too tired to go to school in the morning. Definitely, it has an impact on their ability to study and their ability to think about the future. (Support worker, Brighton)

“For the young people their immigration status is the most important aspect of their lives. They may have food, shelter and support, but without knowing whether they can stay or not

it is a small comfort. The uncertainty, loss of control, fear of what will happen is a huge strain on them. I have a young person who has watched most of his friends get their interviews, some with positive outcomes, some not. He is in an enviable position in that he lives with a good, supportive family, but the distress you see every week is staggering. They would rather know, even if it is a negative outcome, than live in limbo. The stress and worry is bringing flashbacks, nightmares, sleeplessness which is affecting their everyday lives.” (UASC Teacher, Maidstone)

The Impact on Relationships

One issue that was frequently mentioned was the impact that not having a secure status was having on the young people’s relationships with their peers. Many young people live in independent living with other asylum seeking children, or attend ESOL classes in which they regularly mix with other young people from their country of origin. A number mentioned the effect of seeing other young people who arrived at the same time or much more recently in similar positions getting an interview and a decision before them. Some young people even sought to avoid mixing with their peers because having to discuss their situation in the asylum process was too painful.

*Of course, I am not happy. Because my friends after only 3 months, they got their documents and they are happy and I am not. From time to time my friends have a joke saying, that because I am not in contact with them (the Home Office) that is why I am delayed. So my friends ask me from time to time do you have any news? I say nothing, and they say it is because I am not doing anything about it – like it is my fault. I feel embarrassed about it– sometimes I say don’t talk about it. Sometimes I feel upset and sometimes I cry. **(Case F still waiting for an interview after 2 years)***

*Every time when people mention or asked about my papers that was the worst thing that could happen. I knew that if I tried to hide it, others would raise it. It was causing me a lot of anxiety. All my life when I went to education or college, most young people around me had leave to remain but mine seemed special so when they mentioned it..... Even now thinking about it makes me feel uncomfortable. **(Case C granted Refugee Status after 1 year and 10 months)***

*It really affected me – I felt quite a lot of disappointment when I hear from others. Some people came after me and were interviewed. When I came in the back of lorry there were 3 of us young boys. The other 2 were very quickly given a decision – their ages were accepted and they got decisions within 2 months. But I have been kept behind. **(Case I Refused after 2 years delay and currently appealing)***

*I did not feel free because it was holding me back. This was the main discussion I was having with other young people around me. This was the question that other young people were often asking. It was holding me back and I could not consider myself an equal to the other people who had their papers. **(Case A granted Refugee Status after 1 year and 9 months)***

*Lots of people got status before me. After a year and 7 months, I saw other people who just arrived and got status after a few months. I was not happy when I saw people who came after me and got status whilst I was still waiting. **(Case N granted refugee status after 2 years and 1 month)***

If anyone came in (to the drop-in centre) with substantive interviews or status a lot of the others who were waiting felt upset and the worst thing about it was it was so random. Some

people just arrived and got status in 2015, people were coming afterwards getting substantive interviews and getting granted, whereas others were waiting for years and still not getting status. The only way to describe it, as a young person did, is like a lottery where you get a ticket when you arrive and the numbers are randomly picked out. It might be 1 month it might be 5, it might be 2 years. They talk about it as a form of punishment. They say, "the government are punishing us, but what have we done to deserve it?" **(Support worker, Canterbury)**

A number of those interviewed reported that they distrusted their solicitors. Several wondered whether the reason their case was delayed was due to a problem with their solicitor rather than the Home Office.

I am confused about the whole system – I need to see my solicitor. The delay is from the Home Office side but it could be my solicitor. Even though she sees me, I don't know. I don't understand why they are not just responding and respecting the contact from the solicitor. Always she is telling me wait, but months and now years have gone by. **Case E (Still waiting after 1 year and 11 months)**

Because of the long delay it affected my behaviour – maybe I was not acting properly with my solicitor and social worker. I was getting a bit cross easily, even with my friends. **(Case C waited 1 year and 10.5 months)**

One of our young people paid £500 to a private solicitor to take his case from his legal aid solicitor on the basis that they would get an answer from the Home Office quicker. He borrowed money from his brother. Obviously this did not help him in any way, shape or form. **(Support worker, Canterbury)**

It is becoming increasingly difficult to explain to these children why their cases are subject to such long delays. Another consequence of this is that the young people develop a distrust in the professionals involved in their cases, particularly their legal representative, who is subsequently unable to manage their expectations. This lack of trust can be hugely damaging to the relationship that we have worked hard to develop.

(Legal Caseworker, Plymouth)

It is also evident that the unexplained delay also makes the role of foster carers and key workers more difficult:

I have been with G and her friend T. They broke down in tears during discussion about their Home Office asylum claim (it was heart breaking), they shared that this is impacting on them every day, they can't concentrate now at college as it is always in the forefront of their minds and finding it hard that some more of their friends have heard back whilst they have not. They are finding the situation impossible and it is extremely unsettling. I felt completely helpless towards them. Awful.

(Key worker, South West)

Reasons for the delay

Participants were asked if they had been given any explanation as to why there was a delay in their case. Some stated that they had received letters from the Home Office explaining that there would be a delay in their case, whilst others received no communication from the Home Office at all. A few

were told they would be interviewed in the next 6 months. Those who received no information were left wondering at the cause of the delay, and whether something had gone wrong specifically in their case. Even those who were told it was due to the large number of applicants found this hard to accept when other young people who arrived at the same time or subsequently had their claim processed more swiftly.

*Every time I asked my social worker what was happening and why it was so slow, they were telling me there were too many people in the same situation as me and that I would have to wait. That is all I heard. It was surprising though that people who came after me were having their interviews and getting their papers, so this was worrying me as I was thinking maybe they have lost my file and I didn't know what was happening. **(Case A granted Refugee Status after 1 year and 9 months)***

*The only thing I kept hearing was there were a lot of asylum seekers in 2015 and so I had to wait. But you hear this and at the same time see some people within a few months getting their papers. So it did not really explain it. It just seemed like an excuse.....I was so worried maybe they lost my file. In fact I was always bothering my solicitors to inquire about it. **(Case C waited 1 year and 10.5 months)***

*No one ever explained the delay. I was thinking maybe it will be positive because they are taking their time to consider it..... Then I was thinking what have I done wrong so that other people's cases are decided and mine has not been. What have I done wrong? **(Case D – Arrived age 16 and refused asylum after a delay of 2 years and 1 month)***

*They tell me because there are many people who come to the country, but this has nothing to do with me. It is not my mistake. So if everyone is treated the same that would be fine, but you see people who after 3 months get their documents, when people who have come earlier are still struggling to get their status sorted. **(Case F still waiting for an interview after 2 years and 3 months)***

*I didn't know the reasons for the delay. I was so unhappy and worried. **(Case H waited 11 months for interview)***

*There were no reasons given. They arranged my interview in June (2017) and then it was cancelled and rearranged for last month (September 2017). The Home Office interpreter didn't turn up the first time even though I went. But they didn't send me any letters to give any reasons why they delayed my case. Even the last interview I did not receive any letter about the interview – my solicitor phoned me to inform me about the interview. **(Case J waited 1 year and 11 months for an interview)***

*I contacted the solicitor and she said because a lot of people arrived and the Home Office is so busy you have to wait for some time. But I didn't receive any letters from the Home Office explaining the delay. **(Case M has been waiting nearly 2 years for a decision)***

The big worry I had was that I had no screening interview. When I was asking other boys they all had their screening. I thought what is wrong with me – why did they not interview me at all? Everyone was given an ARC and I was not with one. This was the second problem I had. During this year I was waiting I was so frustrated and worried about my asylum claim. I didn't understand why had no one asked me anything at all about my claim? It affected me mentally. I was thinking always about my future and what would happen. I couldn't sleep. I

couldn't concentrate on my life or focus on my life here. (Case H granted Humanitarian Protection)

Generally it is very hard. I am desperate. I don't know how they (the Home Office) work. It could be complicated. But according to my solicitor she keeps saying they are busy. But if they are busy why are they deciding other people's cases quicker than mine, and mine is waiting? Case E (Still waiting after 1 year and 11 months)

When you think about it. Why have some people got a decision and they are living easily? Why me – what mistakes have I made? You cannot relax and have your life at ease. (Case G still waiting 2 years for an interview)

They speculate a lot and try to find reasons for why it is happening to them. What they may have done, whether it is their solicitor, is it this, is it that? They try to make up reasons to feel that they know what is happening, but very often they don't really know. They live together and some have received letters explaining there will be a delay in their case, but others didn't receive the letter so this is a negative - so she fears they have forgotten about her. Obviously they compare themselves to each other and there is a lot of speculation – they can believe all sorts of things. (Support worker, Brighton)

Access to services and other difficulties caused by delay

Participants were asked if the delay in their case had caused them any practical difficulties accessing services in the UK. The majority had been able to access some form of education such as ESOL classes though some stated that their lack of secure status was affecting the type of courses that they could attend and their ability to plan for future studies. Some described having difficulty enrolling on college courses but after persistence from social workers or support workers they were accepted.

A recurring concern that emerged was the ability to access a bank account and the impact this then had on the ability to access a student bursary. A number of those interviewed did not have Asylum Registration Cards (ARCs) as a form of ID and despite assistance from support workers the Home Office had not responded to the request for an ARC to be issued. A support worker commented that a number of children transferred to the UK under the Dubs amendment⁴² remained without any ID for many months.

Whilst many of the participants were primarily focused on their educational opportunities several also mentioned the frustration at being unable to get part time work whilst they were waiting for their case to be decided, and as a result having to be wholly dependent on social services. Other concerns mentioned included the ability to obtain a driving licence – whilst this may seem a relatively minor issue it is yet another obstacle that marks them out from their peers and potentially holds back their development. Several mentioned being unable to travel abroad like other young people their age without access to a travel document.

I have not been able to work, and depend on myself. Instead I have just been waiting, depending on the money I am given. If I had status I could do further education. The lack of knowing. It affects my concentration – I heard that other people on my course say that if you don't get status you cannot go to university when you are older. (Case B refused asylum after more than 1 year 8 months)

⁴² Section 67 Immigration Act 2016

I couldn't work, I couldn't apply for a driving licence. I was thinking of doing this but it was not possible. My foster carer would have helped support me in this, but I didn't have the papers to do it. (Case C granted Refugee Status after 1 year and 10 months)

Even though I have started the social care course they told me by January the practical course will start and unless I have documents I am told I am not going to be able to continue with that. Thinking about my situation is very hard. (Case E still waiting for an interview after 1 year and 11 months)

I don't have papers so if I were to work or earn something - I cannot do this. I cannot go out and visit friends out of this country. I would like to do these things - I have some friends that I was brought up with that I would like to visit. (Case G still waiting 2 years for an interview)

I had no problems studying. But I was going to a boxing club and training. My coach asked me to attend a competition but because I did not have any ID to show them I was not able to take part. This was very upsetting

..... I got a bursary in vouchers which I could only use in certain shops. I didn't have a bank account. I tried to open an account but they told me I had no ID so I couldn't. (Case H waited 11 months for interview)

I can't open a bank account and I can't show any proper ID that I live here legally I have no ARC and have never had any ID. That is why I can't go to college as I don't have an ID. When I went to Folkestone college they said I can't be enrolled. With Canterbury college I insisted - I told them what was happening and they agreed to take me temporary to study English and then they will decide later whether they can keep me or not. (Case I Refused after 2 years delay and currently appealing)

*Wherever I go the first thing they ask is whether I have status. For example at college, I could not open a bank account. It is really frustrating for me. **Did it stop you attending your education?** Initially when I applied for college they would not accept me without status, but when I took my social worker and they explained and they accepted me. (Case J still waiting for a decision after 2 years)*

It has affected my education. When I applied for college they asked for ID and I did not have any to prove who I am. At that time I did not have an ARC. I did not get that until about 9 months ago.....Sometimes you ask your social worker for something and they say you can't as you don't have papers yet. For example, I was accommodated in bad accommodation and when I asked them to move me from there, they said you haven't got papers yet. Another person was with me in the house - he got status and then he moved to another area. (Case N granted refugee status after 2 years and 1 month)

One Syrian who arrived age 17 had a wife remaining in Syria who he was very concerned about.

I am married and I left my wife there and it was delaying my ability to bring my wife to the UK. This caused a lot of worry. A lot of stress and it was affecting me psychologically. (Case L granted refugee status after 1 year and 8 months)

The concerns about the difficulty in accessing services were supported by the young people's support workers that were interviewed who confirmed that those they were working with sometimes had no ARC to prove their status as an asylum seeker.

Accessing college bursaries is a problem. They couldn't access them as they didn't have bank accounts for them to be paid into and couldn't get a bank account as they had no ID and ARC's were not being accepted to access the bank account. Obviously they have no driving licence and no travel documents. Nothing like that which is very useful if you are 18 if they want to do anything. It limits their ability to act in the way that most of their peer group do. (Support worker, Canterbury)

One thing I have seen which was a struggle was opening a bank account, and that is due to delays and also lack of understanding in the banking industry and it does matter.... when someone is an asylum seeker for very long it is a problem. I had a lot of difficulty finding any branches they could go to get a bank account. Most said they don't accept asylum seekers to open bank accounts. They were not accepting the ARC and saying it was not on their list of accepted forms of ID.

***Why do they need a bank account?** They get support as looked after children from social services and can be paid in cash, however it would be better for them to get used to having a bank account – it is part of independent living skills how to learn and understand how to use it. They get bursaries at college and end up having to receive it through someone else's account. They can't get it in cash. (Support worker, Brighton)*

The Substantive Asylum Interview

A number of young people arrived when they were children, but found that they had turned 18 by the time of their interview. As a result they had to attend the interview on their own without a solicitor present. Of those interviewed, 6 had turned 18 by the date of the interview and 2 more are still waiting and may well be 18 by the time they are interviewed. It is evident that the thought of reaching 18 and having to attend without the support of a solicitor and independent interpreter was another source of anxiety. Some were still accompanied by a social worker whilst others attended alone. Despite waiting many months for the interview, several young people actually got very little notice when their interviews were finally arranged and as a result did not have an opportunity to meet with their solicitor again prior to the interview. Some had not seen their solicitors for a number of months.

*I was 18 and 1 month at the time of interview and I had to go with no solicitor. **How was it - going on your own without a solicitor?** First I asked people and they helped me to get there. I was anxious about the solicitor not being there. I was worried as most people had their interview in Dover. But mine was in Croydon. (Case L granted refugee status after 1 year and 8 months)*

*My solicitor didn't go with me but my social worker did. **What was it like going without a solicitor?** It was ok because I was told even if she was with me she couldn't talk anyway. **Did you see the solicitor before interview?** No I just had a phone call from her to tell me of interview. Then it was cancelled and I had to go another day to Croydon. The last time I saw my solicitor was a long time ago. Before the interview I saw her and made the statement and they read it back but this was a long time ago. I was told 2 days before my interview that I had it. It was very short notice. But I was ok for it. There were no big problems in my interview, I could take breaks. But it took so long – nearly 3 hours. I was fasting and really tired and I told them I could not continue. I didn't want to have to do it another day as I had been waiting for such a long time. I told them it was difficult and so after that they asked me about 7 questions and then ended. **You are still waiting for the decision now?** They told me*

it will take a month but later the solicitor told me it will take longer. I am still waiting. It is very hard. (Case M still waiting for a decision 4 months after the interview– total delay approx 2 years)

I was not happy that I was not informed about my interview. 2 days before my interview a Kurdish interpreter guy knocked on my door and told me I had the interview in 2 days time. I was shocked – I didn't know why the Home Office did not write to me. I got the interview letter after I had had the interview! (Case J is still waiting for a decision after approx 2 years - fortunately he was able to see his solicitor the day before the interview and as he was under 18 his solicitor attended).

Case A describes her experience of the interview which she had after a 20 month delay:

I had not seen my solicitor for over a year before the interview. I was not even sure that the interview would happen. I asked to see the solicitor about a month before, as I wanted to go over the statement again, but they were too busy to see me (this was before I knew the interview date). Soon after that the interview letter came. I did not get a chance to see her before my interview because she was going away and she said as I am now over 18 I would have to go to the interview on my own.

The interview letter didn't come straight to me. It went to my social worker and they sent a copy to me. When I saw in the language was Tigrinya and not Amharic, I was happy to have finally got an interview date, but I had a lot of stress about having to do it in another language. I tried to contact my solicitor and she said that she was going away. She said because I was over 18 she couldn't come to the interview with me.

I felt unlucky that I would not have a solicitor at the interview as I knew other people whose solicitors did attend. I was very afraid that I would be on my own, just with some information from some other people who had been to it before. I had a foster carer who I still have good contact with her and even though I was not living with her she went with me to the interview. I told her I would be on my own, she asked me if I was happy for her to come with me and I said I would be happy for her to come. I was generally afraid about whether they would have the right interpreter, but thank god it was in Amharic. This was a great relief for me.

Because it was my real story, I knew I would have no problem telling it, but I was very stressed and nervous anyway. Initially they told me it would maybe take 4 hours, and I was terrified at the thought of that but in the end it was only 2 hours. They were reasonably good with me. But coming back to talk about my story was very painful and times I cried when I thought about it. (Case A granted refugee status after 1 year 9 months)

Advice for the Home Office from the Young People Interviewed

At the end of the research interviews the young people were asked what they would like to say to the Home Office about their experience of the asylum process. Below are a selection of the comments.

- *The waiting should be shorter. They should not leave people on their own. They must follow up what is happening to make sure that they have a proper solicitor who is helping them.*

- *As a young person they should get help. The sooner the better. The longer it takes, the more depression, anxiety and mental illness they face. They should do it as soon as possible. Not knowing the fixed date, will it be a month, a year, continuously thinking about it - it affects you a lot.*
- *I wish they make it swift and short or tell them exactly when they will decide it – give them a date. Not just saying: two weeks, 5 months or a year. Otherwise it makes you crazy – there is no date. They are playing with people’s minds.*
- *We have mentioned all this, but they should understand that when someone waits for such a long time it creates a lot of problems for the person. I wish they can understand that at the end someone is suffering because of this delay.*
- *I would tell them just for just one day and no more they should be in my shoes to see what it is like. They would cry all day if they could see – I believe that. Put yourself in my shoes.*
- *I hope that these things will not happen to any others. That they will not get delays in their interviews in the future.*

Further Research on the Impact of Delay on Mental Health

There have been a number of studies which have considered the incidence of mental health problems amongst young asylum seekers.⁴³

A recent study into the emotional health and wellbeing of UASC in Kent⁴⁴ notes recent data from an initial health screening in Kent documenting that 45% of UASC were exhibiting post traumatic symptoms.⁴⁵ A further audit undertaken by Sussex Partnership Foundation Trust⁴⁶ found that 87% of UASC referred to their service were experiencing disordered sleep patterns; this being a significant indicator symptom of PTSD. The report describes the trauma experienced by these young people as comprising of the reason for fleeing the home country, the journey, and then the immigration process once arrived which has the potential to exacerbate symptoms. The report's author Dr Ana Draper confirmed that they had identified the asylum process to be a 'hot spot' as it is 'anxiety inducing and reproduces the trauma the young person has experienced'. She explains that the asylum process itself is traumatising, both because of the requirement to recall distressing past events, and also because of the complexity of the process itself together with the uncertainty and waiting involved. 'Hot spots' in terms of stress levels were around anything to do with the asylum process, so this meant appointments at the Home Office, meeting solicitors, being interviewed. The disturbance levels Dr Draper measured were extremely high and likely to be approaching incapacitating for the young people experiencing them. The stress of accumulated experiences of trauma – particularly violence – may also lead some young people developing behavioural or antisocial problems, which makes them more likely to be viewed negatively.

A 2011 Children's Society⁴⁷ study cites several psychological studies which support this:

"According to research on refugee children's mental health there is a direct relationship between post-migration stresses and psychological distress including higher levels of post traumatic stress disorder (PTSD) and depression. The immigration process and discrimination were both found to result in greater PTSD scores while uncertainty regarding asylum status or failed claims were significantly related to depression. Furthermore, evidence suggests that psychological problems such as these are more prevalent in unaccompanied asylum-seeking children than in accompanied children."

The report documents many young people telling them that the immigration system made them feel powerless as they had no choice over what was happening with their case or the impact it had on their life. Chase (2013), drawing on data from a UK Department of Health-funded research study into the factors affecting the emotional well-being of unaccompanied children and young people seeking

⁴³e.g: Fazel et al (2012) Mental health of displaced and refugee children resettled in high-income countries: risk and protective factors Lancet 2012; 379: 266–82' Jakobsen, M et al (2017) The impact of the asylum process on mental health: a longitudinal study of unaccompanied refugee minors in Norway. BMJ Open Vol 7(6); The Children's Society, Into the unknown - Children's journeys through the asylum process; Mind (2009) A civilised society: Mental health provision for refugees and asylum-seekers in England and Wales

⁴⁴ Draper, A (2017) UASC Health Project Emotional Health and Wellbeing End of project report, January 2017

⁴⁵ Coyle, R., (2016) Health Needs Assessment – Unaccompanied Asylum Seeking Children. Kent Public Health Observatory cited in Draper (2017), p84

⁴⁶ Draper, A. Simpson, L. Gordon, A (2016) Clinical Audit Report, UASC sleep intervention, Unaccompanied Asylum Seeking Children Project. www.uaschealth.org

⁴⁷ The Children's Society, *Into the unknown: Children's journeys through the asylum process* <https://www.childrenssociety.org.uk/sites/default/files/tcs/into-the-unknown--childrens-journeys-through-the-asylum-process--the-childrens-society.pdf>

asylum notes that for most young people in their late teens their immigration status and uncertainty about the future was their overriding concern.⁴⁸

A consultant child and adolescent psychotherapist specialising in work with child refugees who responded to our request for evidence stated:

The current system exposes young people to a high level of uncertainty that undermines their functioning. We see in our daily practice the impact that delay in decision making and uncertainty have on young people, who by definition, have no parental care and who already face numerous challenges both psychological and practical. We observe a progressive deterioration in mental health and a regression and loss of developmental achievements in many of our young community members who have to wait an excessive amount of time for the resolution of their asylum claims.

.....They equate the silence from the Home Office with the likelihood that their application for asylum will be refused. In this state of mind they are unable to engage well with the natural healing process provided by involvement in studies and social life at school and college.

...Exposure to uncertainty and delay is always at some cost to their development and their sense of well-being.⁴⁹

There is therefore a substantial body of evidence that the asylum process itself can be damaging for children and young people. Unnecessary and unexplained delay is likely to significantly exacerbate what is already a traumatic experience. It creates a situation where young people are not able to move on from the events they have experienced in their home country and during their journey.

Consequences for the Asylum Claim: Impact on Credibility Assessment

There has been significant academic research concerning the assumptions made by decision-makers assessing asylum-seeker's credibility and the difficulties that asylum seekers face in setting out a narrative history that conforms to certain expectations.⁵⁰ The higher courts have cautioned decision-makers against applying Western conceptions of what is plausible behaviour in the context of claims from individuals from diverse backgrounds.⁵¹ The difficulties of narrating a history of persecution are compounded for children and young people. Neurological and psychological evidence indicates that mental development continues into an individual's early twenties. Studies have shown that

⁴⁸ Chase, E (2013) 'Security and subjective wellbeing: the experiences of unaccompanied young people seeking asylum in the UK' *Sociology of Health & Illness* Vol. 35(6), p862

⁴⁹ Consultant child and adolescent psychotherapist, London, 25/09/17

⁵⁰ See Herlihy, Scragg and Turner [2002] "Discrepancies in Autobiographical Memory – Implications for the Assessment of Asylum Seekers: repeated interview study" *British Medical Journal* 324-27 and Rousee, Crepeau and Houle "The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board [2002] JRS 43-70, Herlihy, Gleeson & Turner, [2010] "What assumptions about human behaviour underlie asylum judgements" *International Journal of Refugee Law* 22(3):351-366

⁵¹ *In many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue.... Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience.* Neuberger LJ in *HK v SSHD* [2006] EWCA Civ 1037 [28-29]

autobiographical memory develops through adolescence.⁵² Furthermore, cultural factors can influence the ability to narrate a life history.⁵³ Children from cultures where there is less emphasis placed on the individual may be less able to provide detailed memories focusing on their own feelings and motivations. Yet an inability to narrate details, provide a consistent account or provide an explanation for the actions of adults in the story are frequently used as justification for dismissing a claim.

Psychological issues can clearly have an impact on memory.⁵⁴ A 2010 study showed that adolescents exposed to war conditions had less specific autobiographical memories than those not exposed to war.⁵⁵ Given Wilson⁵⁶, notes that in normal circumstances a person will reach psychological maturity in their early 20s, but trauma is likely to delay 'optimal development'. UASC are "more likely to present with 'uneven' development and may not match expected norms in receiving countries".⁵⁷

*"Both single and repeated traumas can significantly affect a young person's everyday life and memory, and repeated trauma from a young age has been found to have a particularly deleterious effect on brain and language development and memory... Earlier, more severe or longer lasting stressors cause more psychological distress and may hinder development."*⁵⁸

Furthermore, as young adolescents they are more likely to think in a concrete way – based more on lived experience than on the deductive and hypothetical principles which western society expects. Thus explanations of events which appear shallow or implausible to an adult may be a reflection of a concrete and inductive thinking.⁵⁹

Providing detail may also be impaired by the young person's ability to regulate their emotions. Those suffering psychological problems may be unable to cope with the interview; they may be unable to answer questions or misread an interviewer as aggressive.⁶⁰ Trauma can affect memory and can therefore affect the perception of credibility. Depression can lead to young people appearing disengaged and uninterested in the account they are giving; anxiety can often lead to fidgeting which may be interpreted as an indicator that the young person is lying; if they are withdrawn their distress may not be apparent. Hence their account may not appear credible.

Delay in the asylum process therefore is damaging on a number of levels. By increasing mental distress it can exacerbate the difficulties that young people already face in providing a coherent and

⁵² Habermas, T & de Silveira, C (2008) The Development of Global Coherence in Life Narratives Across, Adolescence: Temporal, Causal, and Thematic Aspects. *Dev Psychol.* Vol44(3):707-21; Givens-Wilson, Z et al (2016) Telling the story: A psychological review on assessing adolescents' asylum claims. *Canadian Psychology Vol 57(4)*, p265-273

⁵³ See for example, Chen et al (2013) *Development in the Organisation of Episodic Memories in Middle Childhood*, *Frontiers in Behavioural Neuroscience* 7:84; Wang, Q. (2004). *The emergence of cultural self-constructs: Autobiographical memory and self-description in European American and Chinese children*. *Developmental Psychology*, 40, 3–15.

⁵⁴ See for example Kuyken W., Dalgleish T (2011) *Overgeneral autobiographical memory in adolescents at risk for depression*. *Memory* 19(3):241–250

⁵⁵ Brennen et al (2010) *Trauma Exposure in Childhood Impairs the Ability to Recall Specific Autobiographical Memories in Late Adolescence* *Journal of Traumatic Stress* 23(2):240-7

⁵⁶ Givens-Wilson, Z et al (2016) Telling the story: A psychological review on assessing adolescents' asylum claims. *Canadian Psychology Vol 57(4)*, p265-273

⁵⁷ Ibid p266

⁵⁸ Ibid p266

⁵⁹ Ibid p266

⁶⁰ Ibid p267

“credible” narrative in their asylum interviews. Furthermore, significant delay resulting in a young person becoming 18 prior to their interview deprives them of the protection of a legal aid funded representative and a responsible adult present at interview.

The Impact on the Asylum Claim of Turning 18

A concern raised by a number of practitioners is that delay in the asylum process may prejudice the ultimate outcome of a young person’s asylum claim and the likelihood of them being granted a secure immigration status. This section examines that issue.

As discussed earlier there are a number of important procedural protections accorded to those under 18.

- Specific Home Office guidance applies to the handling of claims by those under 18, including during the interview.⁶¹ Those conducting interviews must be trained to handle the claims of children. The child should be allowed to express themselves in their own way and at their own speed. Regular breaks must be offered. If the child appears tired or distressed, the interview should be stopped. For less mature children, the benefit of the doubt should be applied more liberally.
- Those under 18 have the right to be accompanied to the interview by a legal representative and independent interpreter funded by legal aid.⁶² They should also be accompanied by a responsible adult.
- The Immigration Rules state that, “...account should be taken of the applicant's maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of his situation”.⁶³
- Guidance on child witnesses should be taken into account by judges deciding immigration appeals by those under 18. Judges are directed to exclude the public when a child is giving evidence, and children must be protected from improper or aggressive cross-examination.⁶⁴ A 2008 practice direction⁶⁵ confirms that a child will only be required to attend and give evidence at a hearing where necessary to enable the fair hearing of the case and where their welfare would not be prejudiced. The importance of these principles were affirmed in the case of *AM (Afghanistan)*.⁶⁶
- Those who are refused asylum before the age of 17.5 are normally granted a period of UASC leave to remain, if the Home Office is not satisfied that there are adequate reception conditions in place upon their return. This gives them the possibility of applying to lawfully extend that leave and means that they should not be removed until a further decision on this application is made. After the age of 17.5 leave is often refused outright, even though any eventual removal is unlikely to take place before they turn 18.
- There are restrictions on the detention of unaccompanied children.⁶⁷

⁶¹ *Processing Children’s Asylum Claims (Version 2)*, 9 October 2017. It should be noted that the guidance states that with those who turn 18 prior to the interview, staff must, *wherever possible*, follow best practice for children’s cases.

⁶² Regulation 3 of The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012 makes provision for attendance at interviews where a person is a child “at the time of that interview”. For persons who are not children attendance at interviews is only funded where a person lacks capacity within the meaning of section 2 of the Mental Capacity Act 2005 or in specific circumstances where they are detained.

⁶³ Immigration rules 350-352

⁶⁴ Child, vulnerable adult and sensitive appellant guidance Joint Presidential Guidance Note No 2 of 2010:

⁶⁵ *Child, Vulnerable Adult and Sensitive Witnesses Practice Direction First Tier and Upper Tribunal*, Lord Justice Carnwath, Senior President of Tribunals, 30 October 2008

⁶⁶ *AM (Afghanistan) v Secretary of State for the Home Department*, [2017] EWCA Civ 1123

⁶⁷ Immigration Act 2014, section 5 and Home Office Enforcement Guidance

- Decision makers must take into account the best interests of minors. This should apply at all stages of the claim, when conducting the interview and in making the decision.

In addition the fact that an individual is under 18 may be relevant to the way in which their substantive asylum claim is considered. In order to obtain asylum an applicant has to demonstrate that they meet the definition of a refugee set out in Article 1A of the 1951 Refugee Convention⁶⁸ or that they qualify for Humanitarian Protection under the EU Qualification Directive.⁶⁹ The Convention itself makes no distinction between the treatment of adult and child refugees.

Nevertheless, subsequent guidance has addressed the particular problems of assessing the risk on return for a child. Refugee law requires that the assessment of risk is based on the individual characteristics of the applicant, so an assessment of a child's claim must take into account their age, maturity and past experiences. UNHCR guidelines on children's asylum claims⁷⁰ call for children to be recognised as 'active subjects of rights', rather than being viewed through the prism of adult experiences. The 'best interests' principle requires that harm is assessed from the child's perspective and that consideration is given to socio-economic rights, which may be as relevant in a child's claim as civil and political rights. For children, discrimination or an accumulation of less serious violations of rights may amount to persecution.⁷¹ Children may have faced significant abuses at home, at work, on the streets and in institutions ostensibly there to protect them. This may include harmful traditional practices such as female genital mutilation (FGM) and forced marriage as well as domestic violence, child labour, and recruitment by armed groups. States are often complicit, or unable to provide enforceable legal protection. The EU Qualification Directive⁷² recognises 'Acts of a child specific nature' in its definition of acts of persecution.

For anyone, adult or child, to qualify as a refugee under the 1951 United Nations Refugee Convention it is necessary to show a well-founded fear of persecution *for reasons of* one of the 5 Convention reasons.⁷³ The principal 'Convention reason' applying to children is 'particular social group' (PSG). Age has been accepted as constituting a PSG, in that although age changes with time, at any specific time it is an 'immutable characteristic'. Therefore children from groups such as 'street children', 'orphans', or 'children with disabilities' may, depending on country conditions, qualify for refugee status. *LQ Afghanistan*⁷⁴ accepted that an Afghan child with no family would face a real risk of persecution if returned alone to Kabul, given the nature of Afghan society and the lack of protection available to children.

⁶⁸ Article 1A defines a refugee as a person who "...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country....".

⁶⁹ EU Qualification Directive 2004/83/EC provides subsidiary protection to those who faces a real risk of suffering serious harm (as defined in the directive) in their home country.

⁷⁰ UNHCR, Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, page 3 para 3. UNHCR guidelines are non-binding on the UK but can be persuasive in UK courts as an aide to interpreting the Convention.

⁷¹ See for example, JA (child - risk of persecution) Nigeria [2016] UKUT 00560 (IAC) Headnote "A child can be at risk of persecutory harm contrary to the UN Convention on the Rights of the Child in circumstances where a comparably placed adult would not be at such a risk".

⁷² EU Qualification Directive 2004/83/EC

⁷³ UN Convention on Refugees 1951 article 1A(2). The convention reasons are race, religion, nationality, political opinion and membership of a particular social group.

⁷⁴ *LQ (age: immutable characteristics) Afghanistan* [2008] UKAIT 00005

Adult asylum claims based on a fear of non-state actors are frequently refused on the grounds that the applicant could return to a different, safe, part of their country ('internal flight alternative' (IFA)). For example, Afghan asylum-seekers are expected to return to Kabul. The legal test is whether such relocation would be 'unduly harsh', considering the specific characteristics of the applicant.⁷⁵ For children, UNHCR guidelines require consideration of their best interests and their long-term life prospects. What might be 'reasonable' for an adult may not be reasonable for a child.⁷⁶ Conversely, what is merely inconvenient for an adult might be 'unduly harsh' for a child.

When assessing claims for Humanitarian Protection based on a fear of 'indiscriminate violence' decision makers must also take into account the individual characteristics of the applicant. The more the applicant is able to show that he or she is specifically affected by reason of factors particular to his/her personal circumstances, the lower the level of indiscriminate violence required for him/her to be eligible for subsidiary protection⁷⁷. Therefore, in conflict zones where children are particularly affected, it should be easier for them to make out a claim for Humanitarian Protection.⁷⁸

It is a well-established principle that an asylum claim must be determined at the date of the hearing based on a consideration of the facts that then apply.⁷⁹ This does mean that a young person who arrives at age 15, but does not have his case heard in court until he is 18 will have the risk on return assessed based on the facts that then exist. Arguably, had his case been decided earlier there would have been stronger arguments for granting international protection.

The courts have cautioned though against drawing any sharp distinction between risks that might exist as a child, but not as an adult. In *KA (Afghanistan)* it was stated that there is 'no bright line' when assessing risk with Kay LJ noting that "*persecution is not respectful of birthdays – apparent or assumed age is more important than chronological age*".⁸⁰ In *KS (benefit of the doubt) [2014]*⁸¹ the tribunal considered that the concept of a "liberal application of the benefit of the doubt" is not to be regarded as a rule of law to be universally applied in children's cases, and an assessment of the young person's maturity must be made. They considered though that even once a minor has turned 18, a child sensitive approach should still be taken to aspects of the claim which involve events that occurred when the young person was a minor.⁸²

⁷⁵ *Secretary of State for the Home Department (Appellant) v. AH (Sudan) and others* [2007] UKHL 49, confirming *Januzi v Secretary of State for the Home Department* [2006] UKHL 5

⁷⁶ UNHCR, Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees page 21, para 55

⁷⁷ See case of *Elgafaji (Justice and Home Affairs)* [2009] EUECJ C-465/07

⁷⁸ See for example *AA (unattended children) Afghanistan CG* [2012] UKUT 16 (IAC)

⁷⁹ *Ravichandran [1996] Imm AR 97*. In *TN & MA (Afghanistan) v SSHD [2015] UKSC* the Supreme Court reaffirmed this principle rejecting the argument that a child applicant who suffered an arguable prejudice in the handling of their claim, should be granted leave as a corrective remedy once an adult, when on the facts that then existed they did not have an entitlement to refugee status. This ended a long line of litigation focused on children who were arguably denied leave to remain whilst a child due to Home Office errors. See also *AA (Afghanistan) v Secretary of State for the Home Department [2007] EWCA Civ 12*, *R (S) v Secretary of State for the Home Department [2007] EWCA Civ 546* and *SL (Vietnam) v Secretary of State for the Home Department [2010] EWCA Civ 225*.

⁸⁰ *KA (Afghanistan) & Ors v Secretary of State for the Home Department* [2012] EWCA Civ 1014 para 18

⁸¹ *KS (benefit of the doubt) [2014] UKUT 00552 (IAC)*

⁸² See paras 106-107, *KS (benefit of the doubt) [2014] UKUT 00552 (IAC)*

Nevertheless, it remains many practitioners experience that asylum appeals from certain nationalities are more likely to succeed at the first tier tribunal when a young person is still a child.⁸³

It is of course also the case that refugee status can be curtailed if the factors that give rise to it no longer exist, meaning that a young person whose claim for asylum as a 15 year old unaccompanied child is only successful based on their young age and lack of family protection could be withdrawn once they become an adult if it is considered that they would no longer be at risk. Until recently, though, it has been usual for those granted 5 years refugee leave to be subsequently granted Indefinite Leave to Remain as a matter of course, provided they remain of good character. In March 2017 the Home Office revised its policy to actively review refugee claims providing for a more intensive scrutiny of whether the factors that gave rise to the asylum claim still exist when considering ILR.⁸⁴ However, revocation of refugee status is a significant decision which attracts a right of appeal and the burden is on the Home Office to show that any change is significant and non-temporary. It is also the case that where the revocation of refugee status is considered, the UNHCR should be provided with an opportunity to present their views on individual cases. Therefore a young person who has been able to obtain refugee status as a child remains in a legally more secure position than one whose claim is not decided, or who receives only UASC leave.

⁸³ See for example Colin Yeo's discussion: "Boys to men: how to prepare asylum appeals for young Afghans" at <https://www.freemovement.org.uk/boys-to-men-how-to-prepare-asylum-appeals-for-young-afghans/>, The Home Office does not publish separate appeal statistics for unaccompanied minors, which may show that a higher proportion of appeals by children are successful. Our Freedom of Information requests for this material was refused on the basis that the information is not centrally recorded and to obtain it would lead to excessive costs.

⁸⁴ Home Office Refugee Leave Version 4.0 March 2017

Conclusion

There is evidence that delay has become a serious systemic problem for unaccompanied minors in the UK asylum process. Home Office statistics show that throughout 2015 and 2016, the average processing time was over 6 months and practitioners' experiences are that many individual cases are far in excess of this.

The overwhelming evidence obtained from interviews with young people and professionals working with them was that delay in the processing of the claim was having a significantly negative impact on their mental health. It is evident that delay can compound the effects of trauma and the asylum process on children and young people. The asylum process is itself inherently traumatising, yet the additional uncertainty at what is a critical time in a young person's development is adding to this.

Importantly the lack of clear, consistent and reliable information about the causes of delay is leading to young people relying on rumours or speculating as to why their case is delayed; The seeming disparity whereby individuals who arrived at a similar time are treated very differently is having a negative impact on young persons' relationships with their peers and those advising them.

For those who are finally granted refugee status after a lengthy delay, there is a risk that the insecurity and uncertainty at a crucial point in their lives will have damaged their future prospects and ability to successfully integrate in the UK, through preventing them from taking full advantage of educational and other opportunities. A lengthy wait for an asylum interview may also hinder their ability to recover from the trauma they have experienced in their country of origin and during their journey. Finally there is a risk that subjecting young people to lengthy delays ultimately prejudices the outcome of the asylum claim by making it less likely that they will obtain lasting international protection.

Recommendations

- There should be a dedicated service standard for the processing of the claims for asylum made by UASC requiring that claims be determined within a period of no longer than 6 months save for in a limited number of clearly defined exceptions informed by the principle of the “best interests” of the child.
- The Home Office should formulate and adhere to a transparent and published policy for the consideration of requests for the expedition of the processing of the claims for asylum of UASC.
- The Home Office should publish statistics on the average length of time it takes to process the claims of unaccompanied asylum seeking children in each asylum processing region, in order that there is better transparency and greater accountability for any future increase in processing times.
- The Home Office should publish data on the timescales applied in the National Transfer Scheme.
- The Home Office should publish separate statistics on the outcomes of asylum appeals involving unaccompanied asylum seeking children.
- The Home Office should provide a clear channel of communication for legal representatives and those supporting young asylum seekers to enable them to request and be promptly issued with Asylum Registration Cards.
- The Ministry of Justice should amend the Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012 to permit the Legal Aid Agency to fund the attendance of legal advisers at the asylum interviews of all those who are granted legal aid for their asylum claim whilst a minor, regardless of the young person’s age at the date the interview is scheduled. Whether or not a young person qualifies for publicly legal representation at their asylum interview should not depend on whether they are called for interview before their 18th birthday, this being an additional concern for those approaching adulthood.
- The Legal Aid Agency should ensure that adequate publicly funded legal representation capacity exists in all national transfer scheme regions so that young people can be promptly referred to specialist legal advisers at the outset of their asylum claims.

Postscript: Subsequent Developments

Despite the introduction of the National Transfer Scheme, reports of young people subject to very lengthy delays remained. At this time Elder Rahimi were working with a number of young asylum seekers subjected to delays of more than 18 months. In 2017 proceedings were issued in 6 cases where young asylum seekers had experienced significant and unexplained delays. An order is sought that the Home Office should formulate a transparent and published process or mechanism by which asylum claims for unaccompanied children can be considered on an expedited timescale on the basis of an individualised assessment of their best interests and circumstances. Evidence obtained through this research including statements from those working with large numbers of unaccompanied asylum seeking children has been submitted as part of these judicial reviews. These cases remain pending in the Upper Tribunal.

Concerns with the growing scale of the delay in Kent have been raised by the Refugee Council directly with the Home Office at the National Asylum Stakeholder Forum.⁸⁵ It is understood that the Home Office have said they plan to increase their capacity to interview children by ensuring there are more child-trained decision makers, but no timescale has been provided. In April/May 2017 during the course of this research, the Home Office began to clear the backlog of delayed cases in Kent by seconding casework teams from other regions. Many of those young people who arrived in the Summer of 2015 finally received interviews and decisions, in some cases now as adults and without an entitlement to legal representation at interview. Whilst it was a welcome development that interviews were now being conducted, a number of young people described receiving interview dates with very little notice given. NGOs reported there were a significant number of young people who were not adequately prepared at interview, as due to the preceding delay they had not seen their solicitor for a year or more and there was not enough time to meet their solicitor again.

Whilst there may be some signs that the situation has improved in recent months, concern remains that without a substantial change in policy, significant delays will occur in the future, impacting on another generation of young asylum seekers.

In November 2017 the government published a new safeguarding strategy for unaccompanied asylum seeking and refugee children fulfilling a commitment made in a Written Ministerial Statement in November 2016.⁸⁶ Whilst this document addresses a number of important aspects of the care of unaccompanied children it does not address the priority processing of claims, improving the accuracy of the asylum determination procedure or the need for ensuring lasting secure and durable solutions for those who arrive as children.

When fully implemented the Immigration Act 2016 will introduce changes to the provision support provided to unaccompanied minors refused asylum, excluding them from the “leaving care” provisions of the Children’s Act 1989.⁸⁷ This makes ensuring that young asylum seekers receive a prompt consideration of their claim for international protection so that a durable solution can be achieved, even more critical.

⁸⁵ Letter from Refugee Council, 22/09/17 submitted to judicial review proceedings

⁸⁶ Home Office & DfE, Safeguarding Strategy Unaccompanied asylum seeking and refugee children November 2017

⁸⁷ Section 68 and Schedule 12 Immigration Act 2016

Annex 1: The Current Law Concerning the Processing of Asylum Claims from Minors

Until 2008 the UK government opted out of applying the United Nations Convention on the Rights of the Child (UNCRC) to immigration issues, but in 2008 the government removed the opt-out, and from November 2009 s55 Borders, Citizenship and Immigration Act (BICA) 2009 required the Secretary of State to ensure that immigration, asylum and nationality functions are discharged 'having regard to the need to safeguard and promote the welfare of children'. The case of *ZH Tanzania* interpreted this as requiring immigration decision-makers to treat the 'best interests' of a child as a 'primary consideration'.⁸⁸

General Comment No 14 of the UN Committee on the Rights of the Child describes the child's best interests as a three-fold concept:

1. A substantive right whereby the child's best interests are taken as a primary consideration in any decision made in relation to a child;
2. A fundamental interpretative legal principle so that any legal rule or provision is open to more than one interpretation, that which most effectively serves the child's best interests should be chosen;
3. A rule of procedure such that any decision must include an evaluation of the possible (positive or negative) impact of the decision on the child concerned and the justification of a decision must show that the right has been explicitly taken into account.

General Comment No 6 of the Committee on the Rights of the Child elaborates on the substance of state parties' obligation to take appropriate measures to ensure that asylum seeking children receive appropriate protection. This includes giving "*priority*" to claims made by unaccompanied asylum seeking children, and ensuring a decision is rendered "*promptly and fairly*". The ultimate objective in addressing the fate of unaccompanied asylum seeking children is "*to identify a durable solution that addresses all their protection needs, takes into account the child's view*" with efforts to find a durable solution being "*initiated and implemented without undue delay.*"⁸⁹

EU Law Framework

Article 18 of the EU Charter on Fundamental Rights confers a right on an individual to make a claim for asylum or international protection. The criteria for qualifying as a refugee or for humanitarian protection is governed by the EU Qualification Directive⁹⁰ on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

Although the criteria for qualifying as a refugee or for humanitarian protection are applicable to everyone including children, the Qualification Directive recognises the specific vulnerable position of

⁸⁸ *ZH Tanzania v SSHD* [2011] UKSC 4. Note however, that it is to be "a primary consideration", but not "the paramount consideration" and so the child's best interests can in some circumstances be outweighed by an accumulation of other considerations.

⁸⁹ General Comment No 6 of the Committee on the Rights of the Child, p20

⁹⁰ EU Directive 2004/83/EC. These criteria are incorporated into UK domestic law by the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, made under section 2(2) of the European Communities Act 1972.

children, and in particular, unaccompanied asylum-seeking children and requires member-states to have their best interests as a primary consideration in the examination of their claims for international protection.⁹¹

By the Procedures Directive⁹² on minimum standards on procedures in Member States for granting and withdrawing refugee status member-states are required to implement a procedure for examining asylum claims which is concluded “*as soon as possible*” without prejudice to an adequate and complete examination: Article 23(2). Where decisions cannot be completed within six months, the applicant must be informed of the delay, and be provided with information on the time frame within which examination of his claim can be completed. By Article 23(3), member states may “*prioritise or accelerate any examination*” of a claim, including where the applicant has special needs. This includes those applicants who are unaccompanied asylum-seeking children. Indeed, by recital 14, the Procedures Directive requires that specific procedural guarantees be laid down for unaccompanied asylum seeking children, and for those procedural guarantees to have the best interests of the child as a primary consideration.

It is therefore evident that the EU Common European Asylum System operates with the clear objective that cases of children should be determined speedily.⁹³

UK Domestic Law

The UK Immigration Rules require the Home Office to ensure that an application for asylum is determined as soon as possible without prejudice to an adequate and complete examination, and generally within six months.⁹⁴ Any delay should be notified to the applicant with information on a timeframe within which a decision may be expected, although this does not “*oblige the Secretary of State to take a decision within the stipulated time frame.*”

The rules also provide specific procedural guarantees for unaccompanied children, recognising their “*potential vulnerability*” and the need for “*particular priority and care in the handling of their cases.*”⁹⁵

The Home Office has issued policy guidance⁹⁶ to ensure that claims from unaccompanied children are “*prioritised*” and “*protection is granted swiftly to those who need it*”. An earlier version of this guidance⁹⁷ had an indicative timescale set out an attached Process Map for an initial decision on an unaccompanied child’s claim to be made is 35 days with an appeal being heard by Day 45. The July 2016 policy is silent on indicative timescales but implemented a “UASC case review” to agree

⁹¹ See recital 12 and articles 20(3) and (5).

⁹² EU Directive 2005/85/EC

⁹³ See further Article 17(1) of the Procedures Directive requiring that a legal representation should assist a child with their asylum application “*as soon as possible*”; Article 19(1) of the Reception Directive (2003/9/EC) creates a similar right and further requires member states to commence the family tracing duty “*as soon as possible*”: see Article 19(3). The Qualification Directive further requires action to be taken to secure a child’s well-being via appropriate representation following the grant of status “*as soon as possible*”: Article 30(1). Finally, Article 6(4) of Regulation 604/2013, the procedure by which the Common Asylum System determines which member state is responsible for examining a child’s asylum application, responsibility is to be allocated to the relevant member state, requires appropriate action to be taken to identify the responsible member state “*as soon as possible.*”

⁹⁴ Paragraph 333A of the Immigration Rules replicating Article 23(2) of the Procedures Directive

⁹⁵ Paragraphs 350 to 352ZB

⁹⁶ *Processing Children’s Asylum Claims* (Version 1.0), 12 July 2016

⁹⁷ *Processing Asylum Claims from Children* (version 6.0), April 2013

milestones for the examination of a unaccompanied child's asylum claim with the child's allocated social worker and legal representative.

The Home Office has also issued statutory guidance⁹⁸ setting out how the section 55 duty is to be applied. Paragraph 1.4 states that the statutory duty to safeguard and promote the welfare of children who are in the United Kingdom means:

- *Protecting children from maltreatment;*
- *Preventing impairment of children's health and development (where health means 'physical or mental health' and development means 'physical, intellectual, emotional, social or behavioural development');*
- *Ensuring that children are growing up in circumstances consistent with the provision of safe and effective care;*
- *Undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.*

Work with the child should be child-centred, take account of the child's views, informed by evidence, and have regard to the professional views and information available from other agencies involved with the child.⁹⁹

Paragraph 2.7 states that

- *children should be consulted and the wishes and feelings of children taken into account wherever practicable when decisions affecting them are made, even though it will not always be possible to reach decisions with which the child will agree. ...*
- *children should have their applications dealt with in a timely way that minimizes the uncertainty that they may experience.*

It is acknowledged that *"there should also be recognition that children cannot put on hold their growth or personal development until a potentially lengthy application process is resolved. Every effort must therefore be made to achieve timely decisions for them."*¹⁰⁰

In *R (ABC)*¹⁰¹HHJ the court considered that excluding a child asylum seeker from refugee status because of suspected involvement in a serious crime abroad was unlawful because the Respondent adopted the same approach as with adults facing the same prospects of exclusion who are subject to a rolling six-month review. The Judge held that such an approach, applied to a child asylum seeker, did not comply with section 55 BCIA 2009, finding that a delay in resolving a child's immigration status was inimical to the child's best interests.¹⁰²

In *R (Shah) v Secretary of State for the Home Department* [2014] EWHC 2192 (Admin), the Court noted the Respondent's acceptance that *"pursuant to her obligations under section 55 ... there is a need to deal with child applicants in a 'timely manner' which minimizes the uncertainty that they may experience and in recognition of the fact that children cannot put on hold their growth or personal development until a potentially lengthy application process is resolved."* Whilst 'timely' did not always require the Respondent to expedite consideration of the claim, the Court held (at [25(iii)]) that it did mean that *"applications must be dealt with in a time frame which is appropriate to the case. In other*

⁹⁸ Guidance has been issued under s55(3) in the form of Every Child Matters; Change for Children.

⁹⁹ Paragraph 1.16.

¹⁰⁰ Paragraph 2.20

¹⁰¹ *R (ABC) v Secretary of State for the Home Department* [2011] EWHC 2937 (Admin),

¹⁰² See [54]-[61].

words, it requires a case specific approach.” Thus an approach that treated all applications including those from children generically the same “clearly precludes a case specific approach” in breach of section 55, BCIA 2009.

Duty of Effective Administrative Decision-Making

It is well established as a matter of public law that the state has a duty to provide a fair system, whatever the administrative decision-making process.¹⁰³ Delays in processing an application whose outcome will affect the family life of the person may require the intervention of the Court¹⁰⁴. Delays may also be unlawful if they are unreasonable.¹⁰⁵

The duty to ensure effective decision-making is not limited only to cases where otherwise there would be a breach of Article 6, ECHR. In *R (Gudanaviciene and Ors) v Director of Legal Aid Casework* [2015] 1 WLR 2247, the Master of the Rolls noted¹⁰⁶ that the procedural requirements to ensure rights are practical and effective and not theoretical and illusory and apply also to procedural requirements inhering in Article 8 ECHR. He went on to find at that:

69. ... *The fact that immigration decisions do not involve the determination of civil rights means that article 6.1 cannot be invoked in relation to such decisions. But it does not follow that the procedural obligations under article 8 do not apply to immigration decisions... The procedural protections inherent in article 8 are necessary in order to ensure that article 8 rights are practical and effective.*” (emphasis added)

70. ... *“the focus of the procedural aspect of article 8 is to ensure the effective protection of an individual’s article 8 rights ... in determining what constitutes effective access to the tribunal (article 6.1) and what constitutes sufficient involvement in a decision-making process (article 8), for present purposes the standards are in practice the same.”*

Summary of Legal Principles

Pulling together the strands of the diverse and authoritative sources of law, as outlined above, they all point in a single direction, namely that:

- Delay in progressing and examining an unaccompanied child’s asylum claim is to be avoided if reasonably possible;
- Any delay must not be caused without the decision-making affording primacy of consideration to the impact (positive or negative) of the delay, particularly on the child’s physical, emotional and psychological development and the securing of a durable solution for the child;
- The effect of section 55 BCIA 2009, whether applied on its own or read with the UK’s international obligations under Article 24 CFR, the UNCRC, and Article 8 ECHR, has the effect of directing a decision-maker to afford statutory weight of primary importance to the best interests of the child in any decision which directly or indirectly affects a child consistent with the structured approach required under Article 8, ECHR

¹⁰³ per Edis J in *R (Sathanantham and Ors) v SSHD* [2016] EWHC 1781 (Admin), adopting the principle as laid down in *R v SSHD ex parte Saleem* [2001] 1 WLR 443, *R (Q) v SSHD* [2003] EWCA Civ 364 [2004] QB 36, and *R (Refugee Legal Centre) v SSHD* [2005] 1 WLR 2219. It was incumbent on the Defendant to determine applications fairly and rationally; a failure to determine an application within “a reasonable period of time breaches that duty”: *Sathanantham* at [87] and [92].

¹⁰⁴ *R v SSHD ex parte Phansopkar* [1976] QB 606 at 626B-G per Scarman LJ (as he then was). That was a case where the right to family life under article 8 was engaged (albeit pre-Human Rights Act 1998).

¹⁰⁵ *R v SSHD ex parte Mersin* [2000] INLR 511

¹⁰⁶ At [65]-[66]

- Thus, any justification for the delay must be capable of being evidenced. At the very least, the impact on the children of what is contemplated must be properly understood by (and seen to be so) the decision-maker, then confronted (and seen to be so) by them recognising that those interests are primary interests in the decision-making (even if they might be outweighed by others in the end).
- The onus is on the Respondent to demonstrate how a decision was made in compliance with section 55 BCIA 2009. The failure to do so, whether at a policy or individual level, has been found to be an independent reason for why a public authority's decision was defective.¹⁰⁷
- Policies formulated with compliance with section 55 BCIA 2009 in mind must be capable of achieving the legislative objective of treating the best interests of children as a primary consideration.

¹⁰⁷ See *Nzolameso* supra at [27] per Baroness Hale who held further at [39] that a policy must not only reflect a public authority's obligations under s.11 CA 89, it should be approved by the democratically accountable members of the council and ideally be publicly available.

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